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FAX COVER SHEET

DATE: August 21, 2001

CLIENT #: 216-00.4

To: Mackenzie Valley Environmental Impact Review Board
Attention: Joe Acorn

FAX: (867) 920-4761
PHONE:

CC: Ka'a'Gee Tu First Nation
Attention: Chief and Council and Allan Landry

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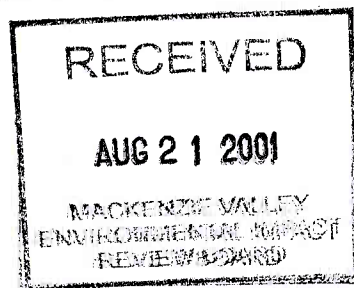
FROM: Louise Mandell, Q.C.

RE: sec attached

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MESSAGE



Replacement submission as discussed. Thanks Joe.

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Mandell Pinder
Barristers & Solicitors

August 21, 2001

Via Fax: (867) 920-4761

Mackenzie Valley Environmental Impact Review Board
P.O. Box 938
Yellowknife, NT
X1A 2P6

Attention: Mr. Joe Acorn

**Re: Technical Review of the Environmental Assessment Report
submitted by Paramount Resources for the Cameron Hills Drilling Project**

Following are the Ka'a'Gee Tu First Nation's comments on the above report. We hope these comments assist the MacKenzie Valley Environmental Impact Review Board in conducting its environmental assessment of the Project. We request that the Board ensure we receive copies of the submissions from other First Nations.

To summarize our comments, we are extremely concerned that basic consultation activities, which Paramount should have engaged in for this Report, were not performed. In brief, Paramount has not recognized or addressed the fact that the Project overlaps with the traditional and contemporary use area of the Ka'a'Gee Tu people. As a consequence, Paramount has not studied either the areas of potential impact of their project on the Ka'a'Gee Tu First Nation or mitigation measures. The Ka'a'Gee Tu have no resources to study this, and their lack of resources prejudices their ability to place before you the results of such a study which would show their occupation of the area in question and the impact of the project on them.

Canadian courts have repeatedly concluded that consultation must be meaningful. Issues related to First Nation's occupation of an area affected by a project must be understood by a proponent of a project and responded to. The Supreme Court of Canada, in *Delgamuukw v. British Columbia* (1997) 153 DLR (4th) 193 (S.C.C.) determined that lands held pursuant to the aboriginal title cannot be used in a manner which is irreconcilable with that title. Despite Ka'a'Gee Tu's repeated requests that Paramount conduct a traditional use and ecological knowledge study of the area which focuses on the Ka'a'Gee Tu First Nation, Paramount has refused or failed to do so and as a consequence has not determined if its proposed activities violate or are irreconcilable with the Ka'a'Gee Tu's aboriginal rights. This has resulted in the Ka'a'Gee Tu not being able to support the Project. The Ka'a'Gee Tu are not anti-development – they are concerned about cultural survival and ensuring that any development is compatible with their children and grandchildren being able to continue to live on and with the land as their ancestors have since time immemorial.

Socio-economic Effects

Paramount has determined that two potential effects of the Project on First Nation concerns are “continued accessibility to hunting and gathering areas for traditional land users,” and “potential minimal impact to traditional land uses such as trapping, hunting, fishing and gathering.” Paramount also concludes that it does not expect the Project to have an adverse affect on the pursuit of traditional activities. Paramount's conclusion is made without any study of the Ka'a'Gee Tu harvesters.

The Ka'a'Gee Tu First Nation is concerned that access will be increased to the area for non-Band members, and this concern has been communicated to Paramount. In particular, that there may be increased pressure on the hunting and fishing resources upon which they rely – and over which they have aboriginal rights – due to more people entering the area. They have proposed to Paramount that the Company meet with them to develop a plan to minimize pressure due to increased access, and to compensate them if resource rights are infringed due to project activities.

Paramount states it will tell its employees to not hunt or disturb animals. Paramount must develop a specific set of guidelines which outline how such individuals will be disciplined, and

for how the Ka'a'Gee Tu hunters, how they can follow-up on complaints and observations made by them on the ground.

