



Mackenzie Valley Environmental Impact Review Board

IN THE MATTER OF: **The Canadian Zinc Corporation Phase 3 Drilling
Environmental Assessment EAQ405-002**

AND IN THE MATTER OF: **A Request for Ruling by the Canadian Zinc
Corporation on the Status of the Canadian Parks
and Wilderness Society (CPAWS NWT) in the
Proceeding**

REASONS FOR DECISION

INTRODUCTION

On (date) the Mackenzie Valley Land and Water Board referred the Canadian Zinc Corporation's (CZN) proposed phase 3 drilling program to the Mackenzie Valley Environmental Impact Review Board (MVEIRB or Review Board) for Environmental Assessment (EA) pursuant to section 124 of the *Mackenzie Valley Resource Management Act* (MVRMA). On (date) the Review Board approved the list of parties to the CZN EA. The Canadian Parks and Wilderness Society (NWT) (CPAWS) applied on (date) pursuant to the MVEIRB's *Rules of Procedure for Environmental Assessment and Environmental Impact Reviews* (the Rules) for party status in this EA. The Board granted party status to CPAWS.

On July 14th, 2005 CZN wrote to the Review Board expressing concerns about CPAWS activities, in particular a campaign to have the Nahanni National Park Reserve expanded to include the entire Nahanni River watershed "and as part of that objective to *"Stop the Prairie Creek mine"*.¹ CZN provided more detail about CPAWS recent activities in its letter. Many of these activities have taken place during the period since the CZN EA was initiated.

CZN requested that the Review Board take certain actions in response to its concerns. The Review Board determined that this request should be treated as a Request for Ruling pursuant to Rule 46. Notice of the CZN Request was provided to the parties to the Canadian Zinc Corporation EA on July 15th 2005 and submissions in response to the Request were received by the Review Board on July 19th 2005.

THE CZN REQUEST

CZN has registered its objection to formal "party" status for CPAWS. The developer submitted that CPAWS should not be entitled to make Information Requests in the proceeding. CZN further requested that CPAWS submissions in this EA should be evaluated for legitimacy in the

¹ CZN July 14 letter page 1 paragraph 4.

context of CPAWS stated objective to stop the mine. Finally, CZN suggested that CPAWS submissions should not be given any weight or serious consideration in the proceeding.¹

SUBMISSIONS IN RESPONSE TO THE REQUEST

CZN's submission was based on its letter. No new evidence of the alleged CPAWS activities, in addition to the materials already on the public record for EAQ405-002, was provided by the developer.

Responses to the CZN Request in the form of letters were received from the Sierra Legal Defence Fund (SLDF) on behalf of CPAWS, from the Deh Cho First Nations, the Parks Canada Agency's Nahanni National Park Office, Environment Canada and the Government of the Northwest Territories' Department of Industry Tourism and Investment. These responses have been placed on the public record for this proceeding.

The Review Board thanks all parties which participated in this matter for their assistance.

THE REVIEW BOARD DECISION

The MVEIRB met July 20th, 2005 to consider the CZN Request. The Review Board's reasons for decision are set out below:

CPAWS was granted party status in this proceeding in accordance with the Rules, following the submission of the required information in proper form. CPAWS has, as recognized by CZN and other parties, actively participated in other Review Board proceedings, including five other proceedings involving CZN.²

CZN cites activities by CPAWS that in CZN's opinion "exceeded the boundaries of acceptable conduct and brought into question the *bona fides* of its participation in the CZN Environmental Assessment".³

The Review Board notes that the CPAWS activities cited by CZN relate to the question of whether a mine should eventually be permitted on Prairie Creek. This proceeding is, however, focussed on the potential effects of a new phase 3 drilling program which is part of CZN's ongoing exploration activities. A review of the record in this proceeding indicates that none of the information associated with or results of these CPAWS campaigns form part of the record in this EA.

