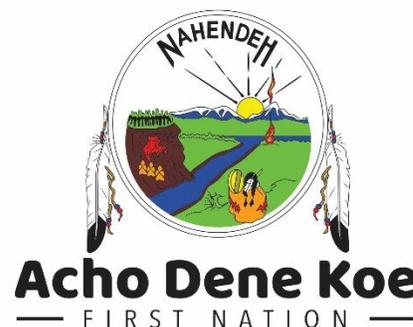


July 15, 2021

Mackenzie Valley Land and Water Board  
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Box 2130  
Yellowknife, Northwest Territories X1A 2P6

Attention: Andy Wheeler,  
Jen Potten,  
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**SENT ELECTRONICALLY ONLY**

**Re: Canadian Zinc Corporation – Prairie Creek Mining and Milling Site – Water Licence and Land Use Permit – MV2021D0005 MV2021L2-0004**

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Acho Dene Koe First Nation writes in response to the referral received via the Online Review System on June 4, 2021.

Acho Dene Koe First Nation's traditional territory and waters span three jurisdictions: British Columbia, the Yukon, and the Northwest Territories.

Our main community is currently settled in Fort Liard, but our members continue to use and occupy our Traditional Territory as a whole. As our ancestors did, we hunt, trap, fish and gather for food, social, cultural, and trading purposes throughout our Traditional territory.

We adhered to Treaty 11, and as such, we have treaty-protected hunting rights. Additionally, we assert Aboriginal rights, including title, throughout our Traditional Territory.

Our rights, and our Traditional Territory, are affected by the proposed decision.

### **Treaty and Aboriginal Rights**

In 1922, our ancestors adhered to Treaty 11, and these rights are constitutionally protected pursuant to s. 35(1) of the Constitution Act, 1982. Among other things, Treaty 11 protects our right to pursue our usual vocations of hunting, trapping, and fishing. When signing Treaty 11, our ancestors were assured that this liberty would not be taken away or curtailed. Any erosion of our ability to hunt, trap and fish would be a serious infringement of our Treaty rights.

The courts have cast serious doubt on whether Treaty 11 extinguished Aboriginal title to the land. In *Re: Paulette's Application*, the trial judge found that "notwithstanding the language of the two treaties there is sufficient doubt on the facts that aboriginal title was extinguished."<sup>1</sup>

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<sup>1</sup> *Re: Paulette's Application*, [1973] 6 W.W.R. 97 (N.W.T.) [*Re: Paulette's Application*].

More recently, the Federal Court recognized that the Federal Government's failure to set aside reserves for Samba K'e First Nation was a fundamental breach of Treaty 11, and Samba K'e continued to have a strong prima facie case for Aboriginal title, which elevated the Crown's duty to consult with them.<sup>2</sup> Similarly, Canada failed to set aside reserves for Acho Dene Koe First Nation. Accordingly, in our view, our Aboriginal rights, including Aboriginal title, have never been ceded, abandoned, or extinguished in any part of our Territory.

Aboriginal rights, which include title, are constitutionally protected legal rights, pursuant to s. 35(1) of the Constitution Act, 1982. Aboriginal rights include a priority use rights to resources (e.g., fish, wildlife, trees, traditional medicines, and foods). Aboriginal title confers on the rights-holding group the exclusive right to decide how the land is used and the right to benefit from those uses, subject to the restriction that the uses must be consistent with the group nature of the interest and the enjoyment of the land by future generations.<sup>3</sup>

Acho Dene Koe First Nation holds constitutionally protected Treaty rights, and assert strong Aboriginal rights within our Traditional Territory, and take seriously any infringement of our rights.

### **Crown's Duty to Consult and Accommodate**

Where the Crown has "knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it", the Crown has a duty to consult with the First Nation (*Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511 at para. 35).

Acho Dene Koe First Nation currently uses, and has traditionally used, our Territory for fishing, hunting, trapping, and gathering. Development and resource exploitation have already significantly impacted and infringed our Treaty and Aboriginal rights, and any new developments will infringe our rights in a compounding manner. An infringement cannot be justified, without meaningful consultation and accommodation, which may include compensation.

Acho Dene Koe First Nation expects and intends to enter full meaningful consultation with government prior to any decision that has the potential to infringe our Treaty or Aboriginal rights. The importance of protection of our Treaty and Aboriginal rights, and of preserving natural resources, cannot be overstated.

### **Review of New Type A Land Use Permit and Water Licence Renewal Applications**

Canadian Zinc Corporation has applied to the Mackenzie Valley Land and Water Board for new Type A Land Use and Water License authorizations to accommodate proposed mine expansion activities. This authorization would allow for an increased rate of production at the mine, as well as several changes to the mine infrastructure and operations.

Acho Dene Koe First Nation is affected by Prairie Creek mine activities, as our territory is located downstream from the mine sites. Acho Dene Koe First Nation members using the downstream watershed to conduct activities such as traditional harvesting (e.g., fishing, hunting, and the collection of berries and medicines), activities which are protected by our Aboriginal and Treaty rights.

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<sup>2</sup> *Samba K'e Dene First Nation v. Duncan*, 2012 FC 204.

<sup>3</sup> *R. v. Sparrow*, [1990] 1 S.C.R. 1075 and *Delgamuukw v. B.C.*, [1997] 3 S.C.R. 1010; *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44.

Further, as mine production continues to grow, it will bring increased traffic passing through Acho Dene Koe First Nation territory, as trucks bring cargo to and from the mine site. As a result of the Prairie Creek mine site, Acho Dene Koe First Nation experiences pressures on the environmental quality of our territory, and our connectedness with the land.

