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September 12, 2009

Yukon Energy, Mines and Resources
Oil and Gas Resources
Suite 300, 211 Main Street
Whitehorse, Yukon Y1A 2B2

RE: Comments on Proposed Amendments to Yukon's Oil and Gas Act

Dear Sirs:

The Yukon River Inter-Tribal Watershed Council (YRITWC) has reviewed the proposed amendments to the Yukon Oil and Gas Act. The following comments are submitted in response to the invitation for public comment on these proposed amendments.

The YRITWC is an Indigenous grassroots organization, consisting of 70 Tribes and First Nations, dedicated to the protection and preservation of the Yukon River Watershed (encompassing the sacred Yukon River and its numerous tributaries). Our mission is to preserve the Yukon River for the protection of current and future generations of Tribes / First Nations, and for the continuation of traditional Native way of life. Therefore, we are very concerned that surrounding watersheds, region-wide biodiversity, and sensitive ecological environments are adequately considered and accounted for in all land-use management plans, with an emphasis on minimizing activities that have the potential to adversely impact the environmental conditions on which the traditional activities of various First Nations depend upon.

Based on our review of the Proposed Amendments, we have identified certain concerns for which we offer the following comments:

- **Natural Gas from Coal (NGC)¹:** Currently, there is no legislation in place specifically related to NGC in the Yukon Territory. Although to date there has been limited interest from industry to develop this resource within the Territory, the YRITWC submits that the severe proven environmental impacts associated with NGC require adequate government legislation before development is permitted within the Territory. The YRITWC contends that NGC-specific regulation must be incorporated into the Yukon Oil and Gas Act.
- **Consultation with First Nations²:** The YRITWC emphasizes the great importance of recognizing First Nations cultural background and traditional rights at all levels of land use decision making within the Yukon Territory. By repealing the definition of 'consultation' from subsection 1 of the Yukon Oil and Gas Act, the Yukon Government must nevertheless uphold its duty to consult with all Yukon First Nations (i.e., the 11 First Nations that have signed Final Agreements **as well as** the White River First Nation, Ross River Dena Council, and the Liard First Nation who have not yet concluded land claims agreements). As per the Yukon Supreme Court judgment in Little Salmon/Carmacks First Nation v. Yukon³, the duty to consult requires the government to listen to the First Nations interests and make good faith efforts to determine if they can be accommodated.
 - ❖ The YRITWC stresses that by repealing the definition of 'consultation' from the Yukon Oil and Gas Act, the Yukon Government cannot evade its constitutional duty to consult with First Nations whenever they take actions that may impede on aboriginal rights. This includes those First Nations with traditional lands in southeastern Yukon that have not yet finalized land claims agreements.
- **Definition of 'Working Interest'⁴:** The YRITWC would like the amended definition of 'working interest' to include a mention of First Nations' subsurface ownership rights on category A settlement lands.
- **Definition of 'Pipeline'⁵:** The amended definition of 'pipeline' states that it "*does not include a pipeline designated as an oil and gas facility or as part of an oil and gas facility by a direction under subsection 5(3)*". However, there is currently no provision 5(3) in the Yukon Oil and Gas Act, nor any amendment in the Proposed

¹ Natural Gas from Coal is also widely referred to as Coalbed Methane Gas.

² Applicable provisions of the Yukon Oil and Gas Act = s.1 (definition of 'consultation'), s.13, and s.14.

³ 2007 Y.R.S.C. 28, *affirmed*, 2008 Y.K.C.A. 13.

⁴ Applicable provisions of the Yukon Oil and Gas Act = s.89(1).

⁵ Applicable provisions of the Yukon Oil and Gas Act = s.1(1).

Text⁶ to incorporate a new 5(3) provision. The YRITWC suggests this was a typographical error and should refer to subsection 65(3) rather than subsection 5(3).

- ❖ *Assuming the Proposed Text for the definition of 'pipeline' was intended to refer to subsection 65(3) rather than subsection 5(3):* The YRITWC is concerned that this provision allows the Chief Operations Officer an unreasonable level of discretion in designating any pipeline or any class of pipelines as a whole or part of an oil and gas facility, rather than regulating it as a pipeline subject to specific pipeline legislation.

We would like to thank-you for this opportunity to comment on the Proposed Amendments to the Yukon Oil and Gas Act. Should you have any questions regarding our comments, please feel free to contact us to discuss the matter further. Thank-you in advance for your consideration of our comments and concerns.

Sincerely:

A handwritten signature in blue ink, appearing to read "Rob Rosenfeld".

Rob Rosenfeld
Yukon Region Director
Yukon River Inter-Tribal Watershed Council

Cc: Jon Waterhouse / YRITWC Alaska Region Director (907)388-2683

⁶ Proposed Text for Yukon's Act to Amend the Oil and Gas Act – Summer and Fall 2009.