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Cc: "Amanda Gauthier"; "Rebecca Chouinard"; "John Donihee"
Subject: RE: MV2006L2-0003/MV2011C0015 - Tamerlane Ventures Inc. - DKFN Closing Comments
Date: Thursday, February 02, 2012 2:42:05 PM
Attachments: [DKFN Closing Comments.pdf](#)

Hi All,

Following up from the January 26th Public Hearing for Tamerlane Ventures Inc., Deninu Kue First Nation have submitted their closing comments in writing. The document is attached. Tamerlane's closing comments are due Monday, February 6, 2012.

If you have any questions or concerns, please feel free to contact me.

Julian Morse

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From: Julian Morse [mailto:jmorse@mvlwb.com]

Sent: Tuesday, January 31, 2012 5:00 PM

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Cc: 'Amanda Gauthier'; 'Rebecca Chouinard'

Subject: MV2006L2-0003/MV2011C0015 - Tamerlane Ventures Inc. - Public Hearing Transcript

Hello,

The transcript of the January 26, 2012 Public Hearing for Tamerlane Ventures Inc. in Fort Resolution is now posted to the registry and available for viewing online. You can find it at the following link:

<http://www.mvlwb.ca/mv/Registry/2006/MV2006L2-0003/2012%20Public%20Hearing/MV2006L2-0003%20-%20Transcripts%20-%20Jan31-12.pdf>

If you have any questions, please feel free to contact me.

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From: Julian Morse [<mailto:jmorse@mvlwb.com>]

Sent: Friday, January 27, 2012 4:42 PM

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Cc: 'Amanda Gauthier'; 'Rebecca Chouinard'; 'John Donihee'; 'Zabey Nevitt'

Subject: MV2006L2-0003/MV2011C0015 - Tamerlane Ventures Inc. - Updated Workplan and Due Dates

Hello Everyone,

Thank you to everyone who participated in yesterday's Public Hearing for Tamerlane Ventures Inc.'s applications for Land Use Permit and amendment to Water License. Please see for your information, the attached updated **workplan**, which contains several new dates of note.

As discussed during the Hearing, closing comments from DKFN will be due on **February 2, 2012**. Closing comments from Tamerlane will be due on **February 6, 2012**.

Four undertakings resulted from the hearing, which will be due on **February 2, 2012**. All the undertakings are for Tamerlane. They are as follows: (Please note that for actual wording, you will need to see the transcripts, which should be available early next week).

Undertaking # 1: Data on explosives

Undertaking # 2: Diesel fuel quantity

Undertaking # 3: Describe crushing process in writing

Undertaking # 4: Provide list of documentation

If you have any questions or concerns, please feel free to contact me.

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Closing Submission of Deninu Kue First Nation

Mackenzie Valley Land and Water Board Hearing, January 26, 2012

RE: Tamerlane Ventures Inc. Applications for Land Use Permit MV2011C0015 and Water License Amendment Application MV2006L2-0003

Introduction

Tamerlane Ventures Inc. (“Tamerlane”) has applied for a land use permit and a water license amendment to authorize the development of a mine facility and the extraction of a one million tonne bulk ore sample from R-190 lead/zinc deposit (the “Applications”). The proposed mine is in the traditional territory of the Deninu Kue First Nation (the “DKFN”)

At the Land and Water Board hearing on January 26, 2012, due to shortness of time, the parties agreed to provide closing statements to the Board in writing. This submission is a closing statement only, and does not constitute a summary of all submissions that were presented to the Board by representatives of the DKFN at the hearing.

Closing Submission

In a letter to the Board sent on or about November 3, 2011, the DKFN notified the Board of its view that that the Tamerlane Applications would have significant environmental, economic, spiritual and cultural impacts on the DKFN.

The DKFN submits that the notice to the Board triggered the Crown’s duty to consult with the DKFN. There is no evidence on the record that Aboriginal Affairs and Northern Development Canada (“AANDC”), the responsible Crown agency in this case, took steps to assess the scope of its duty to consult with the DKFN in the circumstances, or to discharge that duty. On the contrary, the DKFN presented evidence at the hearing that the Crown had not consulted. Further, there is no evidence that the Board inquired of AANDC as to whether adequate consultation with DKFN had occurred and/or was complete.

