

EA03-005
Mandell Pinder (KTFN)
Re: NEB

FAX COVER SHEET

DATE: October 1, 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: Joe Acorn - *Via E-mail

Cc: Mackenzie Valley Environmental Impact Review **FAX:** 1-867-766-7074
Board
Attention: Kimberley Cliffe-Phillips
Environmental Assessment Officer

Cc: Paramount Resources Ltd. 1-403-262-7994
Attention: Shirley Maaskant

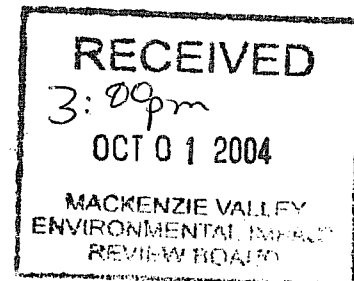
FROM: Louise Mandell, Q.C.

RE: Paramount Resources Ltd. Cameron Hills Extension Project

NUMBER OF PAGES INCLUDING COVER SHEET: 22

MESSAGE

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October 1, 2004

Via Fax: (403) 292-5503

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

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

Dear Sirs:

Re: Paramount Resources Ltd. Cameron Hills Extension Project – Comments and Reply of the Ka'a'Gee Tu First Nation in response to the NEB's Draft Modifications of the MVEIRB Recommendations

We are writing on behalf of the Ka'a'Gee Tu First Nation to submit comments in response to the National Energy Board's ("NEB") September 13, 2004 draft proposed conditions and proposed modifications addressing the Recommendations of the Mackenzie Valley Environmental Impact Review Board ("MVEIRB") on the Paramount Resources Ltd. Cameron Hills Extension Project. We are also replying to the September 21, 2004 submission of Paramount Resources Ltd. ("Paramount").

The Ka'a'Gee Tu appreciate the opportunity to respond to the proposed modifications. We hope that this indicates that post-Report decision-making in this, and other, Environmental Assessments will increasingly be an open and transparent process, and as outlined in our letters of July 20 and August 31, fully allow for the participation of the Ka'a'Gee Tu. We expect that DIAND will use a comparable process for developing its modified measures in advance of consultations that may result in modifying the recommendations.

In this submission we do not re-state, or retract, the comments the Ka'a'Gee Tu made in their June 24, 2004 letter replying to the MVEIRB's recommendations. This letter is restricted to commenting on the NEB's proposed modifications, as compared with the original MVEIRB recommendations.

General Comments

We raise a few general points prior to addressing each of the NEB's proposed modifications and conditions.

Issuance of Permits Without Sufficient Consultation and Accommodation

As established in *Haida Nation v. British Columbia (Minister of Forests)* (2002) 99 B.C.L.R. (3d) 209 (C.A.), supplementary reasons (2002), 5 B.C.L.R. (4th) 33, both the Crown and a third party who has been issued a permit or tenure have legal duties to consult and seek a workable accommodation of Aboriginal interests when activities having potential impacts will take place in the traditional territory of a First Nation. Paramount has been issued permits to conduct operations in the traditional territory of the Ka'a'Gee Tu without legally required consultation and accommodation taking place. The Crown and Paramount have not fulfilled these duties to date.

Paramount's response to the MVEIRB's recommendations and to the NEB's modification illustrates their failure to acknowledge the scope and nature of these legal obligations. Similarly, as will be outlined below, the NEB's proposed modifications do not meet the standards of consultation and accommodation.

The Ka'a'Gee Tu expect that legal obligations of consultation and accommodation will be met by both the Crown and Paramount.

Reporting and Information Sharing with the Ka'a'Gee Tu

Throughout the environmental assessment process the Ka'a'Gee Tu has raised the issue of Paramount's lack of communication, and its unwillingness to accept that it has any responsibility to keep the Ka'a'Gee Tu informed about how the project is developing. This included a lack of information in relation to environmental problems that have occurred on-site.

