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Box 1500
Yellowknife, NT X1A 2R3

February 25, 2011

Your file - Votre référence

Judith Wright-Bird, Chair
Sahtu Land Use Planning Board
P. O. Box 235
Fort Good Hope, NT
X0E 0H0

Our file - Notre référence

7392-10-2

Dear Ms. Wright-Bird:

Re: INAC Departmental follow up comments on the Draft 3 Sahtu Land Use Plan

As a follow up INAC's October 2010 submission to the Board on the Draft 3 Sahtu Land Use Plan, INAC and Board staff met to discuss the Departmental submission. Please find attached INAC's responses to Action Items that arose from this meeting.

We look forward to attending the Board's Public Hearing in the Spring and to continue supporting the Board's work plan leading to the development of a Final Draft Land Use Plan.

Should you have any questions concerning this submission, please contact myself or Francis Jackson, Manager, Environment and Conservation Division, at (867) 669-2588 or Francis.Jackson@inac-ainc.gc.ca.

Sincerely,

Teresa Joudrie, Director
Renewable Resources & Environment,
Northwest Territories Region

Attachment

**INAC Responses to SLUPB Action Items from Bilateral Meeting
of November 19th, 2010**

CR 13 – Closure and Reclamation (P.9)

Action item #1: INAC will follow-up and provide confirmation of its position on this item.

INAC response:

The Department supports the inclusion of CR #13, as long as all of the changes requested in the Department's October 15th submission to the Board are made.

CR 15 – Monitoring – Differences for small vs. large projects (P 10)

Action item #2: INAC to provide further clarity and/or suggestions on how the Board can address their concern.

INAC response:

INAC acknowledges the importance of site-specific monitoring to ensure that mitigative measures are effective, and that the scale issue is addressed in the CR. Ultimately, the success of mitigative measures required under CR#14 will be determined through monitoring requirements described under CR#15. For added clarity, proponents and regulators may require additional guidance from the Board as to how monitoring reports are to be developed and distributed (Part 2 of this CR).

Application of the Plan to Oil and Gas Rights Issuance; and Issuance of Subsurface Rights for Oil and Gas beneath Conservation Zones (P 4, 6, 15 & 20)

Action item #3: INAC to respond to the following question: Is INAC saying that the Plan cannot restrict the issuance of Exploration Licences in Conservation Zones and PCIs?

INAC response:

The Department is in the process of completing a response to these issues, which will be provided to the Planning Board in advance of the Public Hearing.

Exemptions for Existing Rights (P 14-15)

Action item #4: INAC to further assess any implications to the Plan's provisions for exempting existing rights on existing projects and confirm its support for the approach.

INAC Response:

The Department has not identified any further implications, and can confirm its support for the Plan's provisions for exempting existing rights on existing projects.

Norman Wells Proven Area Agreement

Action item #5: INAC to respond to the following: On p. 15 of INAC comments, Section A: Please provide specific revisions necessary to capture the Norman Wells Proven Area in this section. Also please explain what a pioneer lease is. The INAC dataset the Board is using includes this, but we require further explanation of the significance and origin of that designation.

INAC response:

The Norman Wells Proven Area Agreement signed in 1944 by the federal government and Imperial Oil Limited, granted Imperial Oil the exclusive right and privilege to drill for, mine, win and extract all of the petroleum and natural gas from this field. Further to the Norman Wells Amending Agreement of 1994, the Proven Area Agreement remains in force and will continue to do so while commercial production continues in the Norman Wells Proven Area.

Under the Proven Area Agreement, Imperial Oil was designated the Operator of the project and given full control of the development and operation of the Proven Area and bears all the yearly up-front costs, charges and expenses incurred with the development and production of the proven area. The Government of Canada receives, as partner in the project, a one-third ownership interest in the gross production from this area.

In terms of identifying existing oil and gas land interests, it may be clearer to use the term “Existing Oil and Gas Rights” which includes Exploration Licences, Significant Discovery Licences, Production Licences, and the Proven Area Agreement. Maps displaying these rights and an associated spatial file can be found at the following link (<http://www.ainc-inac.gc.ca/nth/og/le/mp/cmvt/index-eng.asp>).

Although the oil and gas related Pioneer Leases in the Sahtu are maintained in good standing within the boundaries of the Norman Wells Proven Area, the term ‘Pioneer Lease’ can be removed from the map legend (P 25).

Extension of activity beyond the boundary of right (e.g. seismic in adjacent CZs)

Action item #6: INAC to identify the significance of this request.

INAC response:

The Department is in the process of completing a response to this issue, which will be provided to the Planning Board in advance of the Public Hearing.

Application of the zoning prohibitions to below threshold activities (P 3)

Action item #7: INAC to review the definitions and the intent behind these comments and bring any remaining issues and suggested revisions back to the Board.

INAC response:

INAC has reviewed these definitions and supports the wording described in the Draft 3 Sahtu Land Use Plan. Specifically, Section 2.3 states: “Except where a land use is exempted under section 2.3.2, the Plan applies to any land use activity that requires an authorization under any federal or territorial legislation or that may be authorized by a disposition of an interest in land from a government or a First Nation”. Section 2.3.1 goes on to state “Activities that do not require an authorization or disposition are not subject to the Plan”. It is this final point that INAC sought to underscore.

Prospecting Permit Protocol and Settlement Agreement (P 3-4)

Action item #8: INAC to respond to the Board before January on how the Prospecting Agreement and Protocol relate to the Plan and any revisions necessary to the Plan in regards to these documents.

INAC response:

The Department responded to this request by e-mail on December 20, 2010, which stated the following: The Settlement Agreement and Prospecting Permit Protocol are time-limited, and are only in effect until a Sahtu Land Use Plan receives final approval from the Minister of INAC. For specific reference, the Settlement Agreement's term is set out a 1.4.1 of the Agreement, and states that the Agreement terminates upon final approval of the Sahtu Land Use Plan by the Minister pursuant to s.43 of the MVRMA. The Protocol is Schedule A of the Agreement.

There is nothing in the Settlement Agreement or Prospecting Permit Protocol that would bind the Sahtu Land Use Planning Board, because the Settlement Agreement was kept separate and apart from the land use planning process.

The Agreement and the Protocol are in place to guide INAC's decision-making with respect to the issuance of prospecting permits in the absence of an approved Sahtu Land Use Plan.

MGP - Request for the Final Draft Plan to be consistent with outcome of MGP review (P 4)

Action item #9: The SLUPB would like INAC to flag any specific recommendations/ responses that they would like the Board to consider when reviewing and revising Draft 3 of the Plan.

INAC Response:

This was just to remind the SLUPB of the JRP findings and government response to it. There is no action required here.

Definitions: mineral exploration and development (P 5)

Action #10: INAC to confirm whether there are any changes needed to the “mineral exploration and development” definition now.

INAC Response:

INAC does not require changes to this definition.

Geological reconnaissance work (P 12)

Action item #11: INAC to clarify what the concern is in relation to this comment.

INAC response:

As noted in the Action item #7 response, INAC has reviewed these definitions and supports the wording described in the Draft 3 Sahtu Land Use Plan. With respect to geological activities and research, INAC was seeking confirmation that activities below regulatory thresholds would not be subject to the Plan.