House of Commons' Standing Committee on Indigenous and Northern Affairs

Bill C-88, An Act to amend the Mackenzie Valley Resource Management Act and the Canada Petroleum Resources Act and to make consequential amendments to other Acts.

Dehcho First Nations
PO BOX 89, FORT SIMPSON, NT X0E 0N0

Statement

Introductions

I am Grand Chief Gladys Norwegian, elected to represent the Dehcho First Nations (DFN). We are a regional body, representing eight member First Nations and two Métis locals in the Dehcho region of the Northwest Territories.

The Dehcho First Nation communities are connected through language, cultural beliefs, practices, genealogy and principles. We are part of the Dene Nation, and have lived on our homeland, and according to our own laws and system of government, since time immemorial.

Our homeland is comprised of the ancestral territories and the waters of the Dehcho Dene. We were put here by the Creator as keepers of and guardians over our waters and lands. We therefore share responsibility in managing that land.

We understand that the committee is here today to consider Bill C-88, which (among other things), incorporates the proposed amendments to the *Mackenzie Valley Resource Management Act*, and we are here to share our thoughts and comments on those amendments. These amendments would have significant impacts on how our lands, resources and rights are impacted by development occurring within the territories of our member First Nations, and so we appreciate the opportunity to share our views.

I would like to start by saying that, on a general level, DFN has not a party to the Mackenzie Valley management regime. We are still negotiating with Canada on land and resource issues in our region. However, in the meantime, we are made subject to the MVRMA, and accordingly must deal with what is now before us.

With those points noted, I would like to say we we believe the proposed amendments are positive, and are a move in the right direction. They will – if they come into force– allow for better environmental review and protection measures for the developments that are occurring within the Dehcho region.

Most notably, they will reverse the unacceptable amendments of 2014 that would have eliminated the regional co-management boards. Those boards were negotiated as part of modern treaties – but the previous government attempted to replaced them with a single "super-board". Those amendments are now subject to a successful injunction brought by our neighbours the Tlicho Government, who are a party to a modern treaty and who are supposed to be a partner in the MVRMA process. We agree that the "superboard" should never have been put into the law – and those provisions must be reversed.

The amendments before you in Bill C-88 now make it clear that the members of the Board appointed to a hearing panel will include an equal number of Indigenous government appointees to other appointees made by public governments. In doing so, the proposed amendments will help to restore balance to the way that the MVRMA operates, and ensures that the voice of Indigenous board members will be heard.

This point cannot be understated: responsible management of our lands and resources is a sacred duty for our people. We are prepared, in the context of our treaty relationship, to work with other governments, but we will never again be silenced or sidelined.

The new amendments also create a cost recovery scheme against proponents, and an administration and enforcement scheme for Development Certificates that is backed by fines and other penalties.

This, from DFN's perspective, will 1) prevent hesitant or less-serious proponents that lack a solid business case from moving ahead with regulatory applications, and 2) make sure the regime is enforced, and that developments move forward in accordance with specific terms and conditions – terms and conditions that DFN (and others) has the opportunity, under the amendments, to influence. The amendments enable intervenors before the boards, such as DFN, to seek changes to development certificates to impose conditions on an already-approved project.

Notwithstanding these positive aspects of the Bill, in the remaining time that we have here today, DFN would like to put forward a few recommendations on the following topics:

First: the regulations regarding consultation.

Section 90.31 of the proposed amendments allow for regulations to be developed that would set out requirements for any consultation that is to be undertaken by developers or proponents when it comes to issuing, amending, renewing, suspending, or cancelling a permit or authorization.

DFN has already provided comments to CIRNA on this, but, to reiterate the essence of those comments, DFN believes, in accordance with UNDRIP (in particular, Article 3), that it has a right to self-determine, and this includes being able to define and determine what meaningful consultation and accommodation should look like, and how it should be carried out.

Any and all consultation must be carried out by the Crown in good faith and with the intention of substantially addressing the concerns of the affected First Nation party. The Crown must also make all good faith efforts to substantially accommodate any concerns that the First Nation has about the decision, action, or project at issue.

This must always be the case in any consultation. But what that process is and how it is carried out should be defined by the First Nation communities whose lands, resources and rights stand to be affected.

Second: exemptions from preliminary screenings.

Section 117.1 of the proposed amendments makes it clear that a proponent can't proceed with a development until they are issued a "development certificate", or are granted an exemption from

a preliminary screening, because the development's impact on the environment will be "insignificant".

As mentioned earlier, the requirement that proponents must have a development certificate in order to move ahead with a project is an important change to the existing regime. It creates a regulatory tool with enforceable terms and conditions that must be followed. That said, what would 'qualify' a development for exemption (and what factors would be considered in making the determination that a development's impacts will be "insignificant") is not outlined or explained in the legislation, and needs to be clarified.

DFN proposes that, when determining whether the impact of the proposed development is (or is not) significant, Indigenous and traditional knowledge must be included about how the rights, lands and resources of Indigenous peoples might be impacted. Clear language should be included to this effect, whether it be in the regulations or the legislation itself.

And third: the regulations regarding administrative monetary penalties.

The proposed amendments will ensure that if a proponent breaches or violates the terms or conditions of a development certificate, the proponent will be met with fines, including administrative monetary penalties, and allows the Minister to make regulations on this.

DFN has already provided its comments and recommendations on the proposed regulations, and we understand that a second draft of those regulations is being developed.

That said, I would like to reiterate an important part of those comments, which is DFN's recommendation that Indigenous and traditional knowledge about how Indigenous rights and resources have been impacted must be considered at the time a penalty is being determined and issued. For example, a project could be taking place on or near a sacred burial site of a First Nation, but the location and significance of that site would be knowledge that only the First Nations would have. A violation in this case would and should be a considered very serious one, and should have a similarly significant penalty.

Those are my comments on this legislation. I look forward to any questions you may have.

Mahsi cho.