Information sharing is not merely a moral obligation to inform one's neighbours of how one's conduct may impact on them. With respect to First Nations, it is also a legal obligation, rooted in the constitutional necessity for consultation with Aboriginal peoples when their interests are impacted. This was illustrated in the recent decision of the British Columbia Supreme Court in *Haida Nation v. Minister of Forests*, 2004 BCSC 1243. In that case, Weyerhaeuser, who held a tree farm license that had been issued without consultation and accommodation, was refusing to produce information and reports to the Haida. The Court ordered that the Haida are entitled to the receipt of the information from Weyerhaeuser, and made provision for the receipt of that information.

The MVEIRB acknowledged the lack of information being provided to the Ka'a'Gee Tu and this fact was specifically reflected in their recommendations. The MVEIRB included provisions requiring Paramount to report and provide information to the Ka'a'Gee Tu and other Aboriginal communities. In particular, the MVEIRB laid out requirements for the distribution of project reports and for notification of the communities in the event of the environmental problems/issues. These reporting provisions are a vital and important part of the recommendations.

The NEB's modifications effectively delete these reporting requirements. The NEB modifications, if adopted, would only require that Paramount's reports be made "readily available" to the "government and the public". This proposed modification fails to recognize the importance of this issue to the Ka'a'Gee Tu, overrides a matter that the MVEIRB found significant and substantive, and fails to recognize the legal obligations owed to Aboriginal peoples. Further, it removes responsibility from Paramount to keep the communities informed, and places the responsibility and cost on the communities – even though the communities did not ask for this project to occur on their lands.

Paramount, as is made clear in its submission, only seeks to further limit any obligation they may have to share information with the Ka'a'Gee Tu. Paramount refuses to accept that it has a responsibility to automatically and directly provide information to the Ka'a'Gee Tu, and further takes the position that it should not have to provide information to the Ka'a'Gee Tu upon request. Paramount clearly does not acknowledge or understand the responsibilities it assumed when it proceeded to work on Ka'a'Gee Tu lands without the consent of the community.

Requirement of an EIR

Pursuant to s. 131(1)(b) of the *Mackenzie Valley Resource Management Act* there is a limit on the modifications to a recommendation. As the MVEIRB states in their "Procedures for Consultation under the MVRMA" "if the changes proposed fundamentally alter the purpose, substance or effect of a recommendation this is tantamount to a rejection of the recommendation. The proper course of action, in this instance, is to reject the original recommendation thus triggering an EIR."

The Ka'a'Gee Tu are of the position that a number of the NEB's proposed modifications, including the provisions concerning reporting requirements, if adopted, would constitute a fundamental change to the "purpose, substance, or effect" of a recommendation. As such, it would be legally required that an EIR take place. We note in this regard that in 2002 the Federal Minister requested and the Board agreed to, over strenuous objection from the Ka'a'Gee Tu, substantial modifications and deletions of recommendations to the Cameron Hills – Paramount EA. Despite this fact, and in contradiction to both the MVRMA and current Board policy, no EIR was triggered.

In the specific comments below we have noted which proposed NEB, or Paramount, modifications would, if adopted be "tantamount to a rejection of a recommendation" and thus trigger an EIR. We expect that the MVRMA and the MVEIRB's policy, unlike in 2002, will be followed in this instance.

NEB Proposed Modification to Recommended Measure 2

MVEIRB's Recommendation

The Review Board recommends that Paramount prepare a report within 12 months and thereafter, annually, until the developments on the SDL¹ are abandoned and restored, for distribution in plain language to the parties in this EA.² This report will outline the

implementation status³ of each commitment made during the course of this EA, as set out in Appendix A.⁴

NEB Proposed Modification

The Review Board recommends that Paramount prepare a report in plain language within 12 months and thereafter, annually, until the developments on the Cameron Hills SDL(s) and PL(s) are abandoned and restored that outlines the status of compliance with commitments Paramount made during the course of this EA. In the event of non-compliance, the report will provide a plan for achieving compliance or detail as to why compliance cannot be achieved. Paramount will submit the annual report to appropriate regulatory agencies and make it readily available through an approved distribution medium to other members of government and the public.

