



Champagne and Aishihik First Nations

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**To: Oil and Gas Resources Branch,
Department of Energy, Mines and Resources
Government of Yukon**

Re: Yukon Oil and Gas Act Amendments

The following is a written submission in response to the proposed amendments to the Yukon Oil and Gas Act (YOGA), which follows and elaborates on information provided via a telephone conversation with Ron Sumanik (of *Oil and Gas Resources* – designated contact for YOGA consultation) in early September of this year. At that time, we were told that an extension on the consultation would not be granted despite our request, but that comments would be received and considered from First Nations after the deadline. We now understand through contact with Gail Barnaby, Council of Yukon First Nations, that there has been an extended deadline provided to all First Nations.

We have some significant concerns about the way in which the amendments and subsequent consultation was carried out, and some central concerns with a few of the proposed amendments. Otherwise, many of the proposed amendments are of relatively lesser concern or of no concerns to CAFN.

Process

In general, on matters as substantial as amendment to Acts, it would have been more appropriate to directly address the CAFN Chief well in advance of advertising a public notice for consultation. Instead, public notice was given approximately one week prior (i.e. July 29th) to the date of the letter being sent and addressed to a CAFN director (i.e. Lawrence Joe – on August 4th). We received the letter the following week after the date the letter was written and sent. This gave us little more than 4 weeks to consider the proposed changes and to address the matter to Chief and Council. This amount of time is nowhere near sufficient to ensure the First Nations has an opportunity to fully consider the proposed amendments. Furthermore, this consultation was carried out in the middle of summer when First Nations governments are understaffed due to holiday time and those carrying out subsistence harvest activities. To call this consultation a “Summer and Fall” consultation is somewhat misleading. Although the CAFN - YG Consultation Protocol is yet to be renewed, it provided some basic general principles that should continue to be used in these sorts of processes.

The consultation process should have also taken into consideration the complexity of the issues, and the fact that both First Nations Governments and the Yukon Government are not well versed or have very much direct experience with Oil and Gas activities (as admitted by YG Oil and Gas Resources staff-personal communication) which makes the process all the more challenging to meaningfully address. Although the amendment documents are relatively short, they were not sufficient to understand the context and so it was necessary to refer to the full Act and supporting regulations. Combined, these legal documents constitute over 500 pages of technical detail and substantial clause cross-referencing. Again, the short period for consultation was not sufficient to read through the necessary material to form an opinion or position on with respect to determining the scope and nature of possible implications upon First Nations treaty rights and interests.

The proposed amendments may affect a wide range of treaty rights and CAFN government and citizen interests in non-Settlement Land as established through the CAFN final agreement. Not all Yukoners have such treaty rights and interests as established under a Final Agreement. This means that there is a need to invest in direct government-to-government consultation prior to initiating public consultation in order to effectively address such matters. In other words, the consultation with First Nations should have been government to government and been carried out over a longer duration. We hope that this opportunity be made in the future for any other proposed amendments.

The amendments also need to be recognized strictly as a Yukon Government endeavour, whereby a few sections were targeted for amendment, rather than a comprehensive review of the Act itself. There are many other aspects of the Act worthy of consideration for amendment (such as the powers of the Minister, process and limitation of expropriation, development of specific regulation), and other aspects that the Act does not provide direction on but should (such as pipeline regulations, greenhouse gas emission regulations). In order to achieve some of the objectives as stated in Section 2 of the Act, it is likely necessary to carry out a more thorough review of the Act and supporting regulations. This should be done first as a government to government initiative in the way in which the 1993 Accord and the 1997 Memorandum of Agreement recognized.

Section 13

Perhaps our greatest concern is with respect to the proposed repeal of **Section 13** of the Act. We understand that this is likely a significant breach of the Memorandum of Agreement 1997 (MOA), and the Yukon Oil and Gas Accord 1993. We do not view the repeal of Section 13 to be only a matter of bringing the Act into alignment of the Yukon Government's view of common law provisions for consultation. This agreement was signed by all Yukon First Nations and was one of the greatest government to government achievements since the signing of the Umbrella Final Agreement. All parties agreed to the intent of Section 13 in the current Act. As such, all parties to this agreement must meet to discuss such a proposed change to the Act. Failing to recognize this as a breach of this aspect of the 1997 MOA is essentially a matter of trust, and will create uncertainty of the integrity for all other existing agreements in place between CAFN and the Yukon. Perhaps a more appropriate time and place to discuss such changes of direct concern to all Yukon First Nations would be through the Yukon Forum.

Section 68

It is recommended that the MOA working group examine the outcomes of the benefit agreements implemented over the past decade in order to determine if the Act or policies require revision. Based on this examination, amendments to the Act or changes to policy may be proposed. It is our understanding that the territorial representatives of the MOA working group have confirmed an interest to undertake this work.

Under section 68 the Act, no oil and gas activity can be carried out under a license unless a benefits agreement is in effect. Where work related to the oil and gas activity is forecast to cost less than \$1 million, in any twelve-month period, a benefits agreement is not required. In most cases, a benefits agreement would be amongst the proponent, YG and the YFN on whose Settlement Land or traditional territory the oil and gas activity would be carried out. The agreement would contain undertakings by the proponent to provide First Nations, local residents and other Yukoners employment and training opportunities and opportunities to supply goods and services to the proponent.

The territorial officials have acknowledged that there are a number of issues related to the negotiation and implementation of the benefit agreements that are contentious. For instance, what are the objectives of the agreements? How are they enforced? How can we Consultation in Respect of Proposed Amendments to Yukon's Oil and Gas Act improve the effectiveness of the agreements? These are some of the questions that could be raised at the MOA working group level.

Pipeline Regulations and Current amendments related to expropriation of Lands

We understand there is an intention to develop pipeline regulations in the near future. Considering the Northern Pipeline Act right of way for the Alaska Pipeline transects a large portion of the CAFN traditional territory, we view it as a likely outcome of development that additional pipelines may "spur" from this line for the purposes of energy supply for future mining activity, etc. that may directly affect CAFN. We expect that a different form of consultation (e.g., government to government discussions prior to developing concepts of the regulations and government to government discussions on first drafts of the regulations; all prior to public consultation) is considered when Yukon is prepared to initiate this process.

The current Act and proposed amendments may affect the application of the process and interpretation for expropriation of Lands. We understand that the CAFN Final Agreement provides general terms related to expropriation and that this Act must be consistent with the final agreements. However, there are some aspects of expropriation of Lands in the Act that should be changed. We feel that it would be more appropriate that any inability of a land owner to come to an agreement of compensation for fee simple lands – titled lands when a licensed activity (such as a pipeline) is being considered, that the matter be dealt with through the Yukon Surface Rights Board, and not a process as determined unilaterally by the Minister in charge.

Summary

We hope these comments are considered and look forward to learning the outcomes of this seeking views initiative. If you have any questions, please contact me at the address provided.

Sincerely,

Roger Brown

CC: Lawrence Joe, Director, Heritage, Lands and Resources, CAFN
Chief Diane Strand, CAFN