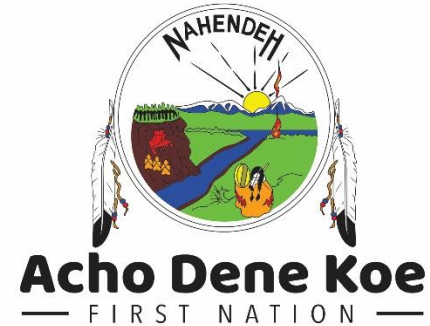


October 5, 2021

Kimberley Murray
Mackenzie Valley Land and Water Board
4922 - 48th Street
7th Floor YK Centre Mall
P.O Box 2130, Yellowknife, NT. X1A 2P6



SENT ELECTRONICALLY ONLY

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RE: MOTION TO THE MACKENZIE VALLEY LAND AND WATER BOARD – MV2021L2-0004 MV2021D0005 CANADIAN ZINC CORPORATION PRAIRIE CREEK MINE AND MILLING SITE EXPANSION

The Canadian Zinc Corporation, the applicant, is seeking a Water License and Land Use Permit to authorize expanded mineral exploitation activities at the Prairie Creek mine site.

Acho Dene Koe First Nation is preparing to submit map(s) and location information of Indigenous Knowledge and locations of cultural significance; however, this information is considered confidential and was never intended for public disclosure.

Acho Dene Koe First Nation respectfully requests a Request for Ruling under Rule 59 of the Mackenzie Valley Land and Water Board Rules of Procedure, to allow for Acho Dene Koe First Nation to redact certain information from the publicly available versions of the Indigenous Knowledge and Land Use Study documents, Acho Dene Koe First Nation's Intervention, and presentation.

Acho Dene Koe First Nation further requests the Board make only the redacted versions of the Indigenous Knowledge and Land Use Study, Intervention and Presentation available on the Board's registry and at the public hearing on this matter, and that unredacted and versions of the Indigenous Knowledge and Land Use Study and presentation be available only to the Board, the Canadian Zinc Corporation, and recognized Interveners in this proceeding.

Statement of Facts

- Under the proposed scope of authorizations MV2021L2-0004 and MV2021D0005, the Applicant would increase the proposed production from the Prairie Creek mine site from approximately 1,600 tonnes of ore per day to approximately 2,400 tonnes of ore per day.
- This would result in the approval of 18 outbound trucks per day hauling zinc ore concentrate from the Prairie Creek mine site to a rail-head terminal in Fort St. John, British Columbia. As a result, the operation of this mine will increase hauling traffic through Acho Dene Koe First Nation territory along the NWT Highway 7/BC Highway 77

corridor, by at least 36 trucks per day, in addition to any traffic not described by the Applicant in their submitted documents.

- Based on the Developers Assessment Report presented by the Applicant through proceedings EA0809-002, hauling trucks are expected to produce a 99 dBA noise while in operation which is expected to attenuate such that the noise would be 35 dBA at 0.5 km from source, and 25 dBA at 1.5 km from source.
- Acho Dene Koe First Nation is preparing an Intervention outlining our written evidence submission, as well as will be making a full presentation during the Public Hearing to the Mackenzie Valley Land and Water Board detailing the impacts of the proposed project on our rights and interests, including Aboriginal and Treaty rights which are protected in section 35 of the Constitution Act. Included in our Intervention and presentation will be relevant information on land use, culturally significant sites, and Indigenous Knowledge of Acho Dene Koe First Nation along the NWT Highway 7/BC Highway 77 corridor.
- Acho Dene Koe First Nation is concerned that land use and Indigenous Knowledge provided in support of these proceedings if made public, may be used to harm Acho Dene Koe First Nation or to the rights of our members.
- Authorization of Water License MV2021L2-0004 and Land Use Permit MV2021D0005, are examples of “strategic, higher-level decisions”¹ with respect to which the Mackenzie Valley Land and Water Board as a representative of the Crown must consult Acho Dene Koe First Nation as an affected First Nation. Further, as established by section 7 of the Waters Act the Mackenzie Valley Land and Water Board has an obligation that “when, in relation to any matter, a reference is made in this Act to consultation, the duty *to consult shall be exercised... (b) by considering, fully and fairly any views so presented.*” Acho Dene Koe First Nation strongly believes that authorization of this Water License MV2021L2-0004 and Land Use Permit MV2021D0005, presents an infringement on our rights, and without the approval of these authorizations, this infringement would not occur.
- Acho Dene Koe First Nation has completed an Indigenous Knowledge and Land Use Study for its territory; however, this study is not specific to the area affected by this project, nor was it designed to address examine the impacts of this project on Acho Dene Koe First Nation rights or land use. While this Indigenous Knowledge and Land Use Study does not completely satisfy the needs for incorporation of Indigenous Knowledge for this project, it does provide an initial view of potential impacts of this project on our rights and interests.
- Acho Dene Koe First Nation intends to include relevant maps and location information from the Indigenous Knowledge and Land Use Study, into its Intervention and Presentation to the Board.
- Rule 59 of the Board’s Rules of Procedure allows the Board to protect the confidentiality of filed information.
- Rule 41 of the Board’s Rules of Procedure allows the Board to make appropriate arrangements specifically for the consideration of Indigenous Knowledge.
- Acho Dene Koe First Nation is not specifically concerned about the disclosure of specific Indigenous Knowledge maps and data to the Board, however, concerned about the

