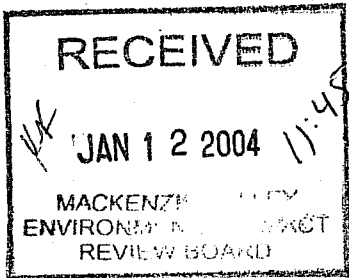


EA03-005



Ka'a'gee Tu First Nation

P.O. Box 4428 C/O Kakisa Lake, NT

Hay River, NT X0E 1G3

Phone: 867 - 825 - 2000

Fax: 867 - 825 - 2002

facsimile transmittal

To: _____ Kimberley Cliffe-Phillips _____ Fax No: ___1 867- 766 - 7074

From: ___Allan Landry _____ DATE: _Jan 12, 2004_

No. of Pages: (including cover page) _____12_____

___Urgent___ For Review ___Please Comment___ Please Reply

Message:

Re: Paramount Cameron Hills Extension Environment Assessment (EA)

Mahsi Cho

KA'A'GEE TU FIRST NATION



Kakisa Lake c/o P.O. Box 4428

Hay River, N.W.T. X0E 1G3

Tel: (867) 825 - 2000

Fax: (867) 825 - 2002

email:kakisa@ssimicro.com

January 12, 2004

To: Kimberley Cliffe-Phillips, Environmental Assessment Officer
Mackenzie Valley Environmental Impact Review Board
Fax: (867) 766-7074

Re: Paramount Cameron Hills Extension Environmental Assessment (EA)

The Ka'a'Gee Tu First Nation (KTFN) submitted 85 Information Requests (IRs) to the Review Board for the Paramount environmental assessment. However, the Review Board did not issue all of these IRs and in some cases did not issue them to all of the intended recipients.

The KTFN is requesting that the Review Board provide its written reasons for its decisions in relation to the KTFN IRs. This request is being made under Section 121 of the *Mackenzie Valley Resource Management Act (MVRMA)*.

Specifically, please explain why:

- 1) KTFN IRs 3, 4, 20, 22, 27, 40 and 74 were not issued; and
- 2) KTFN IRs 8, 12, 25, 42 and 84 were not issued to all of the intended recipients.

Sincerely,

Allan Landry

KTFN Band Councilor and Oil and Gas Advisor

KA'A'GEE TU FIRST NATION



Kakisa Lake c/o P.O. Box 4428

Hay River, N.W.T. X0E 1G3

Tel: (867) 825 - 2000

Fax: (867) 825 - 2002

email:kakisa@ssimicro.com

January 12, 2004

Jan. 8, 2004

To: Kimberley Cliffe-Phillips
Mackenzie Valley Environmental Impact Review Board
Fax: (867) 766-7074

Shirley Maaskant
Paramount Resources Ltd.
Fax: (403) 264-9206

Stephen Mathyk
Mackenzie Valley Land and Water Board
Fax: (867) 873-6610

Terry Baker
National Energy Board
Fax: (403) 292-5876

Maria Healy
Indian and Northern Affairs Canada
Fax: (867) 669-2701

Re: Paramount Cameron Hills Extension Environmental Assessment (EA)

The Ka'a'Gee Tu First Nation (KTFN) has decided to issue the following 12 Information Requests (IRs) to your organizations with regards to the Paramount Cameron Hills environmental assessment currently underway at the Mackenzie Valley Environmental Impact Review Board (Review Board).

In keeping with the Review Board's current schedule for the EA, please provide your answers by Jan. 19th directly to me and to the Review Board's Public Registry.

Sincerely,

A handwritten signature in black ink, appearing to read "Allan Landry". The signature is written in a cursive style and is positioned above the printed name.

Allan Landry
KTFN Band Councilor and Oil and Gas Advisor

- 1) **To:** Paramount Resources Ltd.
- Reference:** ToR Section A-1
DAR Section 1.1.14
- Preamble:** Paramount describes the Ka'a'Gee Tu First Nation (KTFN) as their "neighbours".
- The Ka'a'Gee Tu have been using the Cameron Hills for thousands of years. Paramount is operating on KTFN's traditional lands. The KTFN have an aboriginal and treaty right to this land, to be compensated for any negative impacts to it and to be rewarded for any economic benefits that come out of it.
- Request:** Please explain why Paramount considers the KTFN to merely be its "neighbours".
- 2) **To:** Mackenzie Valley Land and Water Board
National Energy Board
- Reference:** Review Board EA01-005 Recommended Measures
- Preamble:** In its Report of Environmental Assessment on EA01-005, the Review Board applied 21 measures. Of those 21, 17 were directed to the NEB and/or the MVLWB.
- Request:** Please describe in full the outcomes of these 17 measures that were directed to the MVLWB and/or the NEB in EA01-005.
- 3) **To:** National Energy Board
Mackenzie Valley Land and Water Board
Mackenzie Valley Environmental Impact Review Board
- Reference:** ToR Section C-2
DAR 3.2.1
- Preamble:** As the regulators and reviewers of this project, the above organizations have a responsibility to assess and approve Paramount's selected access and pipeline routes.
- Request:** Please explain the criteria, and criteria weighting, that your organization considers acceptable for use by Paramount in selecting access and pipeline routes.