Ka'a'Gee Tu Response to NEB Modifications

1. The Ka'a'Gee Tu accept the more inclusive proposed change of "SDL" to "SDL(s) and PL(s)" because only stating "SDL" excludes portions of the Cameron Hills field that have been converted to PL (Production License).
2. The Ka'a'Gee Tu, for the reasons outlined in our general comments above, do not accept the deletion of the specific reporting requirement to the parties to the EA. Paramount must be required to provide reports automatically and directly to the Ka'a'Gee Tu. This modification alters the original intent and purpose of the MVEIRB's recommendation. The original MVEIRB requirement for Paramount to directly provide the annual report to the parties to the EA (including the Ka'a'Gee Tu) has been deleted by the NEB and should be put back into the measure.
3. The Ka'a'Gee Tu accept the requirement that Paramount outline not only the implementation status of its commitments but also provide a plan for achieving compliance (or a reason for why compliance is not possible).
4. The Ka'a'Gee Tu accept the proposed modification to ensure that Appendix A is more inclusive.

Ka'a'Gee Tu Review of Paramount's Comments

Paramount is requesting that the 12-month time-frame for producing the first environmental compliance report be extended to 16 months to allow for 12 months of data collection and 4 months of report preparation.

The NEB should reject this request. Paramount has known since June 1st that this measure would likely be applied to the project. A responsible and proactive company would have immediately started data collection and report preparation. By the time the project permits are actually issued, it is likely that at least 6 months will have passed since the Report of EA was released. With the additional 12 months allowed by the measure after the permits are issued,

Paramount will have had approximately 18 months since learning that they would need to submit such a report until the report is due.

Paramount is requesting that it not be required to provide information to the Ka'a'Gee Tu upon request.

The NEB should reject this request for the reasons discussed previously.

Ka'a'Gee Tu Proposed Modification

The Ka'a'Gee Tu submit that the proposed modification be as follows:

The Review Board recommends that Paramount prepare a report in plain language within 12 months and thereafter, annually, until the developments on the Cameron Hills SDL(s) and PL(s) are abandoned and restored that outlines the status of compliance with commitments Paramount made during the course of this EA. In the event of non-compliance, the report will provide a plan for achieving compliance or detail as to why compliance cannot be achieved. Paramount will submit the annual report to appropriate regulatory agencies and the Ka'a'Gee Tu. Paramount shall also make it readily available through an approved distribution medium to other members of government and the public.

NEB Proposed Modification to Measure 3

MVEIRB's Recommendation

The Review Board recommends that prior to the issuance of any further licenses or permits¹ Paramount install a meteorological station (at minimum must monitor wind speed, wind direction and temperature)² in the Cameron Hills SDL³ to gather baseline data related to its development. Meteorological data will be provided annually to air quality staff of GNWT-RWED and Environment Canada along with a detailed re-modeling of Paramount's various development scenarios to ensure onsite meteorological conditions are reflected in the modeled outputs.^{4, 5, 6}

NEB Proposed Modification

The Review Board recommends that Paramount install meteorological monitoring equipment in the Cameron Hills SDL and PL over the winter of 2004/2005 (at minimum must monitor and record wind speed, wind direction, standard deviation of wind direction and temperature on an instantaneous, continuous basis). The purpose of the monitoring equipment is to provide on-site meteorological information for inclusion in subsequent re-assessments (dispersion modeling) of facility emissions as well as on-going tracking and assessment of air pollution episodes should they occur. Following collection of sufficient meteorological data, Paramount will undertake a detailed re-modeling of the various development scenarios to ensure on-site meteorological

conditions are reflected in the modeled outputs. Meteorological data and re-modeled development scenarios will be provided to appropriate government agencies, and made readily available through an approved distribution medium to other members of government and the public. The requirement to maintain and report on-site meteorological monitoring will be reviewed on a regular basis by the appropriate government agencies.