¹ *Rio Tinto Alcan Inc. v Carrier Sekani Tribal Council*, 2010 SCC 43

disclosure of specific non-contextualized Indigenous Knowledge regarding land use and areas of significance to Acho Dene Koe First Nation to the public through the Board's public registry.

Ruling Sought by Acho Dene Koe First Nation

- Acho Dene Koe First Nation requests permission of the Board to redact certain information from the publicly available versions of the Indigenous Knowledge and Land Use Study documents, Acho Dene Koe First Nation's Intervention, and presentation.
- Acho Dene Koe First Nation further requests the Board make only the redacted versions of the Indigenous Knowledge and Land Use Study, Intervention and Presentation available on the Board's registry and at the public hearing on this matter, and that unredacted and versions of the Indigenous Knowledge and Land Use Study and presentation be available only to the Board, the Applicant, and recognized Interveners in this proceeding.

Reasons Why this Ruling Request Should be Granted

- As per Rule 40, "The Board will encourage the provision of and shall consider any Traditional Knowledge, *including oral history, submitted during its Proceedings*." This rule is intended to encourage the submission of evidence regardless of form to aid in decision-making.
- The Board has obligations as a delegate of the Crown, under the Constitution Act and the Waters Act to ensure proper consultation and accommodation of affected Indigenous Nations, which includes but is not limited to the consideration and inclusion of Indigenous Knowledge in decision making. Activities associated with the proposed project if authorized under the Waters Act and Mackenzie Valley Resource Management Act, would occur in Acho Dene Koe First Nation Territory.
- Acho Dene Koe First Nation has obligations to participate fully in the Board's regulatory review process. While Acho Dene Koe First Nation has not been supported in its ability to collect information and knowledge specific to this project, we feel the submission of pre-existing information where available is important to informing these proceedings.
- Maps and location information provided by the Indigenous Knowledge and Land Use Study will aid the Board in making an informed decision on the impacts of the proposed project on Acho Dene Koe First Nation rights and interests.
- Materials to be presented through this hearing were obtained on a confidential basis, and therefore should remain protected as such.
- Not allowing for a redacted submission of Acho Dene Koe First Nation map and location information provided by the Indigenous Knowledge and Land Use Study, will dissuade Acho Dene Koe First Nation from submitting this valuable information, out of fear of future harm from public disclosure. Further, this may have the consequence of dissuading other Indigenous Nations from submitting relevant information in the future, for fear sensitive material may be made public, with the potential to cause harm.
- Redacting the requested information in publicly available versions of submissions would preserve confidentiality, protecting culturally sensitive information for Acho Dene Koe First Nation, while resulting in minimal impairment to other parties as generalized information will be made available.

If you have any questions concerning our response, I will ask that you email our Lands Office at lands@adkfirstnation.ca

Thank you.

Yours truly,

ACHO DENE KOE FIRST NATION

Signed on behalf of Sub Chief Brenda Berreault

Boyd Clark

Boyd Clark

Advisor/Acting Band Manager

Cc. Sub Chief Brenda Berreault
Hana Boye, Legal (First Peoples Law, LLP)
Doug McArthur, Advisor (McArthur West Consulting)
Mark MacDougall, Lands Manager (Consultant – Shared Value Solutions)
Scott Mackay, Lands Director (Consultant – Shared Value Solutions)
Barney Dohm, Nor Zinc Negotiator (Consultant)
Council