As the Review Board understands the circumstances, CPAWS is lobbying for a change in the Government of Canada's policy in respect of this area. This activity is part of a long term effort by CPAWS to see its goals for the protection of the South Nahanni Watershed realized.⁴

¹ CZN July 14 letter page 2 paragraph 4.

² See SLDF submission page 2 and CZN letter, paragraph 3 page 1.

³ CZN July 14 letter page 2 paragraph 3.



The concerns expressed by CZN raise important questions about the purpose of Environmental Impact Assessment. Section 114 provides basic guidance on these purposes in the context of the MVRMA:

114. The purpose of this Part is to establish a process comprising a preliminary screening, an environmental assessment and an environmental impact review in relation to proposals for developments, and

.....

(b) to ensure that the impact on the environment of proposed developments receives careful consideration before actions are taken in connection with them; and

(c) to ensure that the concerns of aboriginal people and the general public are taken into account in that process.

The Review Board is of the opinion that an EA proceeding is intended to be part of an environmental planning process which offers residents of the Mackenzie Valley, as well as organizations with an interest in the northern environment, the opportunity to participate in proceedings which consider the potential impacts of a development before regulatory approvals are given. Paragraph 114(c) requires that the Review Board “ensure” that the concerns of the “general public” are taken into concern. In the Review Board’s view CPAWS and in particular CPAWS NWT or its members are part of the northern public.

The requirement in paragraph 114(b) to ensure that the impact on the environment of a proposed development “receives careful consideration before actions are taken in connection with them” means that an EA proceeding can, at least in part, serve as a type of planning process. It seems unremarkable to the MVEIRB that parties with different points of view, some strongly held, come and participate in Review Board proceedings to advocate their positions.

The MVEIRB encourages interested parties to participate in its proceedings, to share their perspectives, concerns and information. In the Review Board’s view, this is consistent with the purposes set out in section 114 of the MVRMA.

Given the broad and inclusive purposes set out in section 114 of the MVRMA, the Review Board is of the view that it should not rescind the standing or restrict the rights of a party in one of its proceedings except in exceptional circumstances. In this case although CZN and CPAWS’ goals for the Prairie Creek area are very different, there is no evidence in this proceeding that CPAWS has engaged in abusive, improper, vexatious or frivolous activity.

⁴ SLDF letter, page 2 section 2.



CZN suggests that CPAWS submissions be evaluated for their legitimacy in light of their stated objective to stop the mine. The Review Board evaluates all submissions in its proceedings within the scope and context for that proceeding. This would include an evaluation of the relevance of any submission about a development which is the subject of a proceeding. As we have indicated, there is no material related to the CPAWS campaigns on the record to date. If CPAWS or some other party chooses to file that material, it will be evaluated for relevance to the drilling program and weight will be assigned accordingly.

The Review Board will not make a decision as to the weight of the material on the public record until the record is closed at the conclusion of the public portion of this EA. At that time all of the information on the record is reviewed and evaluated. It would not be appropriate for the Review Board to rule in advance on the weight to be assigned to CPAWS evidence or submissions. This analysis will be undertaken in due course.

As for the implicit questions raised about CPAWS continuing status, the Review Board confirms that CPAWS will continue as a full party in this proceeding. In our view, EA proceedings can accommodate healthy and respectful debate. A party's status does not depend on whether they agree with a developer's position on whether the development should occur. The Review Board expects all parties to advocate their position and to test the evidence advanced in an EA. This type of exchange assists the MVEIRB to understand the evidence, the range of views in the Mackenzie Valley, and to make better decisions.

DECISION

The Review Board will evaluate the relevance and will assign weight to the submissions of CPAWS in due course. CPAWS is confirmed as a full party in the Canadian Zinc Corporation Phase 3 Drilling Environmental Assessment #EAQ405-002. CPAWS may continue to exercise the rights granted to parties under the MVEIRB Rules.

Dated: 25 July, 2005

Gabrielle Mackenzie Scott

Gabrielle Mackenzie Scott

Chairperson

Mackenzie Valley Environmental Impact Review Board

