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For Immediate Release

First Nation of Na-Cho Nyäk Dun Treaty Rights Vindicated by Court

Yukon Court of Appeal affirms that Yukon Government acted unlawfully and dishonourably in approving mining project; failed to adequately consult First Nation

April 9, 2023—Whitehorse, Yukon: The Yukon Court of Appeal issued its decision today in an appeal brought by Yukon Government of a Yukon Supreme Court decision that overturned the approval of a mining project in the pristine Beaver River watershed in the Traditional Territory of the First Nation of Na-Cho Nyäk Dun (“FNNND”). In a landmark victory for FNNND, the Court of Appeal upheld the lower court’s decision and findings, affirming Yukon acted unlawfully and dishonourably in approving this mining project.

This case was deeply important to FNNND, not only because of the sensitive location where mineral activity was proposed, but also because the case raised critical questions around the nature and scope of FNNND’s Treaty right to co-manage their Traditional Territory and the scope of the right to land use planning in Chapter 11 of the Treaty. The Court of Appeal agreed with FNNND’s submissions—and the decision of the Yukon Supreme Court—that a core objective of the Treaty is to ensure FNNND has a meaningful role in managing their Traditional Territory, including through land use planning. Although the Court of Appeal determined that two of the declarations FNNND sought were unnecessary, since Yukon’s decision was quashed and the declarations would be duplicative of relief already granted, the Court of Appeal affirmed all of the substantive determinations from the Yukon Supreme Court’s earlier decision.

The Court of Appeal was unequivocal “that maintenance of the honour of the Crown required Yukon, at a minimum, to ... pursue the Chapter 11 purpose of meaningful participation by the First Nation in the management of land and resources in the traditional territory.” The Court expressly endorsed FNNND’s submission “that approval of a development project in an area where land use planning is occurring may undermine the land use planning process, and the s.35 treaty right which that process is intended to uphold, because it will reduce the amount of undeveloped land available if and when a land use plan is negotiated and implemented.” This is significant as FNNND seeks to embark on a Chapter 11 planning process for their territory.

“We are very pleased by the Court of Appeal’s decision,” FNNND Chief Dawna Hope said. “We entered into our Treaty with the hope and expectation that we would be partners with public government in deciding whether and how our Traditional Territory could be developed.

Unfortunately, that core Treaty promise of co-governance has never been lived up to by Yukon Government. Our territory has been ground zero for mining—over and despite our objections. The Court of Appeal, like the Yukon Supreme Court before it, heard our concerns that our Treaty was not being respected, and made a decision that upheld the core promises of our Treaty. We hope this decision sparks a wholesale shift in Yukon Government’s approach to Treaty implementation.”

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