

DELINE FOLLOW-UP COMMENTS TO MAY 3-5/11 NORMAN WELLS HEARING

June 27, 2011

1. TECHNICAL WORKING GROUP

In the Sahtu Land Use Planning Board's ("SLUPB") May 3-5/11 Norman Wells Hearing, the Déline Land Corporation, Déline Renewable Resources Council and Déline First Nation (collectively "Déline") made several recommendations. For the purposes of this submission, Déline would like to begin with the following:

- a. The issues that remain to be resolved with the draft Sahtu Land Use Plan ("SLUP") are primarily technical in nature.
- b. There are differences of opinion on these issues. *The parties currently working on the draft SLUP¹ need to talk their way through the issues.*
- c. The SLUPB should strike a small technical working group, in which interested parties can define the outstanding issues and their underlying interests, better understand each other and the facts, find common ground, and resolve the issues.
- d. The technical working group should include representatives who are, as far as possible, *authorized* to finalize a draft SLUP.

2. WIDER INTERPRETATION + EXCLUSION LIST APPROACH

At pages 4&4 of its April 21/11 submission to the SLUPB², SSI has recommended a relatively narrow interpretation of "relating to the use of land and water" in s. 25.2.9 of the *Sahtu Dene and Metis Comprehensive Land Claim Agreement* ("SDMCLCA") and s. 46(1) of the *Mackenzie Valley Resource Management Act* ("MVRMA"). SSI has recommended an approach along the following lines: Only those "Land Disposition Instruments" listed in its table on p. 5 would be subject to the SLUP, and they would be subject to a conformity test when the party seeking the authorization applies for an "Environmental Authorization" as set out in the table.

As stated in its May 2/11 speaking notes³, Déline has concerns with the SSI approach. But it also sees some merit in SSI's arguments and approach. In addition to the "narrower interpretation + list" approach of SSI, Déline has recommended consideration of a "wider interpretation + exclusion list" approach.

In brief, Déline suggests giving "relating to the use of land" a wider and more purposeful interpretation, in accordance with the negotiated and legislated purpose of land use planning in

¹ Including Déline and other Sahtu communities, the SLUPB, the Sahtu Secretariat Incorporated ("SSI"), the Government of the Northwest Territories ("GNWT") and Indian and Northern Affairs Canada ("INAC").

² Sahtu Secretariat Incorporated, *Hearing Submission, Sahtu Land Use Planning Board Norman Wells Hearing May 3 to 5, 2011* (April 21, 2011) at part 2, p. 4&5. All documents referenced here can be found on the Sahtu Land Use Planning Board's web site, <http://www.sahtulanduseplan.org/website/web-content/index.html>, under "Public Comments".

³ Déline Land Corporation, Déline Renewable Resources Council and Déline First Nation, *Speaking Notes, Norman Wells May 3-5/11 Hearing*, at part 7, p. 4 of 4 ("**Déline Speaking Notes**").

25.2.4(a) of the SDMCLCA and the MVRMA as a whole. Such an interpretation would bring most proposed land and water use / waste disposal activities within the purview of the SLUP and its conformity requirements. Others would be excluded as too remote from the above purposes. Others still could be excluded from the purview of the SLUP as too insignificant to require a test for conformity with the SLUP, unless they required “‘Environmental’ authorizations” (e.g. a land use permit) such as those listed by SSI in its p. 5 table. In the Déline approach, all of such exclusions could be listed in an Exclusions List in the SLUP, so as to eliminate unnecessary and potentially inconsistent applications of the SLUP.

Déline does not want to go further than the above general discussion of this concept, It has not already developed its own Exclusion List. It believes that this is precisely the sort of technical issue that the parties recommending and approving the SLUP need to talk through, better understand (*through* talking through), take ownership of and resolve. To propose a “solution” here would be contrary to the basic principle of the resolve-through-technical-discussions approach that Déline recommends.

3. ACTION ON ACTIONS

During the SLUPB’s May 3-5/11 Norman Wells Hearing and in party technical discussions immediately following the Hearing, several parties made recommendations regarding the Actions proposed in Draft 3 of the SLUP, including:

- a. At 11.G (p. 10 of 10) of the Déline Speaking Notes, Déline proposed giving priority to several listed Actions and Recommendations in Draft 3 of the SLUP.
- b. In the ad hoc technical meeting convened by the SLUPB immediately following the Hearing, INAC suggested a “best efforts” approach to the Plan’s Actions, instead of a legal requirement.
- c. In the ad hoc technical meeting, INAC also suggested that the approving parties (and the Sahtu Land & Water Board?) should cost out the implications of the proposed Actions; that the time spent costing such implications could yield time saved in approving the SLUP; and that the exercise could help demonstrate financial accountability.
- d. Finally, in the ad hoc technical meeting, Déline recommended bringing all of the above ideas together — that the recommended technical working group should deal with the above-identified constellation of ideas at one of its technical meetings.
- e. Déline continues to recommend the approach in “d” above.