4) **To:** Mackenzie Valley Land and Water Board
National Energy Board

Reference: ToR Section C-2
DAR Section 3.2.1

Preamble: Paramount provides a break-down of the species content of Certified Canada Seed #1.

Paramount says that rutting to a depth of 30 cm will be permitted.

Request: Please provide the following information.

- a) Are the species identified indigenous to the project area?
- b) What is your organization's policy on the use of non-indigenous plant species? Are there any concerns with the species that have been identified?
- c) What is your organization's policy on acceptable rutting depth?

5) **To:** National Energy Board

Reference: ToR Section D
DAR Section 4.1.2

Preamble: Paramount states that the target zones have been too shallow and spaced too far apart to allow the use of directional drilling in the Cameron Hills.

Request: Please explain what are the acceptable target depths and distances to permit directional drilling. Does the NEB agree with Paramount that directional drilling is not feasible in the Cameron Hills?

6) **To:** Mackenzie Valley Land and Water Board
Mackenzie Valley Environmental Impact Review Board

Reference: ToR Section E-1
DAR Section 5.1 Table 5.1-1

Preamble: All of Paramount's past, present and future activities are the subject of this environmental assessment.

In October, Paramount applied for amendments to have 5 wells deleted from existing authorizations and to have these 5 wells

replaced with 5 new wells.

In November, Paramount applied for amendments to move the approved gathering pipelines to connect with the 5 new wells.

Proceeding with approving these amendment applications before this EA has been completed seems to violate Section 118(1) of the *Mackenzie Valley Resource Management Act (MVRMA)*. Section 118(1) states:

“No license, permit or other authorization required for the carrying out of a development may be issued under any federal or territorial law unless the requirements of this Part have been complied with in relation to the development.”

The MVLWB has now issued all of these amendments without waiting for the EA to be completed.

Request: Please provide your organization's position on why Section 118(1) did not apply to the above-noted amendment applications.

- 7) **To:** Mackenzie Valley Land and Water Board
National Energy Board
- Reference:** ToR Section F-2
DAR Section 6.2
- Preamble:** Paramount has encountered significant erosion problems. Neither the MVLWB nor the NEB ensured that the Ka'a'Gee Tu First Nation had been informed of these problems and involved in discussions on how to repair and avoid these problems.
- Request:** Please explain why your organization did not consult with, or ensure that Paramount consulted with, the KTFN on the erosion problems encountered by Paramount. If the position taken is that your organization is not the organization responsible for informing the KTFN of environmental problems, then please identify the organization that is responsible for doing so.

- 8) **To:** Mackenzie Valley Land and Water Board
National Energy Board
Mackenzie Valley Environmental Impact Review Board
- Reference:** ToR Section G
DAR Section 7.1.1

Preamble: Paramount states that: "Although future well-sites are located to the best of Paramount's knowledge, uncertainties with respect to drilling success may affect final locations of subsequent well-sites."

In its January 26, 2001 Reasons for Decision on this issue (see <http://www.mveirb.nt.ca/Registry/EAParamount2/RFDFutureWells.pdf>), the Review Board ruled that it would not assess unknown well locations.

As noted in another IR, Paramount has applied for amendments approving changes in well-site locations by up to 15 km without applying for new authorizations.

Applying for and obtaining approval for specific well-site locations and then changing those locations later just seems to be an attempt to get around the Review Board's Jan. 26, 2001 Reasons for Decision.

Request: Please provide your organization's views on the criteria that should be applied when Paramount requests via an amendment to have an approved activity deleted and a new activity approved without requiring a new authorization.

Your answer should clearly explain your organization's view on how much of a change in location is permitted before a new authorization should be required. Your answer should also incorporate the Review Board's Jan. 26, 2001 Reasons for Decision to demonstrate how the Reasons would not be violated by your proposed process and criteria.

