

TECHNICAL REPORT

Regarding the proposed

GIANT MINE REMEDIATION PROJECT



Submitted August 10TH, 2012

Plain Language Executive Summary

The North Slave Métis Alliance (NSMA) represents the Aboriginal rights-bearing Métis of the Great Slave Lake area, who use and exercise their Aboriginal rights primarily in the area north and east of Great Slave Lake, NT,. The North Slave Métis have continuously “used and occupied” their traditional lands from the seventeenth century to the present time. Métis settlements existed long before Europeans “established effective control” of the area. This means the North Slave Métis people possess Aboriginal rights and title to our traditional lands and the resources on our traditional lands, including the right to manage those lands and resources, which are recognised and protected under section 35 of Canada’s Constitution Act (1982). Our Aboriginal Water Rights are further protected by sections 14(4) b and 14(5) of the NWT Waters Act. Despite the fact that Canada has not yet begun negotiations with us to define the extent and application of our rights, we can look to the United Nations Declaration on the Rights of Indigenous Peoples, and the Declaration of Human Rights, which Canada has endorsed, for guidance. We also rely on the 2003 Powley Decision of the Supreme Court of Canada, and other Canadian jurisprudence.

The NSMA has been registered as a non-profit society in the Northwest Territories since 1996, for the stated purpose of negotiating a regionally based comprehensive claim centered in the North Slave Region of the Northwest Territories. Prior to that, our members were represented in the 1975-1990 Dene-Métis Comprehensive Claim negotiation process by the Métis Nation of the Northwest Territories¹ (MNNWT) which was formed in 1972 to represent all indigenous Métis in the Northwest Territories. This organisation was disbanded after the Final Agreement was rejected, and the pan-territorial process was abandoned in favor of the pursuit of regional claims. The North Slave Métis Alliance was endorsed by the MNNWT as the North Slave Regional Métis land claim organisation before it was disbanded.² It is also important to note that the Tlicho Agreement contains a non-derogation clause which states in section 2.7.1(b)(ii), General Provisions, that “No provision in the Agreement shall be construed to affect any Aboriginal rights of any Aboriginal people other than the Tlicho.”

NSMA takes its representation mandate seriously, and must continue to insist it is “consulted and accommodated,” on any and all forms of activities, planned or underway, by public and private sector organizations, on its traditional lands.

The NSMA is concerned about Canada’s proposed Giant Mine Remediation Project because it is in the center of the traditional territory the North Slave Métis, and fails to address historic, current, and future interference with North Slave Métis Aboriginal Rights. Yellowknife River and Yellowknife Bay have been occupied by the North Slave Métis for more than 200 years – long before Canada implemented effective control over the area. The area has great historic,

¹ This is NOT the same organization as the current-day Northwest Territory Metis Nation (NTMN), previously known as the South Slave Métis Tribal Council, formed at the same time as the NSMA, also as a result of the decision to pursue regional instead of pan-territorial claims and the disbanding of the MNNWT.

² 1996-07-07 Metis Nation – Northwest Territories 24th Annual General Assembly Resolution #4. (attached)

cultural, ecological and economic value to the North Slave Métis. It used to be an excellent fishery, hunting area, trapping area and gathering area, as well as a meeting place, transportation hub, and commercial center, long before gold was discovered here.

The Giant Mine Remediation project will permanently prevent current and future generations of North Slave Métis from using, occupying, or otherwise enjoying a significant and historic portion of their traditional territory. This project will subject North Slave Métis to unacceptable ecological, health, social and cultural risks, and is a cause of significant fear and mistrust in the community.

The North Slave Métis Alliance has objected, and continues to object to the restricted scope of this environmental review because it fails to consider past environmental damage, human and ecological, as part of the ongoing and cumulative effects of the project, because it fails to contemplate alternatives, and because it fails to address the ongoing and future costs of water supply and treatment for the City of Yellowknife. These impacts are significant, and cumulative.

