

Katherine.MacKellar

Subject: FW: LFN LTR to Feds/YG Re Panel Review
Attachments: 2021 01 12 LTR LFN to Ministers Resp for YESAA Re Panel Review (00351391xE1C2E).pdf

From: Travis Stewart <TravisStewart@liardfirstnation.ca>
Sent: Monday, January 25, 2021 2:57 PM
To: Laura.Cabott <Laura.Cabott@yesab.ca>
Cc: Andrew.Reid <Andrew.Reid@yesab.ca>
Subject: LFN LTR to Feds/YG Re Panel Review

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Hello Laura,

LFN is in receipt of copies of letters addressed to you from the Governments of Canada (GC) and Yukon (YT) related to GC's referral of the KZK Final Screening Report back to YESAB for further work and consideration. GC notes in its letter that LFN does not support the Final Screening Report (FSR). LFN has done considerable work investigating the proposed KZK mine, and the ExCom Assessment, and we have reached conclusions about the FSR that are more helpful than a simple statement about not supporting it. LFN wrote to the federal Minister of Northern Affairs, the Honourable Dan Vandal and to Yukon Premier Sandy Silver, in which LFN expressed its strong belief that the project should either be rejected or referred to a public Panel.

Given the questions raised by Canada about the assessment and the overly optimistic recommendation, including general uncertainties of the effectiveness of the proposed mitigations, LFN invites YESAB to carefully consider the justifications under the act that should result in YESAB rejecting the project or referring the matter to a public Panel.

Given that GC and YG have corresponded about these matters publicly, LFN believes it is appropriate to share our letter to the Ministers responsible for YESAA with you with the expectation that it will be posted publicly on the YOR. As you know, LFN and our citizens rely on the YOR as part of our community information communication programs, particularly during Covid - 19 times. This proposed new mine has caused significant controversy and conflicting information to circulate so LFN is eager to help our citizens navigate what is taking place in this convoluted process by ensuring relevant information is appropriately available.

Yours,

Travis Stewart
Liard First Nation Lands



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WATSON LAKE
January 12, 2021

By email

The Honourable Dan Vandal, P.C., M.P.
Minister of Northern Affairs
Minister Responsible for YESAA
25 Eddy Street, 7th Floor
Gatineau, QC K1A 0H4

Premier Sandy Silver, MLA
Premier of Yukon
Minister Responsible for YESAA
Box 2703
Whitehorse, YT Y1A 2C6

Dear Ministers:

Re: Request for Public Panel Review of the Kudz Ze Kayah Mine (2017-0083)

On October 12, 2020 the Yukon Environmental and Socioeconomic Assessment Board ("YESAB") Executive Committee (the "Committee") submitted its Final Screening Report (the "Report") about the proposed Kudz Ze Kayah Mine (the "Project"). The report recommends to your governments that, without going to a panel review, the Project can proceed with mitigations despite clear, well-documented and significant harms to Kaska Aboriginal rights, including Aboriginal title. Liard First Nation is deeply alarmed by this outcome and believes that the Committee has erred in law in making its recommendation.

For the following reasons, we write to request that Canada and Yukon reject the project as it is currently proposed or, in the alternative, you consent to a public panel review of the Kudz Ze Kayah Mine project (the "Project") in accordance with ss. 60(1)(c) and 60(4) of the *Yukon Environmental and Socio-Economic Assessment Act* ("YESAA"). In the further alternative, we request that you make a joint request to the Committee for a public panel review in accordance with s. 60(2).

We make this request for the following reasons:

1. It is clear from the Committee's findings that the project will infringe the Kaska right to hunt the Finlayson Caribou Herd (the "FCH"). The Committee noted that:
 - a. The Project is uniquely situated at the intersection of late winter, calving, post-calving, rut, and early winter habitats and the seasonal movement corridors that connect them. Direct and indirect effects of habitat loss and degradation in the Project area will influence all components of the annual life cycle of the FCH.¹

¹ Screening Report at 118.

- b. Habitat loss due to the mine's footprint, including its open pit, waste storage facilities and [Water Management Ponds], will be permanent and irreversible. Beyond direct reductions in habitat loss, the effectiveness of most mitigation measures at reducing habitat disturbance during operations is largely unknown.²
 - c. [I]n the event that the Project proceeds, the FCH population will likely decline, and certainly be lower than in the event the Project does not proceed.³
 2. The Executive Committee's proposed FCH-related mitigations are unproven. There is no evidence they will effectively mitigate these adverse effects or prevent the continued decline and potential extirpation of the FCH. Predicted impacts on the FCH threaten the continued viability of Kaska harvesting rights, which depend on a healthy and sustainable herd that has a harvestable surplus.

