June 16, 2019

Maxime Fortin, Clerk of Committee
Standing Senate Committee on Energy, the Environment and Natural Resources
Senate of Canada
Ottawa, Ontario K1A 0A4

Dear Madam:

Re: 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

On behalf of the Sahtu Secretariat Incorporated (the “SSI”), I am pleased to provide this written submission to the Standing Committee supporting the passage of Bill C-88. The Sahtu Dene and Metis urge the Standing Committee to complete its review of Bill C-88 as soon as practicable so it can be enacted without delay and restore the integrity of the land and water regulatory regime in the Mackenzie Valley, as agreed to in the Sahtu Dene and Metis Comprehensive Land Claim Agreement (the “Land Claim Agreement”).

The Sahtu Dene and Metis have occupied and used the Sahtu settlement area since time immemorial and now live primarily in the communities of Norman Wells, Tulita, Deline, Fort Good Hope and Colville Lake. Among other matters, the Government of Canada and the Sahtu Dene and Metis committed in the Land Claim Agreement, which was brought into legal operation in 1994, to work together to manage and preserve the lands and waters of the Sahtu settlement area in accordance with Mackenzie Valley Resource Management Act (the “MVRMA”) that was developed pursuant to the terms of the Land Claim Agreement.

1. **Background.** The MVRMA was enacted in 1998 in accordance with the Land Claim Agreement and the Gwich’in Comprehensive Land Claim Agreement. Although the MVRMA operated effectively and efficiently for almost two decades, the Northwest Territories Devolution Act amended the MVRMA to eliminate the three regional land and water boards, including the Sahtu Land and Water Board, and establish a single board for the Mackenzie Valley (the “Superboard Amendments”).

   The SSI, Gwich’in Tribal Council, and Tłı̨chǫ Government, among others, expressed serious concerns about the Superboard Amendments. We stated that the Superboard Amendments were contrary to our respective land claims agreements and would affect the nature and extent of our participation in decisions affecting their jurisdictions. Despite these concerns, Bill C-15 received Royal Assent on March 25, 2014, with the Superboard Amendments to come into force on a date to be set by a federal order-in-council.
Following the enactment of the *Northwest Territories Devolution Act*, the SSI and Tłı̨chǫ Government separately commenced legal action in the Supreme Court of Northwest Territories against the Government of Canada and the Supreme Court issued interim injunctions to prevent the federal government from implementing the Superboard Amendments. The effect of these injunctions was that the regional land and water boards would remain in place until the trials were heard to determine if the Superboard Amendments were contrary to our respective land claim agreements and, therefore, unconstitutional.

Upon the election of the federal Liberal government in October 2015, the new Minister of Indigenous and Northern Affairs committed not to bring the Superboard Amendments into legal operation so that our concerns could be addressed and, as a result, we did not take any action to advance our legal action.

2. **Importance of Bill C-88.** As committed by the Minister federal officials met with the SSI and other Aboriginal governments in 2016-17 to address our concerns raised about the changes made by the MVRMA through the *Northwest Territories Devolution Act*. Based on these discussions, Bill C-88 was developed by representatives of the federal government, SSI, Tłı̨chǫ Government and others in a collaborative process.

Bill C-88 addresses the concerns raised by the SSI and others and, in particular, it would:

(a) amend the MVRMA to repeal the not-in-force Superboard Amendments;

(b) bring into force the 2014 amendments regarding administrative monetary penalties, enforceable development certificates and cost recovery; and

(c) provide the federal Minister with the discretion to appoint committees or individuals to study the effects of existing and future developments on a regional basis.

3. **The SSI’s other concerns relating to the MVRMA.** For the record, the SSI wishes to raise a matter which may not be directly related to Bill C-88.

In addition to the Superboard Amendments, the SSI advised the Minister of Indigenous and Northern Affairs in a letter dated May 15, 2017, that it has other concerns about the MVRMA that are not directly related to the Superboard Amendments and are not addressed by Bill C-88. These concerns include other provisions of the MVRMA that were amended by the *Northwest Territories Devolution Act*, including provisions relating to the delegation of the federal Minister’s authority under the MVRMA to the territorial Minister and the provision of written policy instructions to the boards. The SSI also requested that the MVRMA be amended to ensure that the SSI’s engagement in the MVRMA process is consistent with the Tlicho.

The federal officials have not been clear about the process to deal with these concerns. They stated that these concerns could be addressed in the review of the MVRMA undertaken by the Government of Canada, GNWT and the SSI and other Aboriginal groups pursuant to section 3.18 of the *Northwest Territories Lands and Resources Devolution Agreement* (the “*Devolution Agreement*”). This review is scheduled to be commenced five years after the Devolution Agreement was brought into legal effect—that is, April 2019. To date, this review has not been commenced.

The SSI is concerned since there seems to be no certainty how and when these other concerns will be addressed. We intend to raise this matter again with the Minister.

In closing, the SSI appreciates your attention to these matters and urges the Standing Committee to support the timely passage of Bill C-88. At this time, we are hopeful that Bill C-88 will proceed expeditiously through the legislative process and receive Royal Assent before the upcoming election.

The negative implications of the status quo are significant. If Bill C-88 is not passed prior to Parliament rising in June, Indigenous rights and other federal and territorial initiatives may be compromised. It will
mean that other amendments under Bill C-15 that provide for improved administration of the MVRMA may not be able to proceed. Furthermore, without Bill C-88, uncertainty about the future of resource development in the Northwest Territories will increase and this will directly affect the territorial economy.

Sincerely,

Charles McNeely
Chairperson

cc. The Honourable Carolyn Bennett, Minister of Crown-Indigenous Relations
Premier Bob McLeod
SSI Board