Ka'a'Gee Tu Response to NEB's Modifications

1. The Ka'a'Gee Tu are concerned by the fact that the language change from "prior to the issuance of any further licenses or permits" with the phrase "over the winter of 2004/2005" theoretically allows Paramount to proceed with some work before installing the meteorological station. This proposed modification could be improved by specifying a date for the meteorological station to be operational.
2. The Ka'a'Gee Tu accept the NEB's addition of more detail to better reflect the data collection processes necessary to provide information for dispersion modeling.
3. The Ka'a'Gee Tu accepts the NEB's change from "SDL" to "SDL and PL" because only stating "SDL" excludes portions of the Cameron Hills field that have been converted to PL (Production License). However, this change could be improved by pluralizing "SDL" and "PL" to be consistent with the NEB's modification for Measure #2.
4. The Ka'a'Gee Tu are concerned about the phrase "following collection of sufficient meteorological data" for describing when Paramount must re-model its project's impacts on air quality. In the MVEIRB's original measure, Paramount was required to re-model on an annual basis. The NEB's modification removes the reference to a specific period of time and also leaves it up to Paramount to decide how much meteorological data must be collected before it has to re-model. This is not an acceptable change. The NEB must either specify a period of time for the re-modeling or clarify that the determination of what is "sufficient meteorological data" is the regulators' decision, not Paramount's. The Ka'a'Gee Tu's preference would be to maintain the annual requirement that was imposed in the MVEIRB's original measure.
5. In the original MVEIRB recommendation there was no requirement for Paramount to report to the communities or to make their collected data and re-modeling results available to the public. The Ka'a'Gee Tu appreciate that the NEB has added a reporting requirement, and this is an improvement from the MVEIRB's measure. However, the wording of the reporting requirement, for the reasons discussed earlier, is insufficient. Paramount should be required to report directly to the Ka'a'Gee Tu.
6. The original MVEIRB measure was open-ended in that it did not specify how long Paramount had to operate the meteorological station. Presumably, Paramount would have had to monitor and report for the lifespan of the project. The NEB modification removes this open-ended problem by stating that the requirement to continue monitoring and reporting will be reviewed on a "regular" basis. The Ka'a'Gee Tu submit that this proposed modification should be improved by clarifying what is meant by "regular" basis. One suggestion would be to replace "regular" with "annual".

Ka'a'Gee Tu Review of Paramount's Comments

Paramount is requesting that it only be required to operate the meteorological monitoring equipment for a period of 12 months instead of having the regulators review on a regular basis the necessity of continuing the monitoring.

The NEB should reject this request. Paramount wishes to change the recommendation so that it can stop monitoring unless it is told to continue, and thus shift responsibility from itself to the regulators. As well, this proposed change would enable Paramount to seek the discontinuation of monitoring after 12 months.

Paramount is requesting that the "instantaneous, continuous" monitoring be reduced to "regular" monitoring.

The NEB should reject this request. Paramount has presented no rationale for it.

Paramount is requesting that it not be required to provide the collected data to the public due to confidentiality concerns.

The NEB should reject this request. Paramount has failed to demonstrate the confidential nature of this information and, for the reasons outlined earlier, the production of this information is required.

Paramount is requesting that it not be required to provide information to the Ka'a'Gee Tu upon request.

The NEB should reject this request for the reasons discussed previously.

Ka'a'Gee Tu Proposed Modifications

The Ka'a'Gee Tu submit that the proposed modification be as follows:

The Review Board recommends that Paramount install meteorological monitoring equipment in the Cameron Hills SDL(s) and PL(s) and that it be operational by March 31, 2005 (at minimum must monitor and record wind speed, wind direction, standard deviation of wind direction and temperature on an instantaneous, continuous basis). The purpose of the monitoring equipment is to provide on-site meteorological information for inclusion in subsequent re-assessments (dispersion modeling) of facility emissions as well as on-going tracking and assessment of air pollution episodes should they occur. By May 31, 2006, and on an annual basis thereafter, Paramount will undertake a detailed re-modeling of the various development scenarios to ensure on-site meteorological conditions are reflected in the modeled outputs. Meteorological data and re-modeled development scenarios will be provided to appropriate government agencies and the Ka'a'Gee Tu. Paramount shall also make the data and re-modeling results readily available through an approved distribution medium to other members of government and the public. The requirement to maintain and report on-site meteorological monitoring will be reviewed on an annual basis by the appropriate government agencies.

