

First Nation of Na-Cho Nyäk Dun

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BY FAX: (613) 947-3089

Blake Richards
Standing Committee on Aboriginal Affairs and Northern Development
131 Queen Street
Ottawa, Ontario K1A 0A6

Dear Sir:

Re: Bill S-6, An Act to amend the Yukon Environmental and Socio-economic Assessment Act and the Nunavut Waters and Nunavut Surface Rights Tribunal Act

On behalf of the First Nation of Nacho Nyak Dun (the "NND"), Millie Olsen, the NND Deputy-Chief, presented a submission to the Standing Committee on Aboriginal Affairs and Northern Development in Whitehorse on March 31, 2015, with respect to Bill S-6.

In her presentation Ms. Olsen advised that the *Yukon Environmental and Socio-economic Assessment Act* (the "YESAA") was developed in accordance with the Yukon First Nation Final Agreements, including the NND Final Agreement that was brought into legal force more than two decades ago. Over that time, the NND has been involved in the implementation and operation of the YESAA with respect to hundreds of resource development assessments in our traditional territory. We relied on the YESAA assessment to provide for the prudent management of lands, waters and resources and the protection of our heritage and culture.

In particular, Ms. Olsen confirmed that the NND shares the concerns of other Yukon First Nations about four following amendments proposed by Bill S-6 to the YESAA.

- (a) Policy directions binding on the Yukon Environmental and Socio-economic Assessment Board (the "Board"). Bill S-6 would amend the YESAA to provide authority for the federal Minister to give policy directions that are binding on the Board with respect to the exercise or performance of its powers, duties or functions under the YESAA. Bill S-6 does not direct the federal Minister to consult with or seek the consent of the Yukon First Nations before issuing any policy direction to the Board.

Providing the federal Minister with authority to unilaterally issue policy direction undermines the autonomy of the Board and designated offices and compromises the ability of the Board to carry out its functions without political interference. A single party with authority to direct the Board is contrary to the intentions of the parties when they developed the YESAA.

- (b) Delegation to the territorial Minister. Bill S-6 would amend the YESAA to authorize the federal Minister to delegate, in writing, any or all of his powers, duties or functions under the YESAA to the territorial Minister.

While the federal Minister would be required to notify Yukon First Nations in writing of any such delegation, there is no requirement for the federal Minister to consult with or obtain the consent of the Yukon First Nations before delegating any responsibilities. There is also no provision for delegation of powers to Yukon First Nation governments. This amendment would establish a bilateral federal-territorial process for the distribution of responsibilities and powers under the YESAA that excludes the Yukon First Nations from that discussion.

- (c) Timelines for Assessments. Bill S-6 would establish timelines for completion of assessments under the YESAA. The Yukon First Nations assert that these timelines are unnecessary since all stages of the YESAA process are already subject to fixed timelines that are established in the YESAA regulations and rules established by the Board.

The proposed timelines for screenings by the Executive Committee and panel reviews would not provide adequate time to complete the assessment of complex projects. This means that assessments of large projects that may impact Yukon First Nations' rights and interests may not be thorough and complete. It will also likely reduce the time provided in the assessment for Yukon First Nations' review of proposals and, as a result, reduce the effectiveness of engagement and consultation with the Yukon First Nations.

- (d) Exemptions for Renewal and Amendments. Bill S-6 would amend the YESAA to exempt projects from new assessments where an authorization is renewed or amended unless, in the opinion of a decision body for the project, there is a significant change to the original project.

The current regime provides for exemptions of renewals and amendments where the effects of those were explicitly considered in earlier assessments. The proposed amendment, on the other hand, creates a much broader exemption that will allow exemption of projects for which the effects have not been considered. The exemption of such projects would be inconsistent with the objectives of Chapter 12 of the First Nation Final Agreements, specifically failing to provide for a comprehensive review of the "environmental and socio-economic effects of any project before the approval of the project." Exemptions for projects under the YESAA should be based on whether the effects have previously been considered in an assessment, not whether the project is a "significant change" to the original project.

During the development of the YESAA, the parties agreed that the regulations would define which projects and activities are subject to assessment. The proposed amendment interferes with that approach.

Based on the presentations made to the Standing Committee in Whitehorse, it is clear that many Yukoners share the concerns of the NND and other Yukon First Nations with respect to the four controversial amendments proposed in Bill S-6.

The NND believes that these four amendments are contrary to the spirit and intent of the NND Final Agreement and serve to undermine the credibility and effectiveness of the YESAA process in the NND's traditional territory. In turn, this may adversely impact resource development in our traditional territory and this would not benefit anyone.

We have requested that the Minister direct his officials to work with the NND and other Yukon First Nations to address our concerns. We believe that our concerns can be resolved if the federal and territorial officials are prepared to work with us. However, if the federal and territorial governments are not willing to engage with us, we ask the Standing Committee recommend that the above-noted proposed amendments to the YESAA be struck from Bill S-6.

In closing, we ask that you give full consideration to this written submission and forward it to your colleagues on the Standing Committee.

Sincerely,

Simon Mervyn
Chief



Enclosure

cc. Yukon First Nation Chiefs
The Honourable Bernard Valcourt, P.C., M.P.
Premier Darrell Pasloski, Yukon Government
Member of Parliament Ryan Leef, House of Commons of Canada