

Monday, September 14, 2009

Dear Ron Sumanik and Deb Wortley,

Thank you for meeting with YCS representatives. Please accept this letter as our second written comment submission during your public consultation period on the amendments to Yukon's Oil and Gas Act.

The Yukon Conservation Society would like to begin by expressing our concern with the consultation.

### **Public consultation**

The consultation period was for six weeks in the summer, which is not a good time of year to ensure meaningful review and input by individuals, First Nations, Renewable Resources Councils or community groups. Further, the time period was not adequate to consider such important proposed changes. It must also be noted that essential resource people within the Oil and Gas Branch were on holidays and had limited availability during the public consultation period. It would be more fitting to call it a public comment period because from YCS's perspective, very little if any consultation occurred.

YCS is curious as to what kind of outreach EMR conducted with the public, First Nations governments and communities. Community Services and Environment Yukon often travel to communities for consultations regardless of whether or not they are invited. Some of the proposed changes to the Yukon Oil and Gas Act are very substantive and could have far reaching legal, environmental and socioeconomic implications. Changing laws is a serious step and the proposed substantive changes to this legislation deserve better consultation with the Yukon public before entering the legislature for debate. It appears that the Oil and Gas Branch would prefer the Act to Amend the Oil and Gas Act to slip through the legislature largely unnoticed.

It would have been respectful to let the White River First Nation know one of the substantive changes speaks to Yukon First Nations without land claims as this relates directly to them. As there seems to be some contradictory information in the Act and proposed changes as to whether or not pipelines and associated infrastructure are considered oil and gas facilities, the proposal to remove Section 13 is very much relevant to White River First Nation, not just the Kaska First Nations who have proven oil and gas resources in their traditional territory.

EMR stated that it would post electronic copies of each submission on the OGR website. This is good, because it helps expand the dialogue during these consultations. The proposed changes to the Oil and Gas Act are full of complicated legal language, and having access to others' observations and interpretations can be helpful for organizations and individuals to understand. So far, very close to the comment deadline, the only submission posted is YCS's discussion document submitted prior to our

meeting with Oil and Gas Resources staff. Had the public consultation been more proactive and inclusive, there likely would have been more interest in contributing comments. It is possible that others have contributed or will, but this new system is not as efficient as YESAB's registry.

YCS would like to commend the department on posting comment submissions on the website. We look forward to reading other comments on the proposed changes, including those submitted by industry.

### **Issues with the consultation documents**

The Summary Document for Review and Consultation says Summer and Fall 2009. It should be noted this is inaccurate and misleading, as the consultation period is over and done one week before the beginning of Fall. The comment period happened during the summer only.

Although it is uncertain whether it was intentional or an error, the part of the Summary Document that explains Yukon Government's plan to repeal Section 13 is labeled **Consultation with First Nations**. This is incorrect and confusing. In fact the title of Section 13 that Yukon Government wants to remove is **Consent of First Nations**.

### **YCS recommends the following additions to the Yukon Oil and Gas Act**

As you have stated, it is rare for legislation to be opened up to changes, so we would like you to consider taking this opportunity to add clauses YCS feels strongly should be included in the Act.

1. The Oil and Gas Act legislation should explicitly state that it **does not refer to or include activities related to coalbed methane** exploration and development.
2. To reflect and prepare for the inevitable reality of a price and cap on carbon emissions, YOGA should include a clause stating that **companies and individuals involved in oil and gas exploration and extraction must track and report information on greenhouse gas emissions from all operations** including flaring and heavy equipment operation.

It is unfortunate that during our meeting we were not able to go through all of the proposed changes, but we feel you now have a greater understanding of our main concerns with the proposed changes to the Yukon Oil and Gas Act. From YCS's perspective, the proposed amendments drastically weaken the Act, and will remove existing safeguards that indirectly protect the environment. In the Act to Amend the Yukon Oil and Gas Act, Yukon Government is proposing to follow the controversial Alberta model of unlimited oil and gas company access and expropriation of private land.

Below please find YCS's specific concerns and our understanding of Yukon Government's motivation and position on the proposed changes to the Yukon Oil and Gas Act.

#### **1. Proposal to repeal Section 13 Consent of First Nations**

The Yukon Conservation Society does not support this proposed change to remove required consent of First Nations without land claim agreements prior to Yukon Government issuing dispositions or licences. The Summary Document for Review and Consultation states: "Repeal of section 13 is

proposed in order to align Yukon's oil and gas legislation with common law provisions for consultation with First Nations and enable the Yukon Government to open southeast Yukon for new oil and gas activities.”

In areas without a land claim agreement, there are few mechanisms for protection of sensitive areas. First Nations that have land claim agreements have identified special management and habitat protection areas where planning will occur as well as organizations like Renewable Resources Councils to make recommendations on how best to protect fish and wildlife habitat. The traditional territories of First Nations without land claim agreements are not afforded whatever limited environmental protection this provides.

Yukon Government wants to go ahead with oil and gas development in the southeast Yukon regardless of the absence of land claims, protected areas or land use planning. The Yukon Conservation Society feels that instead of removing their requirement to obtain consent, to address the gridlock created from the lack of land claims agreements, the Yukon Government should instead engage the Kaska First Nations in land use planning. This would be a more conciliatory approach to working with the First Nations in the southeast Yukon. Land use planning will ensure for the benefit of all Yukon people that ecologically sensitive areas are protected and areas in which industrial development may be appropriate can be defined before this activity takes place.

