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FAX COVER SHEET

DATE: July 21, 2003

CLIENT #: 216-00.4

TO: Mackenzie Valley Environmental Impact Review
Board

FAX: 1-867-766-7074

PHONE: 1-867-766-7053

Attention: Martin Haefele

Environmental Assessment Officer

CC: Ka'a'Gee Tu First Nation

FAX: 1-867-825-2002

Attention: Allan Landry

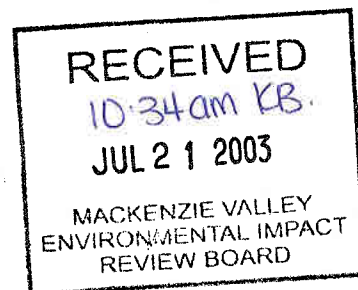
PHONE: 1-867-825-2000

FROM: Gillian Calder

RE: Cameron Hills Gathering System Extension -
Environmental Assessment Draft Terms of Reference

NUMBER OF PAGES INCLUDING COVER SHEET: 6

ORIGINAL BEING SENT BY MAIL: NO



Dear Sirs:

We were able to obtain instructions with respect to the Submission of the Ka'a'Gee Tu - enclosed.

We appreciate your consideration on the deadline.

Yours truly,

A handwritten signature in cursive script, appearing to read "Gillian Calder".

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July 21, 2003

Via Fax: (867) 766-7074Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre
P.O. Box 938
Yellowknife, NT X1A 2N7**Attention: Martin Haeefele**
Environmental Assessment Officer

Dear Sirs:

Re: Cameron Hills Gathering System Extension
Environmental Assessment Draft Terms of Reference
("Draft Terms of Reference")

We are counsel for the Ka'a'Gee Tu First Nation (the "Ka'a'Gee Tu"). We are writing to provide feedback on the Draft Terms of Reference, as circulated June 30, 2003.

The Ka'a'Gee Tu are the main traditional land users, caretakers and managers of the area that is the subject of the Project; they remain dependent on the land and waters in their area for culture and livelihood. And, while other First Nations have ties to this area, it is the Ka'a'Gee Tu who remain connected to this land. At a meeting of the Dene National Assembly, August 12-19, 1996 it was resolved that the Assembly fully endorses the rights of the Ka'a'Gee Tu to have final approval in future economic and land use activities in their traditional area, which includes the Cameron Hills. The Ka'a'Gee Tu have the most at stake in the implementation of the Paramount project in the Cameron Hills region.

As such, their meaningful participation in this process, both as directly affected parties and as expert advisers, is crucial to the success of any Environmental Assessment. As this Project overlaps with the traditional and contemporary use area of the Ka'a'Gee Tu people, potential impacts and mitigation measures must be fully addressed.

Drawing upon their previous involvement and stated concerns arising during the process of the two Environmental Assessments that have been done with respect to this project on their traditional lands, the Ka'a'Gee Tu wish to express several concerns with the Draft Terms of Reference. The Ka'a'Gee Tu have worked to be involved in the Board's review process from the outset of the first phase of the project, and despite a limited financial capacity to participate, have made extensive submissions to the Board. It is our view and request that all previous submissions made to the Board in this review process be included in an evaluation of the adequacy of the scope and content of these Terms of Reference. This is particularly important given that there are on-going concerns from the first phases of the Project that have not as of yet been resolved to the satisfaction of the Ka'a'Gee Tu.

The Scope of the Assessment (Section 3) and to the content and scope of the Developer's Assessment Report ("DAR") (Section 4).

An understanding of the traditional and modern connections, use and occupation of the land by the Ka'a'Gee Tu must begin with an acknowledgement that they occupy the land as both stewards and landlords. Their use is more than that of discrete activities.

The Scope of the Assessment in the Terms of Reference must reflect that First Nations concerns, and in particular the concerns of the Ka'a'Gee Tu First Nation, must be fully considered and addressed in any assessment of cumulative impacts. This will then provide for a full analysis of the impact on the Ka'a'Gee Tu in the assessment of the effects on the environment. The Scope of the Assessment, at present, makes no direct mention of First Nations interest in this land.

