



Alternatives North

June 9, 2010

John Pollard
Chief Federal Negotiator
Northern Regulatory Improvement Initiative
c/o Luisa Turano
Policy Advisor
Indian and Northern Affairs
10 Wellington Street
Gatineau QC K1A 0H4

Re: Submission from Alternatives North

Dear Mr. Pollard

Thank you for the opportunity to meet with you in Yellowknife on May 26, 2010. We appreciated the opportunity to discuss your mandate, timelines and preliminary observations. We were pleased that you had already read some of our materials submitted to Mr. McCrank and in response to his report, and that you accepted some additional Alternatives North documents at our meeting.

You asked us to give some further thoughts to a couple of issues and invited a submission. We take this opportunity to provide some comments on your mandate, the real issues with regard to the resource management regime in the NWT and to the issues you raised with us.

Concerns with the Mandate and the Action Plan to Improve Northern Regulatory Regimes

Firstly, we are quite concerned regarding the narrow and misguided focus of the mandate given to you as Chief Federal Negotiator. There is no factual or statistical evidence that the main problem with the resource management system in the NWT is the need to combine the regional land and water boards into one super board. Although Mr. McCrank reached this faulty conclusion, he presented no clear evidence to support it. The NWT continues to enjoy a growing economy and there is no need to accelerate resource development as suggested by the current federal government. The real problem is finding ways to share the costs and benefits equitably within the NWT, and with future generations, and in fully implementing the integrated resource management system.

The integrated resource management system negotiated through constitutionally entrenched land claims agreements was meant to implement measures to support sustainability and environmental protection. It was never meant to facilitate the private interests of southern or

multi-national corporations. To change this system through a forced merger of parts of the resource management system is dangerous and wrong. The so-called Action Plan on Improving the Northern Regulatory Regimes does not recognize the on-going work of the Mackenzie Valley Land and Water Boards through the Standard Procedures and Consistency Working Groups established under s. 106 of the *Mackenzie Valley Resource Management Act*. Guidelines have already been distributed on waste management, mine closure and a policy was recently released on water and effluent quality.

The federal government proclaims that the settlement of outstanding comprehensive claims is among its greatest priorities. Actions that undermine and subvert the force of existing settlements can be expected to destroy confidence in the claims process among Aboriginal peoples negotiating or waiting to negotiate new settlements. The federal government should be seeking to improve, not confirm, its poor reputation for honouring promises.

As we stated to you we are of the opinion that this review, through no fault of your own, appears to be motivated largely in reaction to unreasonable, yet persistently held views by some private sector developers that have yet to realize that the governance and regulatory system has evolved in the NWT as a result of constitutionally entrenched land claims agreements. Communities, Aboriginal governments, and the public hold substantive powers, largely in the absence of devolution and revenue-sharing arrangements with the territorial government, to ensure that local people have a strong say in the scale and pace of resource development and overall economic development. We acknowledge that there may be some areas of the environmental management system that require real improvement. However, as outlined below, your assignment appears to be based on the perceived need to streamline a land and water regime for the ill-fated Mackenzie Gas Project.

We think the efforts of your review would have been much more wisely invested in responding to and acting upon the findings of the first NWT Environmental Audit in 2005. The Audit is the legitimate and legally-required process for improving the integrated resource management system that was established pursuant to the *Mackenzie Valley Resource Management Act (MVRMA)*. The federal government has yet to officially respond to the 2005 Audit, yet is forging ahead with other initiatives to avoid dealing with the real problems. Additionally, no mention or consideration has been given to the fact that the 2010 Audit is currently underway.

Key Issues

While we are of the view that it is not necessary to force a land and water board merger for the NWT, we were pleased to hear that you will consider making some other observations as part of your report to the Minister. We offer the following in the hope that you can help bring the federal government back on track with proper implementation of the *MVRMA* and sound environmental management.

Land Use Planning

We agree that completing legally-binding land use plans in the Sahtu and Dehcho, in particular, should be priorities but we understand that the Department of Indian Affairs and Northern

Development has devoted insufficient resources internally to ensure this happens this year. There also needs to be an attitude shift within the federal and territorial governments to accept the will of the Dehcho communities who have already approved their land use plan. The other parts of the NWT without land use plans also present ongoing challenges and we have never understood why the federal government has not required land use planning under the *MVRMA* on Crown lands in these regions.

Board Training and Composition

We also agree with your observation on the need for consistent and comprehensive Board training. The School of Community Government offered through the Department of Municipal and Community Affairs serves as a useful model and there are likely good partnership opportunities with Aurora College. As we discussed, the issue of building and maintaining public credibility and trust in the co-management Boards is not simply a matter of training but one of ensuring there is a greater diversity of interests in Board appointments. The federal government in particular needs to stop meddling in Board appointments such as the two instances where Chairs of the Mackenzie Valley Environmental Impact Review Board were parachuted in against the wishes of the Board members and the reappointment of the Sahtu Renewable Resources Chair as requested by Board members was delayed for two years. Board membership should reflect a better gender balance and inclusion of interests beyond the business world. Boards would benefit from a greater diversity of experiences and backgrounds in areas such as civil society, the voluntary sector, environmental and non-governmental organizations.