Yukon Government says removing Section 13 aligns the Act with common law provisions but this may actually prevent development further, by putting disagreements in front of the courts. These legal processes can be protracted and expensive.

Repealing Section 13 will also affect White River First Nation. Although there are no proven reserves of oil and gas in their traditional territory, there are plans for pipelines and associated infrastructure. There is contradictory information in the Act and the proposed changes as to whether or not pipelines and associated infrastructure are considered oil and gas facilities.

## **2. Proposal to amend Section 69 and Section 70 Access and Acquisition of land**

This proposed substantive change would essentially give oil and gas companies the right to enter any land (agricultural dispositions, traplines, outfitter concessions, and private property) to conduct surveys and examinations for the purposes of oil and gas activity. The proposed change states that a person or company does not even need to have a licence for activity, or have applied for a licence, but merely *proposes* to apply for a licence. This effectively allows access to any person with an intention to pursue oil and gas development to almost all land in the Yukon regardless of who else might also hold an interest in that land. In the proposed change this virtually unlimited access becomes a *right*.

The proposed change does not define what “examinations” means, which leaves it wide open to include seismic exploration, drilling, and other such invasive and environmentally damaging activities.

The existing legislation respects the fact that there are other viable uses for land other than oil and gas activity. Our current legislation requires obtaining consent of persons who hold an interest in land prior to any oil and gas industry access.

Why would we change this? How would changing this benefit Yukon people? YCS believes people

who have an interest in land should have the assurance they will be asked for their permission and consent prior to strangers trespassing and conducting “surveys and examinations” perhaps with the intention of expropriating their land.

In the existing Oil and Gas Act, Section 70 is titled: Acquisition of land for pipelines. It is a short section that says if a pipeline licensee requires an interest in land (for a right-of-way), the licensee may acquire interest by negotiation and if not by negotiation then by an order made in accordance with the regulations for the expropriation of the interest.

In the existing legislation, expropriation is specifically for the acquisition of land for a pipeline right-of-way, so that other interests can't block the passage of this infrastructure. YCS doesn't necessarily agree with this, but what Yukon Government proposes to change this to is significantly worse.

Yukon Government wants to remove “for pipelines” and make it simply Acquisition of land. The proposed change is not just to acquire land for rights of way, but to expropriate land for any kind of oil and gas activity, whether or not the original interest holder in that land wants it.

The proposed Section 70 states that a company can acquire interest in land by agreement, or failing that, by expropriation. There is no explanation of what kind of mechanism would facilitate that negotiation of expropriation.

There are some very serious details being left to regulations, which as you state, can be changed easily by an order in council.

This section is clearly not in the best interest of Yukon people. It assumes that oil and gas activity is the best use of land and does not afford property owners or other users of land the right to participate in determining what happens on their land.

### **3. Proposal to amend Section 66 Financial responsibility**

The summary document says that this proposed change will “allow for the suspension of activities until those [financial] assurances are received.” This makes it seem like the law is strengthened, when in reality, the existing law suspends or terminates the licence itself, whereas the proposed change would merely suspend or terminate the activity authorized by the licence. Again, the law as it stands better protects the interests of Yukon people.

### **4. Proposal to repeal Section 67 Environmental assessments**

YCS understands the motivation behind repealing this section is that it currently refers to the Canadian Environmental Assessment Act – the predecessor to YESAA. However, to remove the section entirely also removes the clause that states: an environmental assessment of the oil and gas activity is required before the licence is issued.

The Yukon Conservation Society does not support the repeal of this section. It is essential for the requirement for an assessment to be done prior to a licence for oil and gas activity being issued **to remain in the legislation**. This could be achieved quite simply if references to the Canadian Environmental Assessment Act were replaced with Yukon Environmental and Socioeconomic Assessment Act.

## **5. Definition of Pipeline**

As mentioned earlier, it seems there are contradictory definitions of the term pipeline. Pipeline is in the definition of oil and gas facility, but pipeline also has its own definition where it is not an oil and gas facility. This ought to be clarified.

A serious concern with the definition of pipeline is that it states that a pipeline can transport oil or gas or both, any product obtained from oil or gas by processing or “any other substance intended to be used for a purpose related to an oil and gas activity.”

YCS cannot think of any substance other than water that this section could be referring to. This section should be removed, as transporting water in pipelines for any reason, including for use in pollutive fossil fuel operations or other industrial activities, would be highly controversial and would require specific consultation with Yukon First Nations and the public.

### **Glimmers of hope?**

Officials at the Oil and Gas Branch asked if YCS might highlight any sections we agree with or think are good.

We support the idea of knowing who holds interests in licences in order to ensure accountability.

YCS supports the idea of continuing liability following a transfer. We hope in practice this is applied better than in the mining industry, where shareholders get rich yet companies go bankrupt and corporate officers walk away without any financial penalty or responsibility for dealing with the environmental liability that remains.

However, YCS is unsure of the extent of current liability and what companies are obliged to do in terms of rehabilitating areas once the fossil fuels are removed from the ground or the company is finished exploiting an area. There is nothing in the current Act nor in the proposed changes that describe a company's responsibilities in terms of protecting ecosystems, habitat and other land values and uses.

If you have any questions, please contact the undersigned.

Sincerely,

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