

Sambaa K'e Dene Band
Box 10
Trout Lake, NT
X0E 1Z0

January 19, 2006

Dear Chief Dennis Deneron,

RE: Sambaa K'e Dene Band (SKDB) Motion Requesting Confidentiality for portions of the SKDB Traditional Knowledge Study

The Joint Review Panel (JRP or the Panel) received a letter from Ms. Ruby Jumbo of the Sambaa K'e Dene Band (SKDB) on behalf of Chief Dennis Deneron dated December 12, 2005 requesting a ruling:

“to protect the confidentiality of the Sambaa K'e Dene Band's (SKDB's) traditional knowledge (TK) study regarding the proposed Mackenzie Gas Project (MGP) as per clauses 44-46 and 34-42 of the Direction for Procedures for Hearings and as of the Joint Review Panel's November 3, 2005 'Criteria for Confidentiality Orders for Traditional Knowledge Study Reports'”
(the Motion).

The SKDB stated in their letter, which was sent via fax, that they would be enclosing a copy of their TK Study report with the original letter. On December 15, 2005, by way of return letter (also sent via fax) from Ms. Pacholek, JRP Panel Manager, the Panel thanked the SKDB for proffering a copy of their TK Study but declined to accept it for the purpose of the Panel ruling on the Motion. The decision of the Panel to decline receipt of the TK Study report at this point in time was further confirmed on December 19th by way of e-mail between Ms. Pacholek and Mr. Tofflemire of Crosscurrent Associates acting on behalf of the SKDB.

The Panel established a process for Parties to comment on the Motion. No parties submitted views on the Motion.

In their letter of December 12th, the SKDB stated that it “feels it is important that the Joint Review Panel review the information and findings of the TK study to better understand the study's final recommendations and ensure that SKDB inherent interests and concerns are properly accommodated within the regulatory process.” It wants the JRP to have a full copy of the report “so that it can assess to what extent Imperial has made use of the TK information provided by the community.”

SKDB prepared the TK Study report under contract to, and with funds from, Imperial Oil Resource Ventures Ltd. (IORVL). The Report was submitted to IORVL in May, 2004 in confidence. SKDB is of the view that the TK Study report contains proprietary information and should not be placed on the Panel's public registry. SKDB wishes to submit the TK Study report to the Panel but has identified those pages it does not want publicly released. It proposes a process whereby, in response to information requests from third parties, it will either release the information itself, or authorize the Panel to do so

“where the SKDB feels that the release of certain types of information will benefit the regulatory process”.

The SKDB allege that sections of the TK Study report have commercial value because “the type of information contained in these sections are a standing requirement within the regulatory processes of the NWT ... and therefore the SKDB may be able to license use of this information to oil and gas exploration companies ... in the study area.” If this information is placed on the public record, SKDB feels it could suffer material financial loss, prejudice to its competitive position in land use and/or resource management matters, and “prejudice to the current contractual agreement with the Proponent that states that this information would not be made available to competing pipeline companies”.

In November, 2005, the Panel issued a document entitled *Criteria for Confidentiality Orders for Traditional Knowledge Study Reports* in which the Panel state that in ruling on any such order, it would consider:

- (a) whether a confidentiality order is necessary in order to prevent a serious risk to an important interest, such as the interest of a community in preventing the exploitation of that community’s traditional knowledge by others, because reasonably alternative measures will not prevent the risk; and
- (b) whether the beneficial effects of a confidentiality order would outweigh the harmful effects of the order, including the effects of the order on the public interest in an open and accessible Panel process.

Parties are asked to identify in their motion the interest that would allegedly be harmed by the public disclosure of the TK study report and the nature of the harm that would allegedly be suffered.

SKDB alleges that ‘the Confidentiality Order is necessary to prevent exploitation of SKDB traditional knowledge by others and there are no reasonable alternative measures to prevent the risk of exploitation.’ It also states that “the beneficial interest of the Confidentiality Order would outweigh the harmful effects given that the public has no reasonable or legitimate use of this information with respect to the MGP regulatory process.” No further details are provided by the SKDB.

Based on the foregoing, the Panel is of the view that the ‘value’ that the Panel is being asked to protect is a commercial interest. It appears that the prime importance to the SKDB is their ability to be able to optimize the economic return from the information they have collected and compiled.

What is important to the Panel is the information based on traditional knowledge about the impacts the MGP may have. It is the responsibility of the holders of the traditional knowledge to direct the Panel’s attention to the impact that may take place as a result of the MGP. The Panel looks forward to receiving this information from members of the SKDB community at the hearings.

The SKDB is asking the Panel to review information contained in the TK Study for the purpose of assessing whether IORVL has used the information presented in the SKDB TK Study appropriately. In the Panel’s view, the SKDB is in the best position to assess whether the Proponent has used appropriately the information contained in the TK Study. If, in the SKDB view, the Proponent has not done so, then the SKDB can tell the Panel where and in exactly what way the information has been misconstrued or misapplied. One opportunity for the SKDB to present their views to the Panel is at the public Community Hearing to be held in Trout Lake that is currently scheduled for May 16, 2006.

For these reasons, the Panel dismisses the motion.

Sincerely,

A handwritten signature in blue ink that reads "Robert Hornal". The signature is written in a cursive style with a light blue background behind it.

Robert Hornal
Joint Review Panel Chair