

National Energy Board
Attention: Peter Watson, Chair, *via email: peter.watson@neb-one.gc.ca*
Suite 210, 517 10th Avenue SW
Calgary, AB T2R 0A8

Mackenzie Valley Land and Water Board
Attention: Mavis Cli-Michaud, Chair, *via email c/o: rchouinard@mvlwb.com*
7th Floor, 4922 - 48th Street, Box 2130
Yellowknife, NT X1A 2P6

Government of the Northwest Territories
Attention: Premier Bob McLeod, *via email: Bob_McLeod@gov.nt.ca*
4570-48th Street
Yellowknife, NT X1A 2L9

Government of the Northwest Territories
Attention: Hon. Robert C. McLeod, *via email: Robert_C_McLeod@gov.nt.ca*
4570-48th Street
Yellowknife, NT X1A 2L9

Government of the Northwest Territories
Attention: Hon. Louis Sebert, *via email: Louis_Sebert@gov.nt.ca*
4570-48th Street
Yellowknife, NT X1A 2L9

Ministry of Natural Resources, Canada
Attention: Hon. Jim Carr, Minister, *via email: Jim.Carr@parl.gc.ca*
580 Booth Street, 21st Floor
Ottawa, ON K1A 0E4

July 28, 2017

Dear Board Chairs and Ministers:

Re: Need for a Meeting to Clarify Harmonized Process for Line 21 Review

We are writing to advise that our respective First Nations expect that no further hearing dates regarding Enbridge's Line 21 project will be set by the National Energy Board (NEB), Mackenzie Valley Land and Water Board (MVLWB) or any Crown entity until our First Nations are properly consulted and reach an agreement regarding a clarified and harmonized process for this review.

Consultation and an agreement is required to clarify the shape and content of any harmonized review process. Specifically, clarity is required regarding which Crown bodies (or their designates, such as the NEB and MVLWB) are specifically responsible for:

- (1) engaging in the Aboriginal consultation process,
- (2) identifying and implementing specific accommodations that address the impacts of this project on our Dene rights and the Crown's treaty obligations, and
- (3) making a final determination regarding the sufficiency of the Aboriginal consultation and accommodation process.

As you are aware, our First Nations continue to have serious concerns about Enbridge's proposal to repair Line 21 under the Mackenzie River near Łídljı́ Kúé (Fort Simpson) and regarding plans to reopen this aging pipeline. On July 26, 2017 we received notice from the NEB regarding the postponement of the NEB's hearings (in proceeding MH-001-2017) regarding Enbridge's Line 21 project in order to allow the MVLWB to determine whether this project is exempt from environmental assessment under the *Mackenzie Valley Resource Management Act*.

Serious questions remain regarding who is responsible for which aspects of Aboriginal consultation and accommodation for this project, including with respect to the impact of reopening the overall pipeline.

We are sure that you, like we, have been considering the proper procedures for review of both environmental and Dene rights impacts for this project in view of the Supreme Court's decision this week in *Clyde River v. NEB*. We are concerned that the existing process for reviewing the Line 21 repairs and proposed reopening is not clear regarding who is responsible for which roles, does not offer meaningful opportunities for full participation in the review, and is opaque regarding who will make final decisions about which accommodations will occur where our Dene rights are impacted and regarding the sufficiency of consultation.

With respect to the NEB hearing process, for instance, our First Nations are currently being constrained from presenting the oral evidence of our technical experts (so that we and our community members can hear them). We have not been provided with accessible information for our community members (including lack of support for making information accessible to non-English speakers, particularly those who live and harvest in the immediate vicinity of the project). The process has been accelerated on a timeline which makes our participation more difficult and which has constrained our ability to obtain the technical expertise we need to properly understand the impacts of the repairs and the re-opening (particularly as it relates to permafrost shift risks). More generally, the harmonization process is unclear, with no clarity on which bodies and processes will address the full scope of the impacts of both the proposed replacement of pipeline near Łídljı́ Kúé as well as the impacts of the re-opening of the full line.

80% of Line 21 flows through unceded Dehcho territory. You and we are aware that this aging pipeline has had spill and leak issues (including the 2011 spill near Pehdzeh Ki (Wrigley) and the compromised structure revealed in the 2013 integrity digs). You and we are aware that soil

conditions in this region are rapidly changing due to shifts in permafrost, particularly near water bodies – indeed, this is the very reason why Line 21 had to be shut down. Our communities have very real and justified concerns about how the repairs to, and reopening of, Line 21 will affect our Dene rights and the Crown's treaty obligations.

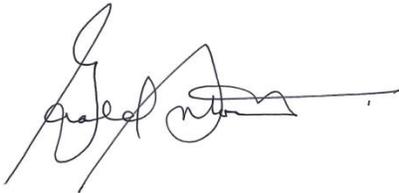
As Dene we have detailed knowledge of our land, including the changes to the land over generations and knowledge of the land's current state. Like science, much of our knowledge is based on observation and evidence. In addition to the shared knowledge mentioned above, our Dene knowledge of the land also gives us reason to be concerned about the repairs to, and reopening of, Line 21.

There must be clarity regarding who will address the Dene rights and treaty obligations concerns, and clarity about how that process will work. Those determinations regarding the process cannot happen in our absence – we must be at the table to work with you to ensure that any harmonized process can properly address our concerns. The current process has been rushed, opaque and confusing. This cannot continue.

We therefore advise that no further hearing dates for NEB hearings or any other regulatory process related to this project should be set until there is clarity regarding the intended harmonized process. Before any further hearing dates are set, there must be clarity about how, specifically, Dene rights and the Crown's treaty obligations concerns will be addressed regarding both the proposed repairs near Fort Simpson and the reopening of the overall line, and who is specifically charged with consulting on all aspects of this matter and who will decide when that consultation is sufficient. That discussion regarding a proper process must necessarily involve our First Nations.

Please advise when representatives of your respective agencies and departments would be available for a meeting to negotiate an agreement with us regarding a harmonized process that properly addresses the full scope of Dene rights and treaty obligations impacts of this project.

Sincerely,



Chief Gerry Antoine
Łíídlíj Kúé First Nation



Chief Dolphus Jumbo
Sambaa K'e First Nation

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