A full environmental assessment must include what the social and economic impacts have been on the Ka'a'Gee Tu. The Ka'a'Gee Tu seek an environmental assessment that deals with what really happens to the Ka'a'Gee Tu and their way of life as a result of this project and its cumulative effects. In doing so the definition of culture, economic wealth and the full significance of loss of economic, political and cultural autonomy must be considered carefully. There is a complex interconnection between forced cultural change and income, human diet, health and overall household well-being that must be considered when considering cumulative social and economic impacts.

The cumulative impacts of this project on overall human well-being and the successful maintenance and reproduction of households must be considered. This is one of the primary functions of culture, and must be included in the assessment. The effect of this project on the transition from economic/material self-reliance to a money economy with the need for outside employment and/or the increasing significance of welfare dependency will also require consideration. Included in this analysis would be an assessment of any imposition resulting from the cumulative impacts of this project from an independent self-sustaining culture to one that relies more on purchased food, fuels and vehicles. In doing this work it will be important not to assume the bias of dominant culture that the use of fossil fuels and mechanized equipment in and of itself produces a superior way of life.

Culture can be seen to involve three features: 1. social structure and practices; 2) knowledge and beliefs (ideology) and 3. the material base. Each of these features are the shared means by which people maintain and reproduce themselves and their culture. In essence, any culture is a system for taking care of people. This cumulative impact assessment will need to consider all of the social and economic functions that Ka'a'Gee Tu culture fulfills for its people, and the cumulative impacts this project will have on those functions over the longer term. The extent to which this project weakens the Ka'a'Gee Tu's ability to service these functions will need to be considered.

A functional approach to culture will be needed. The Ka'a'Gee Tu culture is designed to maximize autonomy and self-sustenance, thereby providing the Ka'a'Gee Tu with a way of life that sustained their society and culture for a long time within their traditional territory. This gave the Ka'a'Gee Tu social power or control over the conditions of their daily life that allowed

households an ability to secure a well-being. The cumulative effect of this project on those households must be considered.

When considering the impacts to households, the authors will need to consider the effect of social cohesion that results from disempowerment and impoverishment that follows the loss of cultural autonomy and economic self-reliance. In addition to reviewing such things as employment and income, health issues such as suicide, diabetes, alcoholism and substance abuse need to be considered as part of the socio-economic impacts, because these are community health issues that are related to the disintegration of the traditional community. Amongst other things, when considering this issue it will be useful to know to what extent debt relationships between the Ka'a'Gee Tu and the non-natives are arising and will be continuing as a result of the changes this project is bringing to their communities.

Economic impacts must be considered and described in terms that include not only Western economic concepts but also traditional Ka'a'Gee Tu economic realities. For example, "economic" concerns include not only what generates revenue but also what is necessary for sustainable cultures to thrive into the future. Immediate economic gains that have short time horizons (eg. 20-30 years) that effectively displace traditional sustainable land-based economies must be considered both in the short and long term. People who have for a long time lived in small scale cultures living in independent local settlements have typically evolved a social and economic stability that is a key feature to who they are. This project's cumulative impacts on the ability of the Ka'a'Gee Tu to maintain such stability must be considered.

Valuating Ka'a'Gee Tu culture requires an understanding of the material differences between that culture (small scale, stable, socially balanced society) and the global scale, unsustainable, stratified society of modern nation states, including Canada. The differences between how these cultures construct wealth, income and investment must be considered. Published sources that discuss the theoretical and methodological issues involved in cross-cultural economic comparisons will need to be reviewed, including as examples: Bodley, John (*The Power of Scale: A Global History Approach*, 2003 and *Cultural Anthropology: Tribes, States and the Global System*, 2000), Shikh and Tonak, (*Measuring the Wealth of Nations: The Political Economy of National Accounts*, 1994); and Goldsmith, Raymond (*Comparative National Balance Sheets* 1985; *Premodern Financial Systems: A Historical Comparative Study*, 1987).

Social impacts should be also defined in terms that are broad enough to include such things as the ceremonial, communal and other cultural practices, the intrinsic value of resources and language to the community, and the medicinal use of plants that will or may be affected.