Paramount claims it has contacted the individuals who trap in the immediate development area, and has consulted with them about potential impacts and compensation. Paramount has not studied nor have they identified Ka'a'Gee Tu Band members who have traplines in the area. Land use studies which have already been completed have recorded the traplines of an elder, Annie Chicot, which intersects Paramount's SDL, and of Mervin Simba, which is immediately to the west of Paramount's SDL. Other members of the Chicot and Simba families also have traplines in the area which may intersect or lay just outside of the SDL. The Chicots, Simbas and St. Pierres also fish and hunt in the area. Information from the Ka'a'Gee Tu people will show that others from their community also trap and hunt in the area. The community harvesters can also advise why they do not hunt or trap in some of the areas embraced by Paramount's proposed activities in accordance with their laws to leave undisturbed certain areas as a conservation measure.

Paramount cannot conclude its activities will not harm trapping activities if it has not properly informed itself. Consultation to determine potential impact on Band members' traplines requires Paramount both to refer to existing studies as well as to study this issue now with the Band. Paramount must also determine how individuals will be compensated if their trapping, hunting and fishing activities are impacted.

Ka'a'Gee Tu members occupy the area where Paramount will be carrying on its activities, as well as the area immediately downstream, carrying on activities of fishing, trapping, gathering foods and medicines, setting camps, and hunting birds, small game and large game, and for other cultural activities. They practice conservation laws on this land.

Some of their land use is referred to or recorded in studies from the 1970's and more recently involving interviews with elders who have since passed away. These studies have limitations if they are to be used to address Paramount's proposal. A recent study does not address the relationship between current and past activities and no study specifically addresses Paramount's Project. We recommend that the Board require Paramount to work with Ka'a'Gee Tu to build on the existing research to address these gaps, analyse traditional land use data in

relation to the Project, collect traditional ecological knowledge related to critical habitat and then to work with us to determine whether any mitigation activities are required.

Consultation

We describe above some of the gaps in Paramount's consultation process, and our recommendations for how to address them. Appendix 3 of Paramount's Report is a table which documents their consultation activities. Paramount's follow-up activity for meetings where Ka'a'Gee Tu raised the issue of potential impact on traditional harvesting areas, and the need for TK studies, is often described as "none required." This is not acceptable. Consultation requires something more than being a passive receptacle when alerted by a Band that its rights could be infringed by a developer's activities. Paramount must investigate.

Further, the table describes the consultation activities concluding in March. A meeting occurred with Paramount and Ka'a'Gee Tu in May which Paramount ought to have included in its Report. Paramount had attempted to defer the meeting with our client until the summer, and it was only with great persistence that the scheduled meeting occurred. The omission of this meeting creates the impression that there are no outstanding consultation issues which require addressing prior to completing the assessment.

Paramount's meeting notes from the May meeting reflect the following. Ka'a'Gee Tu clearly communicated their concerns that Paramount had not gathered from them existing traditional use and ecological knowledge. Ka'a'Gee Tu had requested a meeting in their community to address unresolved issues, but this has yet to occur. The Band volunteered to provide community representatives who would participate in a traditional knowledge study but they needed resources to participate. Paramount finally went out on the land with some elders in mid-August. This study has not been completed.

The Ka'a'Gee Tu gave Paramount a draft Mutual Benefits Agreement some time ago. Paramount has still not responded to this draft. As things stand, the Ka'a'Gee Tu are not satisfied with Paramount's consultation activities and so must oppose the Project at this time.

It is recommended that the Board not approve Paramount's Report until Paramount has addressed the concerns described above and specifically to work with members of the

community to complete a traditional use and traditional ecological knowledge study designed to measure the impact of their project on these people, and to mitigate or compensate by way of other benefits for harm which can be foreseen.

Summary of Recommendations

1. Meet with Ka'a'Gee Tu to jointly develop plans to minimize access, and provide compensation for adverse effects due to increased access.
2. Develop a plan for disciplining employees who hunt or disturb the animals, which includes a complaint and reporting system.
3. Meet with Annie Chicot, Mervin Simba and other trapline users identified by Ka'a'Gee Tu to develop a plan to ensure trapping activities will not be affected.
4. Develop a compensation and mitigation plan to address interference with trapping activities.
5. Commission a traditional use and ecological knowledge study in conjunction with the Ka'a'Gee Tu which builds on existing research and determines the relationship between their land use and Paramount's Project, and which includes a compensation benefits component.
6. Identify funding resources so that Ka'a'Gee Tu can participate effectively in the above.

We thank you for your consideration of this submission.

Yours truly,

MANDELL PINDER



Louise Mandell, Q.C.
Barrister and Solicitor

LM/lb

cc: Chief and Council, Ka'a'Gee Tu First Nation
Allan Landry