9) **To:** National Energy Board

Reference: No Reference

Preamble: Paramount has had pipeline breaks in 2002 and 2003. The 2003 breaks on Apr. 18, 2003 resulted in the contamination of soil and water with over 36,000 L of oil.

As the lead agency responsible for overseeing the clean-up, the NEB has not notified the Ka'a'Gee Tu First Nation of these problems or involved the KTFN in the development of remediation plans.

Request: Please explain why the National Energy Board has not informed or consulted with the KTFN on the spills associated with these pipeline breaks. If the position taken is that the NEB is not the organization responsible for informing the KTFN of environmental problems, then please identify the organization that is responsible for doing so.

10) To: National Energy Board

Reference: No Reference

Preamble: The National Energy Board undertakes inspections of Paramount's Cameron Hills operations.

Request: Please provide the following information.

- a) Dates of all inspections completed in 2000, 2001, 2002 and 2003.
- b) Copies of all inspection reports with any problems, concerns or infractions highlighted.
- c) Copies of any orders or instructions that were issued to Paramount.
- d) Identification of any outstanding concerns and plans for resolving those concerns.
- e) An explanation as to why the inspection reports and any orders or instructions were not automatically provided to the Ka'a'Gee Tu First Nation as soon as they were prepared.
- f) If the position taken is that the NEB is not the organization responsible for informing the KTFN of environmental problems, then please identify the organization that is responsible for doing so.

11) To: Mackenzie Valley Land and Water Board
National Energy Board
Indian and Northern Affairs Canada

Reference: No reference

Preamble: Government agencies that issue authorizations must discharge the Crown's fiduciary duty in an effort to justify infringement of the KTFN's aboriginal or treaty rights. The Supreme Court of Canada has established conditions that must be satisfied in this process such as ensuring that the KTFN receive economic benefits from the land and resources and that management decisions and processes about the land and resources must include significant KTFN involvement, with the bare minimum being deep and meaningful consultation.

The key principles of consultation are set out in the attached Deh Cho Consultation Principles.

Request: Please explain how your organization has fulfilled its fiduciary duty to the KTFN in relation to this project. Specifically, please explain how the Deh Cho Consultation Principles have been satisfied.

12) **To:** Mackenzie Valley Land and Water Board
National Energy Board

Reference: ToR Section C-4
DAR Section 3.4.1
DAR Table 2.4-2

Preamble: Paramount states that drilling waste disposal will be in accordance with the Alberta Energy and Utilities Board's Drilling Waste Management Guide G-50.

Paramount also states that AEUB Guide 60 will be adhered to during flaring.

Request: Please provide the following information:

- a) What other guidelines are available for use for drilling waste disposal and flaring?
- b) Why are the Alberta guidelines being proposed for use in the Cameron Hills?
- c) Are the other guidelines that are available more or less environmentally stringent than the Alberta guidelines?
- d) What organization would be responsible for developing the NWT guidelines and why haven't they done so?



DEH CHO FIRST NATIONS

BOX 89, FORT SIMPSON, N.W.T. X0E 0N0

TEL: (867) 695-2355 FAX: (867) 695-2038

E-Mail: dehchofn@cancom.net



Consultation Principles

1. **Government Agencies have a Duty to Consult.** Federal and territorial government agency activities routinely infringe, or have the potential to infringe, on Deh Cho communities' constitutionally protected treaty and aboriginal rights. These agencies have a fiduciary duty to consult the Deh Cho communities on their activities. The Crown cannot use consultations undertaken by a project proponent as a substitute for Crown consultations.
2. **Co-ordination by the Government Agencies is Critical.** A multiple agency approach to consultations could result in either significant subject gaps or unnecessary overlaps that will tax the communities' limited resources. The agencies must ensure that their activities are properly planned and co-ordinated to minimize subject gaps and the impacts on community resources.
3. **Project Proponents Have a Duty to Consult.** A proponent may have a duty to consult if it receives a benefit (eg. approval to use Deh Cho land) from the Crown and this benefit might infringe Deh Cho communities' aboriginal and treaty interests. The proponent cannot use consultations undertaken by Crown agencies as a substitute for proponent consultations: e.g., see *Haida* decision of British Columbia Court of Appeal.
4. **Negotiations Must Be Part of the Consultations.** The term "consultation", as noted by the Supreme Court of Canada, is just the minimum component in fulfilling the fiduciary duty when aboriginal and treaty rights are infringed. This duty is a very broad one encompassing not only meaningful and focussed dialogue on rights and title, but also negotiations in circumstances where there is a need to accommodate First Nation and Métis interests. (See *Delgamuukw.*)
5. **Deh Cho Leaders Must be Respected.** The Deh Cho leaders have the primary responsibility for participating in consultations and negotiations. While proponents and the Crown should inform local Deh Cho communities, the deep consultations required by the Courts must be conducted with Deh Cho leaders. The proponents and the Crown must acknowledge Deh Cho self-governing rights by respecting the Deh Cho leaders, the leaders' decisions and positions, Deh Cho protocols for dialogue and Deh Cho communities' internal decision-making processes.