While we appreciate the Committee's attempt to design its own mitigation solutions, we believe that its confidence in those proposals is misguided, and that it erred by making a recommendation under YESAA s. 58(1)(b) to allow the Project to proceed without a review.

In particular, we draw your attention to YESAA s. 58(2), which provides that:

Irrespective of any determination made under subsection (1), the executive committee shall require a review of the project if

- (a) it determines, after taking into account any mitigative measures included in the project proposal, that the project might contribute significantly to cumulative adverse environmental or socio-economic effects in Yukon or that the project is causing or is likely to cause significant public concern in Yukon; or
- (b) it determines that the project involves technology that is controversial in Yukon or the effects of which are unknown.

This provision implements commitments in the Umbrella Final Agreement,⁴ but the Screening Report and YESAA itself provide a compelling basis for a public panel review:

1. The Executive Committee's FCH recommendations are not "mitigative measures included in the project proposal." As already noted, the Executive Committee added them itself.

² Screening Report at 119.

³ Screening Report at 121.

⁴ See Umbrella Final Agreement, ss 12.9.2. In particular, notice that section 12.9.2.1 requires the Executive Committee to establish a review panel if "it determines that the Project may have significant adverse environmental or socio-economic effects in the Yukon or outside the Yukon."

2. The EC concluded that adverse impacts on the FCH cannot be effectively mitigated: "[T]he FCH population will likely decline and certainly be lower than in the event the Project does not proceed."⁵
3. The scale and scope of adverse effects is unknowable based on available information: "The available information and clarity of management objectives regarding the FCH is poor as compared with herds such as the Klaza or Southern Lakes caribou, despite the existence of the Wolverine Mine and the potential for development of the Kudz Ze Kayah project, both intersecting key habitat of the FCH."⁶
4. The Project might contribute significantly to cumulative effects on the FCH and Kaska harvesting rights: "[C]aution is warranted with respect to cumulative effects, particularly given much of the present development, additional claims, and a major road, exist in close proximity to the Project."⁷
5. The Project has aroused intense concern among the Kaska, who are the members of the Yukon public most affected.
6. The Project proposes to use passive wetland filtering, an untested technology in the Yukon with unknown potential effects, to ultimately achieve closure.

Had the Executive Committee abided by YESAA's provisions, it would have determined that the Project should not proceed or that it required a panel review under s. 58(2). Given its failure to do either, LFN now asks you, as the Ministers responsible for YESAA, to either provide your consent to LFN's request to the Committee for a public panel review or request one yourselves. In the alternative, the project as currently proposed should be rejected until it can be confidently demonstrated, based in scientific evidence and grounded in Kaska knowledge and ways of knowing, that Kaska rights and title will not be extinguished by this project.

It is difficult for LFN to understand why the panel option exists in the legislation if not to address major projects like the proposed extraction of \$4.2 billion of minerals subject to Kaska title in circumstances that make serious infringement – and potential extinguishment – of Kaska harvesting rights inevitable.

We look forward to your timely response.

Yours sincerely,
Liard First Nation

Chief Stephen Charlie



⁵ Screening Report at 121.

⁶ Screening Report at 106.

⁷ Screening Report at 120.

cc. **Kaska First Nations**
The Honourable Carolyn Bennett, PC, MP, Minister of Crown Indigenous Relations
The Honourable Jonathan Wilkinson, PC, MP, Minister of Environment
The Honourable Bernadette Jordan, PC, MP, Minister of Fisheries and Oceans
The Honourable Omar Alghabra, PC, MP, Minister of Transport
The Honourable Ranj Pillai, MLA, Minister of Energy, Mines and Resources
Keith McGuire, Director, Major Projects Yukon
Jenel Larocque, Yukon Senior Consultation Advisor
Lisa Dyer, Director General, Northern Project Management Office
Saul Schneider, Environment and Climate Change Canada
David Carter, Department of Fisheries and Oceans Canada
Peter Unger, Senior Environmental Assessment Officer, Office of the Chief Scientist
Rob Johnstone, Deputy Director, Explosives Safety and Security Branch, Transport Canada
Christopher Aguirre, Transport Canada