



File RDMI-AL-Fe-MVRMA-05 Dehcho Land Use Plan
27 January 2006

Ms. Heidi Weibe
Executive Director
Dehcho Land Use Planning Committee
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Dear Ms. Weibe

**Dehcho Land Use Plan, Revised Draft – November 2005
National Energy Board Comments**

Thank you for allowing staff of the National Energy Board to review the November 2005 Draft of the Dehcho Land Use Plan (the Plan). The National Energy Board is an independent federal agency that regulates several aspects of Canada's energy industry. Its purpose is to promote safety and security, environmental protection and economic efficiency in the Canadian public interest within the mandate set by Parliament in the regulation of pipelines, energy development and trade.

For the review, the NEB focused on descriptions of the interactions with NEB's role and mandate in the Mackenzie Valley. At this time, I have several comments to provide.

Comment 1 – Regulatory Authorities

On page xv of the Plan, the NEB is identified as one of the "Regulatory Authorities". However, as an independent board, the NEB is considered under the *Comprehensive Land Claim Settlement Agreements* as an "independent regulatory agency", and under the *Mackenzie Valley Resource Management Act* (MVRMA) as a designated regulatory agency (MVRMA S.111 and the Schedule). S. 111 of the MVRMA states:

"regulatory authority", in relation to a development, means a body or person responsible for issuing a licence, permit or other authorization required for the development under any federal or territorial law, but does not include a designated regulatory agency or a local government.

Suggested Change: The National Energy Board should be appropriately identified as a "designated regulatory agency" as set out in the MVRMA.

Comment 2 – Terms and Conditions

As an independent board, the NEB regulates oil and gas activities under the *National Energy Board Act* and the *Canada Oil and Gas Operations Act*. Neither of these Acts provide the NEB with the authority to require land use terms and conditions set out in the Dehcho Land Use Plan. It is expected that such terms and conditions would be included in Land Use Permits or Water Licences issued by the Land and Water Board for the Dehcho area or other authorizations issued by “Governments”.

Suggested Change: None.

Comment 3 – Geophysical Operations

The definition of “Geophysical Operation” in the Plan (page xiii) is drawn from the *Canada Oil and Gas Geophysical Operations Regulations*. However, other industries such as mining and construction also employ geophysical methods.

Suggested Change: Redefine “Geophysical Operation” as: The measurement or investigation, by indirect methods, of the subsurface of the earth for the purpose of locating minerals or petroleum reservoirs or of determining the subsurface conditions for proposed drilling, mining or infrastructure development. Geophysical surveys or methods include seismic, gravimetric, magnetic, electrical and geochemical and any work preparatory to those measurements or investigations.

Comment 4 – Toxic Air Pollutants

A definition exists in the *Canadian Environmental Protection Act* for “toxic substances”. The use of “Toxic Air Pollutants” may not be consistent with that definition. In the Plan, “toxic air pollutants” (pages xv-xvi) is also referred to as “non-criteria pollutants”.

Suggested Change: Define air pollutants as “non-criteria pollutants”, rather than “toxic air pollutants”

Comment 5 – Cumulative Effects Indicators and Thresholds (CR #25)

CR # 25, requires Regulatory Authorities to deny new applications that cause Table 2 thresholds to be exceeded. However, habitat alteration, in and of itself, might not be an accurate indicator of the health or viability of the species at risk. Developers may be able to provide measures that could offset other mechanisms that contribute to species population decline (predation success, hunting, etc.) when thresholds are approached or exceeded.

There are a number of habitat alteration/mitigation studies underway which may suggest alternate and/or supplemental measures and indicators. Two such studies are Alberta Environment’s “Foothills Model Forest” (Grizzly Bear Project) and the Canadian Association of Petroleum Producers (CAPP) Caribou Task Group.

The threat to the grizzly bear may have less to do with habitat alteration and more to do with human-induced mortality (vehicle strikes or poaching). Seismic cutlines should not result in vehicle kills and proper access management should limit poaching opportunities.

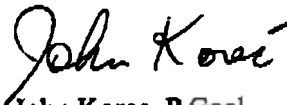
For caribou, human-induced mortality is an issue, but there are other stresses that contribute as well. Further, woodland caribou is a *Species at Risk Act* (SARA)-listed species which will require that a recovery plan to be developed. That recovery plan could well set out different restrictions for critical woodland caribou habitat. Exceeding a threshold could be viewed as a trigger to refer a development to the Review Board for environmental assessment.

Suggested Change: In CR # 25, consideration should be given in to allowing the Review Board to determine, through an environmental assessment, whether a developer's proposed mitigation measures would likely contribute to species population-level protection.

The NEB notes that the DLUPC intends to submit a Final Draft Plan by 31 March 2006 to the Dehcho First Nations and the Government of the Northwest Territories for approval, and to the Minister of DIAND for consideration. Please include the NEB in that distribution.

If you have any questions regarding the above comments, please call me at (403) 292-6614, or send an email to jkorec@neb-one.gc.ca. Thank you.

Sincerely,



John Korec, P.Geol.
Environmental Specialist

c.c. Bharat Dixit, Jim Fox, Robert Steedman, Andrew Hudson