6. **Deh Cho Consultations are more than mere "Public" Consultations.** The consultations with Deh Cho leaders are not limited to stakeholder consultations and public reviews, which the proponent and the Crown must conduct to fulfill regulatory and legislative requirements. The proponent's and the Crown's duty to consult is a constitutional obligation, over and above any regulatory and legislative requirements. The Deh Cho consultations must consist of something beyond the notification and information exchange process conducted with other stakeholders, eg. *Mikisew Cree* decision of Federal Court. Information sessions organized by the proponents and the Crown are not sufficient consultations as required by the Courts, eg. *Taku Tlingit*, *Delgamuukw*, *Haida*.

7. **Proponents and the Crown Must Involve the Deh Cho Leaders at the Early Planning Stage.** Both the Crown and the proponent must consult at the project's early planning stage. The Crown and proponents often seek discussions and consultations too late in the planning process, resulting in inordinate and urgent demands on community resources.

8. **Consultations Must Analyze the Impact on Deh Cho Rights.** The consultations with Deh Cho leaders must, at an early stage, do the following:
 - a. provide Deh Cho leaders with all relevant information about a project, including the complete regulatory basis of a project;
 - b. identify the full nature of Deh Cho rights that may be infringed; and
 - c. conduct a specific analysis of which project impacts will infringe which Deh Cho rights. (See, for example, *Delgamuukw*, *Sparrow* and *Marshall* decisions of the Supreme Court of Canada.)

This process is not straightforward and takes time, resources and a serious commitment on behalf of all parties.

9. **The Crown and the Proponent Must Accommodate Deh Cho Rights.** On the basis of Principle 8, the Crown and the proponent must consult and negotiate with Deh Cho leaders in good faith to seek a workable accommodation on the Deh Cho treaty and aboriginal rights, including aboriginal title, that will be infringed. This means that the Crown and the proponent must propose a process in which it will listen to what Deh Cho leaders identify as Deh Cho rights and provide a response that fully and expressly recognizes, addresses and accommodates those rights. (See *Delgamuukw* and B.C. Court of Appeal decision in *Haida*).

10. **Project Approval Depends on Accommodation.** Project approval depends on Deh Cho leaders providing consent where Deh Cho rights are substantially infringed. The Deh Cho leaders will carefully scrutinize consultation efforts with the view to taking whatever action is necessary if a project proceeds without proper consultation. Some infringed rights may be so integral to the Deh Cho communities that the Deh Cho leaders have a legal right to veto the project.

11. **Communities Must Have the Capacity to Consult.** Meaningful consultation can only be achieved if the Deh Cho communities have the resources to meet the heavy demand for consultations. The Deh Cho communities have very limited resources. There is a real danger that core programs would have to be sacrificed to meet proponent and Crown requests for comments and meetings without financial assistance.
12. **Community Representatives May Participate in Discussions on a Without Prejudice Basis.** The Crown and the proponents typically plan many information meetings. To the extent that the Deh Cho communities have available resources, leaders and staff will attend such information sessions to become more familiar with a project. Participation by Deh Cho representatives (leaders or staff) at these information sessions should not be deemed to be consultation. Any comments, opinions and ideas expressed at these sessions are without prejudice to any future position of the Deh Cho leaders.

Any formal position of the Deh Cho leaders can only be provided to the Crown or a proponent either in writing or in person at a Deh Cho consultation meeting and only after we have received full information disclosure, have had adequate time to review the material and have been provided with adequate financial and human resources to conduct our own analysis and develop our positions.

13. **"Consultation" as Defined in the Interim Measures Agreement ("IMA") is not Adequate.** The narrow definition of "consultation" in the IMA is not adequate consultation for many projects. The current law on consultation and the fiduciary duty is much broader than the IMA definition of "consultation". As well, the IMA is not legally enforceable (Section 70) and is without prejudice to any legal position the Deh Cho First Nations take on fulfillment of the fiduciary duty and consultation (Section 73). Section 72 also provides that the document will not create or deny rights with respect to consultation or fiduciary duties when our rights are at stake.