

## FAX COVER SHEET

**DATE:** December 13, 2004 **CLIENT #:** 216-00.4

**To:** National Energy Board **FAX:** 1-403-292-5503  
**Attention: Mr. T. M. Baker**  
**Chief Conservation Officer**

**Cc:** Ka'a'Gee Tu First Nation **FAX:** 1-867-825-2002  
**Attention: Allan Landry**

**Cc:** Mackenzie Valley Environmental Impact Review Board **FAX:** 1-867-766-7074  
**Attention: Mary Tapsell, Manager of**  
**Environmental Impact Assessment**

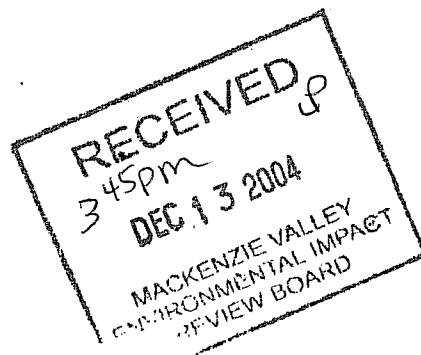
**FROM:** Louise Mandell, Q.C.

**RE:** **NEB's Proposed Modifications –**  
**Paramount Resources Ltd. – Cameron Hills Environmental Assessment**

**NUMBER OF PAGES INCLUDING COVER SHEET: 3**

**ORIGINAL BEING SENT BY MAIL: NO**

Please see attached our letter to you of today's date.  
Thank you.



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AS SOON AS POSSIBLE.**

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December 13, 2004

Via Fax 1-403-292-5503

National Energy Board  
444 Seventh Avenue S.W.  
Calgary, AB T2P 0X8

**Attention: Mr. T. M. Baker**  
**Chief Conservation Officer**

Dear Sirs:

**Re: NEB's Proposed Modifications**

We are writing in regards to your proposed modifications to the Mackenzie Valley Environmental Impact Review Board's (the "Board") recommendations in its June 1st Report of Environmental Assessment in the Paramount - Cameron Hills Environmental Assessment.

The NEB finalized its proposed modifications in October 2004. On November 18 the Supreme Court of Canada issued landmark decisions concerning aboriginal title and rights (*Haida Nation v. British Columbia (Minister of Forests)* 2004 SCC 73; *Taku River Tlingit v. British Columbia (Project Assessment Director)* 2004 SCC 74). These cases are directly relevant to this environmental assessment. The Supreme Court of Canada clarified that the honour of the Crown is at stake in its dealings with Aboriginal peoples, and there is the requirement that meaningful consultation take place prior to the approval of projects which will infringe aboriginal title and rights.

The post-report decision-making process in this environmental assessment and the substance of the NEB's, as well as INAC's, proposed modifications represent "an impoverished vision of the honour of the Crown" (*Taku River Tlingit*). Specifically, we note the following:

- The NEB's proposed modifications significantly weaken the reporting and information sharing requirements to the Ka'a'Gee Tu. Similarly, INAC is trying to delete and/or modify the Board's recommendations which addressed infringements of Ka'a'Gee Tu title and rights, without consultation with the Ka'a'Gee Tu.
- The NEB's final proposed modifications do not adequately or properly address the core concerns of the Ka'a'Gee Tu. Similarly, the rationale provided by INAC for deleting the recommendations uses INAC's Ministry's own failure to support a proper impact assessment of the project on the title and rights of the Ka'a'Gee Tu to

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justify deletion of recommendations that aim at the protection of those rights. Such faulty reasoning cannot be sustained.

As such, the Ka'a'Gee Tu submit that the following steps must immediately be taken:

- A process should be instituted to review the recent decisions of the Supreme Court in the context of this environmental assessment, and ensure that post-report decision-making meets the standards set by the Supreme Court of Canada.
- As all of the recommendations and the proposed modifications were submitted prior to the release of the Supreme Court of Canada decisions, all of the proposed modifications should be withdrawn, and reconsidered in light of the recent case law.
- We encourage the NEB to take steps to fully include the Ka'a'Gee Tu in post-report decision-making, including your consultations with the Board, and to provide clarity, in writing, concerning the process to be followed, and including a written response to Ka'a'Gee Tu's submissions.

The Ka'a'Gee Tu are addressing the same concerns to the Minister of Indian and Northern Affairs. As well, the Ka'a'Gee Tu will be further addressing these points in full, as well as commenting on all of the proposed modifications, in its reply to the Board's request for comments.

We look forward to receiving your reply to this letter.

Yours truly,

MANDELL PINDER



Louise Mandell, Q.C.  
Barrister and Solicitor

LM/dg

ccs: Clients  
MVEIRB