Many non-native people argue that only a commercial culture can provide a satisfying level of wealth and prosperity, but this is objectively not the case. There are different cultural pathways to human satisfaction and prosperity. When studying the cumulative social impacts of this project, these potential biases must be objectively considered. For example, tribal societies typically did not pay high maintenance and capital costs necessary in large-scale societies. Thereby turning their social surplus into leisure, building complex intangible wealth in social relations and expressive culture. Intangible wealth includes, for example, cultural knowledge stored in people's memories and in the mutual obligations amongst kin. These intangibles

created healthy self confident people who successfully reproduced the next generation and provided an environment in which that society could continue to survive. Small scale tribal societies have, by the very fact that they have supported the development and continuation of cultures over long periods of time, been successful in doing what they are designed for. The effect of this project and in particular the long term impact of global, highly stratified, specialized societies on the Ka'a'Gee Tu culture must be carefully considered when completing this study.

When completing all of this work, the baselines from which the impacts are being measured must be clearly and consistently conceptualized and understood.

Further, the Terms of Reference must be specific about consultation and accommodation. First, full and meaningful consultation with the Ka'a'Gee Tu must be part of the Environmental Assessment process itself. This means that the process must include the time, the opportunity and the resources for the meaningful participation of the Ka'a'Gee Tu. The Ka'a'Gee Tu lack the resources to hire experts or to conduct independent and comparative environmental studies to incorporate their traditional, ecological knowledge. Therefore, the Terms of Reference must address the means for ensuring full participation of directly affected parties, and a clear inclusion of traditional, ecological knowledge.

Further, however, the Terms of Reference must address the obligations of the Crown and of Paramount with respect to consultation and accommodation in the Project itself. Since this project began, the British Columbia Court of Appeal has set down principles that have clarified the standard and scope of the duty to consult and to reach workable accommodation with First nations and identified more precisely when these duties are triggered. These cases, and supplementary reasons are: *Taku River Tlingit First Nation v. Ringstad et. al.* 2002 BCCA 59 ("*Taku River*") and *Haida Nation v. B.C. and Weyerhaeuser* 2002 BCCA 147 ("*Haida Nation #1*"); and *Haida Nation v. B.C. and Weyerhaeuser* 2002 BCCA 462 ("*Haida Nation #2*"). Consultation and accommodation in this process is more than adherence to an existing regulatory process. The duty to consult includes an obligation to reach workable accommodation of aboriginal rights and title, including cultural interests and economic interests. All parties have obligations to make reasonable inquiries to determine the Ka'a'Gee Tu's constitutional rights, and to ensure that they are met in this process. The Terms of Reference should include the requirement to identify what consultation and accommodation must be met by both the Crown and Paramount in this next phase of the Project.

It is also important that the Board ensures that that Paramount, in its Developer's Assessment Report, consider traditional use studies and incorporate traditional land use information into the environmental review process. All reasonable steps must be taken to ensure that this information is available and used. The Environmental Assessment must include impacts of the project on traditional land use, as well as on existing land use and occupation. Places of cultural, spiritual and archaeological significance must be identified.

Finally, compensation plans are an extremely important element of the process. It is key to the Ka'a'Gee Tu that no irreversible steps be taken in this process before benefit plans are approved. Compensation plans must address economic as well as cultural components, and not

merely lost revenue from harvesting. The Terms of Reference must address this important concerns and outcome of this process.

The Assessment Process (Section 5).

The Ka'a'Gee Tu are concerned with the amount of time that they are given to respond to all the materials, to review adequately, and to prepare responses. Our experience in this process is that there is a large volume of material and many information requests. Given the seriousness of the cumulative impact of the project, and the lack of resources that the Ka'a'Gee Tu have, the Ka'a'Gee Tu require sufficient time to consider and respond to the materials, thereby helping the consultation process.

We also urge the Board to ensure that there are public hearings and that they are conducted in a manner that permits full participation by the Ka'a'Gee Tu, and other directly affected parties. This will include providing adequate resources to allow for participation.

The Ka'a'Gee Tu appreciate the opportunity to comment on the Draft Terms of Reference, and look forward to final Terms of Reference that reflect their concerns for their community and their land. We would be happy to review a further draft and provide follow-up comments.

Yours truly,

MANDELL PINDER



Gillian Calder
Barrister & Solicitor

GC/djg

cc: Ka'a'Gee Tu First Nation
Attention: Allan Landry