This report will attempt to follow the format template provided by the Board, and will focus on, and be organized according to the following significant issues:

- ∞ Inadequate Crown Consultation
 - There has been no attempt by Canada to Consult with the NSMA to obtain its free, prior and fully informed consent for this remediation project.
- ∞ Impacts on traditional use of water and air
 - Contaminated tailings off-site not addressed.
 - Continuing interference with Aboriginal water Rights directly, and indirectly, past, present, future and cumulative impacts, without Consultation or Accommodation.
 - Ongoing threat to drinking water and air quality for Yellowknife residents, real and perceived, causes significant community concern.
- ∞ Impacts to traditional use and ownership of land.
 - Remediation of site to industrial guidelines does not meet Traditional Use standards.
 - Interference with Aboriginal Use and Occupancy Rights, current and future, is cumulative to the past, and significant.
 - Lack of community involvement in environmental management decision making, monitoring and enforcement, causes significant community concern, and infringes Aboriginal Rights.
 - Failure to address off-lease soil and vegetation impacts.
- ∞ Impacts on traditional use of wildlife.
 - Failure to address fish and wildlife impacts off-lease.
 - Temporary and potentially permanent changes to wildlife habitat, productivity, quality, and resulting impacts to Aboriginal Rights, past, present, and into foreseeable future.
 - Inadequate consideration of Cumulative impacts.
- ∞ Impacts on traditional culture and traditional economy.
 - Inequitable distribution of benefits and costs.
 - Failure to compensate to water supply costs to City of Yellowknife.
 - Failure to remediate damage to human environment, lack of reconciliation.

- Failure to provide community specific impact predictions and mitigations, and failure to address disadvantaged and vulnerable populations.
- Impacts to community cohesiveness, cultural pride, and governance.
- Heritage resource impacts.

Full implementation of each one of the following recommendations are necessary, in the view of the North Slave Métis Alliance, to reduce the significant impacts of this proposed project to an acceptable level:

1. AANDC should work with the North Slave Métis Alliance, and others, to develop and deliver a formal apology for the ecological and sociological legacy of the Giant Mine.
2. AANDC should negotiate a compensation package (IBA) with the North Slave Métis Alliance for the impacts to its citizens and traditional territory – past, present and future.
3. Treated effluent from the project should not be discharged into Back Bay due to the risk of disturbing contaminated sediments and creating thin spots in the ice, but instead should be piped to a deep part of Great Slave Lake far enough out to ensure no impacts near Dettah. Care must be taken to avoid interference with fisheries.
4. AANDC must accept financial responsibility for ensuring that the drinking water supply for the City of Yellowknife is not affected by mine waste of any type, be it discharged effluent, dust, disturbed sediments, or any other cause. These costs will include participatory community monitoring, public reporting, and treatment whenever necessary. AANDC must be aware that water quality criteria may change over time to be more restrictive.
5. AANDC should provide an ongoing health impact and health education program in the City of Yellowknife where any resident may receive upon request an unbiased and free of cost chemical analysis of their hair or fingernails or any water sample, to screen and monitor for arsenic contamination. They should also be provided with unbiased, high quality advice on the health impacts of arsenic and management options.
6. AANDC should establish an independent monitoring agency for the Giant Mine which should be directed by a Board or appointees representing each of the First Nations whose territory includes Great Slave Lake, with one appointee for the City of Yellowknife. The Agency should have a mandate, with an adequate and secure budget, to commission its own research, including traditional knowledge research. To address conflict of interest concerns at the community, regional, and even national level, the Minister should be bound to respond to the Agency's recommendations within a set, reasonable time limit, and the reasons for the Minister's response should be publicly available and subject to judicial review.
7. As part of its ongoing activities the independent monitoring agency should conduct a regular review, on a 5-7 year schedule, of new technologies and options for management of the site. In particular, the possibility of biological treatment of surface and subsurface contamination, as well as opportunities to remove, and even potentially use, the arsenic trioxide dust. Once it is solidly frozen, the transportation risks may be significantly reduced.

More detailed explanation of our position follows.