Through our review of the Land Use Permit and Water License application, and associated plans, Acho Dene Koe First Nation has identified the following as chief concerns with the proposed changes to the mine and milling site:

- To date, the Canadian Zinc Corporation has not provided capacity support or funding to Acho Dene Koe First Nation to participate in the regulatory process. As Acho Dene Koe First Nation does not receive funding to participate in the regulatory process for Water License or Land Use Permit authorizations, this has significantly impaired the ability for Acho Dene Koe First Nation to participate meaningfully in regulatory matters. The Canadian Zinc Corporation must provide funding to Acho Dene Koe First Nation to support its capacity to participate in the regulatory process.
- Further, the Canadian Zinc Corporation has not provided capacity support to Acho Dene Koe First Nation to conduct or facilitate the collection of a Traditional Knowledge and Land Use Study. The inclusion of Traditional Knowledge in project planning is a vital component for guiding decision-making as identified in the Land and Water Boards of the Mackenzie Valley Engagement and Consultation Policy. The Canadian Zinc Corporation must deliver on commitments made in their September 30, 2019, letter to Acho Dene Koe First Nation, providing sufficient capacity support to conduct a Traditional Knowledge and Land Use Study for the area of our territory affected by the Prairie Creek Mine Site and its associated infrastructure.
- In Acho Dene Koe First Nation's submission on the Canadian Zinc Corporation's permit renewal applications for MV2020D0007 and MV2020L2-0003, we requested that the Canadian Zinc Corporation prepare a Human Health and Ecological Risk Assessment (HHERA) that includes migratory animals. The Canadian Zinc Corporation indicated in their response that "prior studies did not identify significant potential for metals bioaccumulation".

Acho Dene Koe First Nation notes that the Canadian Zinc Corporation did not provide any specific studies that conclusively demonstrated that there is no significant potential for metals bioaccumulation. Acho Dene Koe First Nation questions this assertion, given the high concentrations of mercury and cadmium in the waste rock from the mine. Table 4.4 of the Waste Rock and Ore Storage Management Plan reports that Prairie Creek waste rock contains concentrations of mercury that are as high as 2,400 times the average crustal abundance and concentrations of cadmium occasionally over 4,000 times the average crustal abundance. These high concentrations of metals are reflected in the predicted waste rock seepage quality in Table 4-3 of the Effluent Quality Criteria report, with predicted mercury concentrations of 50 µg/L (~1,900 times CCME water quality guideline) and predicted cadmium concentrations of 150 µg/L (~400 times CCME water quality guideline).

The Canadian Zinc Corporation has stated that the volume of waste rock that will be generated under the new mine plan is more than triple the volume proposed under the previous mine plan. It is likely that the increased volume of waste rock will result in a corresponding increase in the risk of heavy metal bioaccumulation. It should also be noted that the waste rock stockpile is a single mine component that presents a risk to human health. For example, the mine tailings are

also highly elevated in mercury and cadmium and will be stored on the mine site during operations for extended periods of time before being backfilled underground.

Given the high concentrations of metals in the deposit at Prairie Creek that are known to bioaccumulate and biomagnifies up the food chain in migratory fish and animals and the commensurate risks to human and ecological health that this presents to Acho Dene Koe First Nation members, Acho Dene Koe First Nation expects the Canadian Zinc Corporation to take these risks seriously and monitor and assess them accordingly throughout the entire life of mine. Acho Dene Koe First Nation requests that the Canadian Zinc Corporation prepare a Human Health and Ecological Risk Assessment framework for the mine that is a part of this license. Further, as part of the Human Health and Ecological Risk Assessment framework, we request that the Canadian Zinc Corporation commit to a timeline to complete the first Human Health and Ecological Risk Assessment, the frequency during operations at which it will be revised and updated, and the length of time they will continue to revise and update the Human Health and Ecological Risk Assessment post-closure of the mine.

Acho Dene Koe First Nation requests that the Canadian Zinc Corporation prepare a Human Health and Ecological Risk Assessment framework that includes migratory animals for the mine and that it is included as part of the license conditions.

As part of the Human Health and Ecological Risk Assessment framework, Acho Dene Koe First Nation requests that the Canadian Zinc Corporation commit to a timeline to complete the first HHERA, the frequency during operations at which it will be revised and updated, and the length of time they will continue to revise and update the Human Health and Ecological Risk Assessment post-closure. We request that the Canadian Zinc Corporation provide the studies that demonstrate a low likelihood of metals bioaccumulation from mine effluents in the receiving environment and demonstrate that the risk is similar under the new mine plan.

In addition to these concerns, Acho Dene Koe First Nations has also identified several other concerns which were posted on the Mackenzie Valley Land and Water Board Online Review System.

Acho Dene Koe First Nation is attempting to work with the Canadian Zinc Corporation to address our concerns through direct bilateral relations. **In our review of the Canadian Zinc Corporation's application, we do not believe that an Environmental Assessment is necessary;** however, it is imperative that concerns regarding potential infringement of our Aboriginal and Treaty rights be fully addressed or accommodated. Acho Dene Koe First Nation is seeking to work with the Canadian Zinc Corporation to resolve these concerns prior to the technical sessions but reserves the right to make comments specific to all regulatory processes for the project.

If you have any questions concerning our response, I will ask that you email our Lands Office at [lands@adkfirstnation.ca](mailto:lands@adkfirstnation.ca)  
Thank you.

Yours truly,  
**ACHO DENE KOE FIRST NATION**  
Signed on behalf Sub Chief Brenda Berreault

 Click here  
\_\_\_\_\_  
Boyd Clark  
Advisor/Acting Band Manager

Cc. Hana Boye, Legal (First Peoples Law LLP)  
Barney Dohm (Negotiations Advisor)  
Scott Mackay, Lands Director (Consultant – Shared Value Solutions)  
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Council  
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