Need for Ecological Thresholds and Limits of Acceptable Change

Key components of the *MVRMA* including the Cumulative Impact Monitoring Program (CIMP) and land use planning remain unfulfilled. As a result, we do not even have the ability to make a reasonable assessment of whether the current level of resource development activity is ecologically sustainable, let alone within limits of acceptable change for communities. Decision-makers and governance systems have yet to recognize ecological and social limits and develop thresholds to ensure some margin of safety in the interest of sustainability.

Stable, Long-Term Funding for the Resource Management System Including Participant Funding

One of the greatest needs for improving the comprehensive and integrated environmental management system that was envisioned in the *MVRMA* is to fully implement the provisions of the legislation through adequate and stable funding of the co-management boards and for a participant funding program for both environmental assessment and other phases of resource management. We support the submissions you have received from the northern boards as they are in a much better position to articulate their needs directly to you.

We cannot understand the inertia of the federal government in establishing a proper and adequate participant funding program for all phases of the environmental management system. We are quite frankly astounded by the federal government's failure to institute participant funding for environmental assessments under the *MVRMA* at a bare minimum, similar to the right to

participant funding enjoyed by Canadians for federal environmental assessment in all the provinces. Participant funding is required for environmental assessment and for all of the management functions specified in the *MVRMA*—land use planning, environmental assessment, land and water regulation, cumulative impact monitoring, and environmental audit. While we recognize that the needs may vary over time or by function, there is little to be gained by short-changing public and community involvement at various stages of the environmental management system. Northerners have for too long been excluded from decision-making about our resources and the pace of development. With meaningful participation, there will be a more effective and efficient decision-making processes.

The federal government's chronic underfunding of *MVRMA* implementation and public participation has been compounded by a failure to promote or educate the public and developers in particular. We recognize that there is a special government responsibility to build long-term capacity through a functional education and training system, but the systematic underfunding of *MVRMA* implementation has only compounded this problem. Northerners are at great risk of losing the integrated environmental management system that was hard fought for at the negotiating table due to this chronic underfunding. The federal government must live up to its legal obligations negotiated in the land claims agreements and provide adequate and stable funding for the operation of the NWT environmental management system.

Erosion of Government Participation in Environmental Assessment

Over the past several years there has been a steady and massive erosion of meaningful government participation in environmental assessment and overall involvement in environmental management. True and representative government responses have been replaced by a *laissez-faire*, market-driven approach that does little to serve the public interest or sustainability. Further coordination of government departments is meaningless when participation is generally hindered by political considerations, rather than driven by the substantive professional expertise of many government employees.

Need for Coordinated Closure and Reclamation Requirements

There is no coordinated or systematic approach to liability, closure and reclamation, or financial security for hydrocarbon or mineral development in the NWT. There is very little regulatory guidance for closure and reclamation of oil and gas facilities in the NWT or for mining, and detailed expectations or closure standards do not exist. Existing provisions for closure and reclamation do not require that ecological diversity and productivity be restored or that agreed upon end uses do not compromise future generations. Further, there are no clear, mandatory requirements for closure plans before operations begin, or financial security to cover approved closure plans to ensure that the public purse is adequately protected.

Representation and Involvement in Land and Water Management Outside Settlement Areas

Lastly, you asked us for some thoughts or advice on how land and water management outside of land claim settlement regions might better involve and reflect the interests of local Aboriginal

governments who sometimes may have overlapping interests. There are provisions in the *National Energy Board Act* that provide for the appointment of temporary members as follows:

4. (1) In addition to the number of members that may be appointed under subsection 3(1), the Governor in Council may, notwithstanding subsection 3(2), appoint temporary members of the Board on such terms and conditions as the Governor in Council may prescribe and any temporary member so appointed shall carry out such duties as may be assigned to that member by the Chairman of the Board.

If there was a similar clause added to the *MVRMA* with some provision for mandatory consultation with Aboriginal governments, there would be some flexibility to allow for temporary members in areas with overlapping interests or to better represent local interests and experiences.

Conclusion

We can sum up our recommendation to you very easily. **In the context of improving the NWT environmental management system, please make the federal government focus on responding to and implementing the findings of the 2005 NWT Environmental Audit.**

Should you have any questions regarding this submission, please contact us by e-mail at info@alternativesnorth.ca.

Sincerely,



Kevin O'Reilly
On Behalf of Alternatives North

Attach.

cc. Dennis Bevington, MP Western Arctic
Premier Floyd Roland, Government of the Northwest Territories
Northern Board Forum