

NORTH SLAVE MÉTIS ALLIANCE

PO Box 2301 Yellowknife, NT X1A 2P7

CLOSING STATEMENT: Fortune Minerals Ltd. NICO Project (EA0809-004)



**Submitted by the North Slave Métis Alliance
To the Mackenzie Valley Environmental Impact Review Board**

Yellowknife, NT

Submitted Wednesday, October 17, 2012

INTRODUCTION

The North Slave Métis Alliance (NSMA) wishes to thank the Mackenzie Valley Environmental Impact Review Board (MVEIRB) for the opportunity to participate in the public hearing on the Fortune Minerals Ltd. (the Developer) NICO Project (the Project). Considering the volume of material on the public record and the length of time that the Project has been under discussion, the hearings proceeded in an impressively efficient and well organised manner.

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 recognized 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. The proposed Project is within NSMA's traditional lands. While it is also within the Tłıchǫ settlement area as established by the Tłıchǫ land claim and self-government agreement, it is important to remember that section 2.7.1(b)(ii) of the Tłıchǫ Agreement provides that nothing in the Agreement affects "any Aboriginal rights of any Aboriginal people other than the Tłıchǫ". The constitutionally protected Aboriginal rights of the North Slave Métis are therefore not extinguished or affected in any way by the Tłıchǫ Agreement. The North Slave Métis have an unresolved land claim to the lands affected by the Project and these lands are subject to the NSMA's asserted Aboriginal rights and titles. The proposed Project adversely affects those rights and titles.

The NSMA is concerned about the proposed Project as it is centred in the traditional territory of the North Slave Métis. It fails to address historic, current, and future interference with North Slave Métis Aboriginal Rights. The area has great historical, cultural, ecological, and economic value to the North Slave Métis. As displayed in our *Traditional Land Use and Knowledge Study*, the region was once an excellent fishery, hunting area, trapping and gathering area.

The 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. The Project will subject North Slave Métis to unacceptable ecological, health, social, and cultural risks, and is a cause of significant public concern in the community.

SUMMARY OF CONCERNS

- ∞ Consultation:
 - There has been limited consultation with the NSMA by the Developer to obtain our free, prior, and fully informed consent.
 - There has been interference with our inherent right of self- government.
- ∞ Impacts on traditional use of water:
 - Community perception and traditional knowledge monitoring is necessary.
 - Ongoing threat to drinking water quality for Métis is both real and perceived.
 - Failure to address the cumulative impact on water and adequate mitigative measures to monitor water quality after closure with full and complete involvement of the NSMA, despite the impact on traditional waterways of the Metis.
- ∞ Impacts on traditional use and ownership of land:
 - Interference with Aboriginal Use and Occupancy Rights.
 - There is a lack of community involvement in environmental management decision making, monitoring, and enforcement, contrary to our inherent right of self-government.
 - Non-renewable resource depletion in an environment of contested property and resource rights amounts to expropriation without compensation.
 - Permanent change to land and land use without fully informed, free and prior consent of North Slave Métis in an environment of unsettled Aboriginal Rights claims amounts to expropriation without compensation.
- ∞ Impacts on traditional use of wildlife:
 - Any impact on caribou, be it health, abundance, or behavior, is significant if and when it interferes with Aboriginal harvesting success.
 - Confusion in jurisdiction and lack of consultation with regard to hunting bans along the site access road corridor.
 - Failure to address the potential over-harvesting of local fish stocks after site access road is constructed.
 - The cumulative impact of increased road access on moose, in combination with the hunting restrictions on Barrenland caribou, woodland caribou, wood bison and muskox, and in combination with increased disposable Aboriginal incomes, is not adequately addressed, especially not with respect to the availability of country food for North Slave Métis.
 - Temporary and permanent changes to wildlife habitat, productivity, and quality.

- ∞ Impacts on traditional culture and traditional economy:
 - There is a very high probability that Métis heritage resources exist in the area of the new roads which are undiscovered, undervalued, or erroneously attributed to the Tłı̨chʼo or Europeans.
 - Failure to adequately address the cumulative effects of the construction and connection of the site road.
 - Failure to properly address Métis heritage resource impacts.
 - Failure to provide community specific impact predictions and mitigations.
 - Failure to investigate disadvantaged and vulnerable populations or mitigate inequitable impacts.

