

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

*Via Facsimile: 867-206-2828*

March 29, 2006

Dear Chief Deneron,

The Joint Review Panel (Panel) has further considered your Motion, dated January 31, 2006, for an Order granting confidentiality to certain portions of the Sambaa K'e Traditional Knowledge Report for the Proposed Mackenzie Gas Project (Report), prepared for the Sambaa K'e Dene Band (SKDB). The Panel has also reviewed the copy of the Report submitted to the Panel in confidence with your letter of February 16, 2006, in response to the Panel's request of February 14, 2006.

On the basis of this review, the Panel is satisfied that the maps for which confidentiality is requested should be received by the Panel in confidence, on the ground that they include site-specific information.

The Panel is also satisfied that the other information for which confidentiality is requested (pages 33 to 121 of the Report) would have probative value for the Panel's understanding of the Report's recommendations to the Panel. The Panel considers that there are three types of information within this section of the Report. The first is site-specific information, which the Panel regards as sufficiently sensitive to warrant the granting of confidentiality order, in accordance with the Panel's **Criteria for Confidentiality Orders for Traditional Knowledge Studies (Criteria)**, released in November, 2005.

The second is information that is not necessarily site-specific, but that, in the specific context of the absence of a settled land claim or similar arrangements (relating for example to the co-management of lands and resources), might relate to matters that are contested between the SKDB and certain government agencies, and which the SKDB may not wish to, and is not required to, provide to those agencies. The Panel is of the view that this information should also be the subject of a confidentiality order.

The third category of material in that section is information that, on its own, would not qualify for the protection of a confidentiality order. However, the Panel is of the view that it would not be practical to separate out portions of this part of the Report. The Panel has, therefore, decided to grant a confidentiality order with respect to all of the material included in pages 33 to 121 of the Report.

In reaching its decision on your Motion, the Panel has applied the criteria set out in its **Criteria** noted above, and in particular the risk to the interest of the SKDB community in preventing the

exploitation of that community's traditional knowledge by others. In the Panel's view, a community's characterization of information as "traditional knowledge" is not by itself sufficient to warrant the issuance of a confidentiality order. The potential risk to the community from disclosure of that information must also be shown. In reaching its decisions, the Panel is not endorsing the SKDB's view that all of the information contained in pages 33 to 121 of the Report is "of proprietary cultural interest", or that the act of copyrighting the Report constitutes in itself a basis for confidential status for that information.


In accordance with its **Criteria**, the Panel has also considered the effects on the public interest in an open and accessible Panel process of issuing a confidentiality order in this case. The Panel notes that, by letter dated December 14, 2005, all Parties were provided an opportunity to comment on the SKDB's earlier Motion for a Confidentiality Order, dated December 12, 2005, and that no comments were received by the Panel.

The result of the foregoing is that the Panel hereby grants a confidentiality order with respect to:

- Section 4.5: Point Form Summary and Analysis of the TK Information Gathered (pages 33 through 121), and
- Maps SKDB-TK2003-02, SKDB-TK-2003-03, SKDB-TK-2003-04, and SKDB-TK-2003-05.

The Report is being returned herewith. The SKDB is directed to file with the Panel four (4) hardcopies of the Report and one electronic version (electronic file(s) not larger than 3 MB) with the confidential portions deleted, suitable for posting to the Public Registry of the Panel. The SKDB is further directed to file with the Panel a complete copy of the Report with **each page** of the confidential sections clearly stamped **CONFIDENTIAL** (without obscuring the text or illustrations).

Sincerely,



Robert Hornal  
Joint Review Panel Chair