NEB Proposed Modification to Recommended Measures 5 and 6

MVEIRB's Recommendation 5

The Review Board recommends that Paramount install an amine fuel sweetening unit at the Central Battery (H-03) location prior to bringing any further wells online or pipe in sweet fuel from outside Cameron Hills, as per Paramount's original development plan.¹

MVEIRB's Recommendation 6

The Review Board recommends that any further combustion engines being installed for line heaters and pumpjacks at the Cameron Hills operation must use the sweetened fuel or an alternate source of no sulphur fuel.¹

NEB Proposed Modification

The Review Board recommends that prior to any new production from the Cameron Hills field, Paramount submit to regulatory agencies, for approval, and appropriate federal and/or territorial government air quality staff an emission mitigation plan for the Cameron Hills field. The emission mitigation plan will detail:

- a strategy for demonstrating that current and future SO₂, NO_x and H₂S emissions in the Cameron Hills field will not result in exceedences of relevant air quality standards;
- a statement describing Paramount's commitment to minimizing emissions from facilities in the Cameron Hills field;
- a contingency plan that includes a comprehensive listing and a decision tree for selection of all possible mitigation options to be implemented in the event that SO₂, NO_x and H₂S emissions in the Cameron Hills field result in measured or predicted exceedences of relevant air quality standards, the contingency plan will outline,
 - the mitigation options (e.g., pollution prevention planning, best management/environmental practices, best available technology, etc.) currently employed and proposed future options, along with triggers and/or timelines for implementation, and
 - the mitigation options considered and rejected, along with rationale for rejection.

Paramount should be required to review and update the plan on a regular basis throughout the life of the Cameron Hills field.

Ka'a'Gee Tu Response to NEB Modifications

The Ka'a'Gee Tu oppose the proposed modifications. The NEB has combined Measures 5 and 6 into one measure that severely weakens the original measures to the point that the modification is actually a rejection of the original measures. The original measures outlined, detailed and focused steps that Paramount had to complete to reduce its air quality emissions. The modification proposed by the NEB does not impose any emission reduction requirements upon Paramount.

The clear intent of Measures 5 and 6 was that Paramount would have to take specific steps to decrease its air emissions, regardless of what the existing standards are. The imposition of a monitoring plan does not satisfy the intent of the original measures. The MVEIRB found technical justification to apply these measures and that is all that is required for the NEB to be required to fulfill these measures.

If the NEB feels strongly that there is no technical justification for these 2 measures and is refusing to impose them on Paramount, then the proper course for the NEB under the MVRMA is to explicitly reject the measures. Regardless, the NEB's proposed modification, if it were adopted by the MVEIRB, is tantamount to a rejection.

The NEB is correct that the imposition of this type of mitigation plan is justified for this project. However, the requirement for this plan should be included in the NEB's proposed modification for Measure 4 (which is discussed below). It should not be used to replace Measures 5 and 6.

Ka'a'Gee Tu Review of Paramount's Comments

Paramount is requesting that instead of committing to "minimizing emissions" that it instead only be required to commit to "adhere to emissions guidelines for emissions".

The NEB should reject this request. It reflects an outdated and inappropriate view of environmental management for a project of this nature. Acceptable environmental management is focused on reducing emissions, not meeting guidelines.

Paramount is requesting that instead of being required to describe all possible mitigation options that it only be required to describe "appropriate" mitigation options.

The NEB should reject this request. Paramount has demonstrated that its view of "appropriate" environmental management is inconsistent with that of the Ka'a'Gee Tu, other First Nations, regulators, government, and the MVEIRB. Allowing Paramount to report on only what it considers appropriate mitigation options will severely limit the options under discussion.

Paramount is requesting that instead of using "best available technology" that it only be required to use "best economically achievable technology".

The NEB should reject this request. The use of "best available technology" is the standard for modern environmental management.