Part 5 of the *Mackenzie Valley Resource Management Act* (the “Act”) requires that the process of authorizing development proposals must “ensure that the concerns of Aboriginal people and the general public are taken into account in that process” (s. 114). As there is no evidence that the Crown has engaged in consultation with the DKFN in respect of the Applications, the requirements of Part 5 of the Act have not been complied with. The DKFN submits that if the requirements under Part 5 have not been met, s. 62 of the Act is clear that the Board may not issue a license, permit or authorization for the carrying out of a proposed development.

The DKFN acknowledges that the AANDC is entitled to delegate responsibility to Tamerlane to take procedural steps towards fulfilling the Crown's duty to consult. However, the final responsibility to consult lies with the Crown. The DKFN submits that there is no evidence that the Crown took any steps to assess whether or not the process initiated by Tamerlane was adequate in the circumstances. Further, the DKFN presented compelling evidence to the Board that the consultation carried out by Tamerlane was in fact inadequate. This was recognized by Board member Keyna Norwegian. (See January 26, 2011 hearing transcript, p. 175 at lines 1-5.)

The DKFN admits that it did not provide early notice to the Board and/or the Crown of its assertion that the application had the potential to impact its Aboriginal and Treaty Rights. Rosy Bjornson, on behalf of DKFN explained to the Board that the DKFN has significant capacity challenges in responding to the large number of development proposals in its traditional territory. (See January 26, 2011 hearing transcript, p. 179-180.) However, the DKFN submits that it did provide the requisite notice to trigger consultation, and the Crown failed to consult. By failing to meet the most minimal duty to consult, the Crown cannot be said to have taken into account the concerns of the DKFN, as required by section 114 of the Act. As Part 5 of the Act was not complied with, the Board is not in a legal position to issue a land use permit or a water license to Tamerlane.¹

In the event that the Board determines that the requirements under Part 5 of the Act were met in respect of the Applications, the DKFN submits, in the alternative, that in light of the fact that consultation with the DKFN is incomplete, the Board should not issue a land use permit or a water license for a term of more than two years. Further, the DKFN urges the Board to require Tamerlane, as a condition of both a land use permit and a water license, to develop and submit a meaningful engagement plan with the DKFN for the Board's approval, and to provide the DKFN with an opportunity for review and comment.

In respect of the land use the DKFN provides the follow specific recommendations:

1. It is recommended that the Part C Item 26(1)(h) Wildlife and Fisheries Habitat be modified from:

The Permittee shall minimize damage to wildlife and fish habitat in conducting this land use operation to

The Permittee shall minimize damage to wildlife and fish habitat in conducting this land use operation, through the implementation of an Aquatic Effects Monitoring Program and a Wildlife Management and Monitoring Program. The information from these programs will contribute to the NWT Cumulative Impacts Monitoring Program.

Components of these monitoring programs should include:

- *the monitoring of fugitive dust deposition and a metal content analysis;*

¹ Ka'a'Gee Tu First Nation v. Canada (Minister of Indian and Northern Affairs), 2007 FC 764

- *monitoring the occurrence of wildlife, particularly species at risk, in the vicinity of the project footprint; and*
 - *annual reporting of monitoring results and input into adaptive management as necessary.*
2. It is noted that Part C Item 26(1) (k) Objects and Places of Recreational, Scenic and Ecological Value does not contain any provisions. Clarification from the MVLWB is required as to what is defined as an object and place of recreational, scenic and ecological values. It is recommended that provisions under this item can pertain to the management and monitoring programs identified above.
 3. Commitments to adaptive management have been mentioned in various sections of the background materials and permit applications. It is recommended that a provision for the development and implementation of an Adaptive Management Plan be included in the LUP, requiring approval by the Board and providing an opportunity for the DKFN to review and comment on the Plan prior to Board approval.

All of which is respectfully submitted.

February 2, 2012



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