



Your file

Our file

September 14, 2009

Ron Sumanik
Manager, Business Development
Energy, Mines and Resources
Government of Yukon
300-211 Main Street (K-11)
Whitehorse, YT Y1A 2B2

Dear Mr. Sumanik,

RE: Consultation in Respect of Proposed Amendments to Yukon's *Oil and Gas Act*

This letter is to acknowledge receipt of your letter of August 4, 2009, wherein you advise Tr'ondëk Hwëch'in of Yukon Government's (YG) proposed changes to the Yukon *Oil and Gas Act* (the "Act").

We have since had a cursory review of the proposal in an attempt to compose our response quickly in order to meet YG's proposed deadline of September 14, 2009, as we understand these proposed revisions are intended to be introduced in the fall sitting of the legislature. However, the details of the proposal require a more in-depth review as the subject matter is significant to us and we wish to provide your government with as detailed a submission as possible under the circumstances.

Given the importance of this initiative, we seek an extension to the consultation timeline as we require additional time in order to properly assess this proposal. Moreover, such an extension would likewise afford other Yukon First Nations (YFN) a reasonable opportunity to submit written comments, as well as provide opportunities for reviews at the Council of Yukon First Nations (CYFN) leadership level, the land manager level and at the Memorandum of Agreement (MOA) working group level. To be sure, this review process would be consistent with the process through which the Act and its regulations were development initially.

We are hopeful that our governments can come to a shared understanding of the proposal and would like to meet with you and your officials to discuss it. In the meantime, we would like to set out some general and specific concerns in respect of the proposed amendments to the Act.

Tr'ondëk Hwëch'in Government
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1. Protocol for the Proposed Amendments

We would like now to raise a concern in relation to the manner in which YG has proposed its revisions to the Act.

It is our understanding that the proposal may contradict sections 4 and 5 of the Canada-Yukon Oil and Gas Accord, which was signed by the federal and territorial governments in May, 1993. As you know, this Accord transferred provincial-like administrative responsibilities and legislative powers with respect to the management of onshore oil and gas in the Yukon Territory to YG.

At that time, the Council for Yukon Indians opposed the transfer of responsibilities and powers related to the management of oil and gas to YG under the Accord since the YFN land claims were outstanding.

It must be pointed out that the Canada-Yukon Oil and Gas Accord was a significant agreement. It was signed by each YFN Chief and the Government Leader at a public ceremony in Whitehorse. It was the first substantive agreement amongst YFN and YG since the signing of the Umbrella Final Agreement. If your government wished to amend the Act contrary to its commitment set out in the Accord, it should have raised the matter for discussion with YFN on a government-to-government basis. It is our belief that such a matter should have been raised at a meeting of the Yukon Forum.

2. Section 13

In our view, the proposed deletion of section 13 represents a breach of YG's commitments under the Accord. Since this proposal to amend the Act is inconsistent with YG's commitments under the Accord, it then becomes a matter that concerns all YFN and warrants further discussion.

3. 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

improve the effectiveness of the agreements? These are some of the questions that could be raised at the MOA working group level.

Summary

The foregoing sets out the initial concerns of Tr'ondëk Hwëch'in. In closing, we would like to thank you for taking our extension request and our views into consideration. We look forward to your prompt reply and will be in contact with you forthwith to arrange for a meeting.

Sincerely,

TR'ONDËK HWËCH'IN

James MacDonald
Director, Natural Resources

CC: Tr'ondëk Hwëch'in Council
Council of Yukon First Nations
All Yukon First Nations