RECOMMENDATIONS

The NSMA has reviewed our recommendations from the scoping and presentation phase. We hope that our input will be a valuable contribution to the process of the Project.

1. Impact on North Slave Métis traditional use of water

The NSMA considers the direct, indirect, short term, long term and cumulative impacts to water, fish, fish habitat, and to NSMA's traditional use of waters, as proposed, to be significant. The Developer should be required to negotiate water quality criteria, including closure criteria, with the NSMA and other Aboriginal Water Rights holders, according to the limits of acceptable change framework. Social, cultural and economic considerations should be addressed, including reasonable compensation for substantial alterations in water quality.

The Mackenzie Valley Environmental Review Board should recommend that the Developer be required to use traditional knowledge in the assessment of cumulative effects, and consider numbers of impacted water bodies in the traditional territory as well as the size of impacted water bodies and the magnitude of existing and future impacts. The Developer should be required to manage their discharges to be compatible with the natural flow pattern of the Marian River.

2. Impact on North Slave Métis traditional use of air

Human, caribou, and fish health are expected to be affected by air quality changes, but the effects are considered negligible by the Developer. There is no discussion of dioxin or furan emissions related to incineration of garbage, or any emissions related to processing chemicals, milling, cleaning products, and paints. We found no discussion of behavioral or aesthetic impacts on people, fish, wildlife, or birds. Predictions should be made for dioxins, furans, odors, and visibility.

The Mackenzie Valley Environmental Review Board should recommend that the Developer be required to use both traditional knowledge and western science in the assessment of air quality in the traditional territory.

3. Creation of an independent environmental monitoring agency (cultural and ecological)

The Mackenzie Valley Environmental Review Board should recommend that the Developer be required to fund an independent agency (Agency) with a mandate to monitor community perceptions of environmental change. Traditional knowledge monitoring would include the performance of traditional activities using water, such as tea boiling and tasting, fish netting and tasting, swimming, washing, canoeing, drinking, and cooking. It will incorporate monitoring of aesthetics such as visual, olfactory and auditory perceptions, and other cultural values.

The Agency would 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 reasonable time limit, and the reasons for the Minister's response should be publicly available and subject to judicial review.

4. Determination under s.128(1)(c) of the MVRMA

128. (1) On completing an environmental assessment of a proposal for a development, the Review Board shall, (c) Where the development is likely in its opinion to be a cause of significant public concern, order that an environmental impact review of the proposal be conducted.

The Mackenzie Valley Environmental Impact Review Board should order an environmental impact review of the Project based on a finding of significant public concern, the unknown socioeconomic and cultural cumulative impacts, the likelihood of adverse impacts on the environment and human health due to water contamination, the uncertainty of Tłı̨ch̨ and GNWT consultation regarding the Tłı̨ch̨ Road or site access road, and the fact that there is significant public concern by residents in the Northwest Territories.

CONCLUSION

The North Slave Métis clearly rely on the area of the Project, including the mine footprint, the surrounding areas, downstream and downwind that might be affected, as well as the transportation routes connecting the project to its material and labour sources and to its target market. The North Slave Métis generally favour economic development, as long as their ecological and sociocultural environment is thoroughly protected and their Métis Aboriginal rights are respected. Given the questions and concerns raised by the proposed Project, the NSMA desires an environmental review of the project which would provide a better opportunity to more fully address the outstanding issues, including the recognition and accommodation of North Slave Métis Aboriginal rights.

The NSMA concludes that this proposed project poses known significant impact risks to the environment that are unmitigated or inadequately mitigated, as well as unknown risks that are potentially significant. The Project could easily be rejected based on the uncertainty of the duration and extent of wildlife and wildlife harvesting impacts, specifically boreal and barren ground caribou, especially considering the uncertainties surrounding access roads. However, at this time, we recommend ordering an Environmental Impact Review.

We believe our recommendations are supported and reinforced by the submissions and questions by other parties at the hearings. We look forward to the Board's decisions and recommendations.