Paramount is requesting that it only be required to update and review the plan if a significant change or modification occurs during the life of the project.

The NEB should reject this request, and further change "regular basis" to "annual basis". Significant changes and modifications are constantly occurring with this project. Paramount is planning on adding new wells, gathering lines and facilities every year for another 10 years.

Ka'a'Gee Tu Proposed Modification

The original Measures 5 and 6 should be applied as the MVEIRB wrote them.

NEB Proposed Modification to Recommended Measure 4

MVEIRB's Recommendation

The Review Board recommends that Paramount install a continuous¹ gas analysis monitoring system to track ambient air quality (at minimum 1 hour SO₂ and NO₂)¹ and provide the data to the general public via website, to be updated no less than monthly if a live connection is not available.² Annual reports on the status of the air quality at Cameron Hills will be provided by Paramount to all potentially affected communities² and government in a plain language document throughout the life³ of the Paramount operations at Cameron Hills.

NEB Proposed Modification

The Review Board recommends that Paramount install instantaneous, continuous gas analysis monitoring over the winter of 2004/2005 to track ambient air quality (at minimum 1 hour average SO₂, NO_x and H₂S concentrations should be calculated and recorded). Data and plain language annual reports on the status of the air quality at Cameron Hills will be provided by Paramount to appropriate government agencies and made readily available through an approved distribution medium to other members of government and the public. The requirement to maintain ambient air quality monitoring will be reviewed on a regular basis by the appropriate government agencies.

Ka'a'Gee Tu Response to NEB Modifications

1. The Ka'a'Gee Tu accept the NEB's addition of detail, as compared to the original measure, by specifying that the gas monitoring must be instantaneous, must include NO_x (instead of just NO₂) and H₂S, and must be installed over the winter of 2004/05. However, this could be improved by specifying a date for the gas monitoring system to be operational.
2. For the reasons discussed earlier, the Ka'a'Gee Tu are opposed to modification to the reporting requirement. Paramount must be required to provide reports automatically and directly to the Ka'a'Gee Tu.
3. The original MVEIRB measure required Paramount to monitor and report for the lifespan of the project. The NEB modification states that the requirement to continue monitoring and reporting will be reviewed on a "regular" basis. The Ka'a'Gee Tu are concerned about this weakening of the recommendation. The NEB's proposed modification could be improved by clarifying what is meant by "regular". "Regular" should be replaced with "annual".

As discussed previously, the NEB's proposed modification for Measures 5 and 6, with certain changes, should be added to this measure.

Ka'a'Gee Tu Review of Paramount's Comments

Paramount does not want to have to proceed with the air quality monitoring unless the meteorological monitoring and modeling indicates that there might be a problem.

The NEB should reject this request. Obtaining accurate on-site meteorological data and combining that with poor and incomplete on-site air quality data will not produce accurate or valid modeling results. Collecting the air quality data as described by the modified measure is a necessary step in producing valid modeling results.

Paramount is requesting that it not be required to provide the collected data to the public due to confidentiality concerns.

The NEB should reject this request. Paramount has failed to demonstrate the confidential nature of this information and, for the reasons outlined earlier, the production of this information is required.

Paramount is requesting that it not be required to provide information to the Ka'a'Gee Tu upon request.

The NEB should reject this request for the reasons discussed previously.

Ka'a'Gee Tu Proposed Modifications

The Ka'a'Gee Tu submit that the proposed modification be as follows:

The Review Board recommends that Paramount install instantaneous, continuous gas analysis monitoring to track ambient air quality (at minimum 1 hour average SO₂, NO_x and H₂S concentrations should be calculated and recorded) and that the monitoring system be operational by March 31, 2005. Data and plain language annual reports on the status of the air quality at Cameron Hills will be provided by Paramount to appropriate government agencies and the Ka'a'Gee Tu. Paramount shall also make the reports readily available through an approved distribution medium to other members of government and the public. The requirement to maintain ambient air quality monitoring will be reviewed on an annual basis by the appropriate government agencies.

The Review Board also recommends that prior to any new production from the Cameron Hills field, Paramount submit an emission mitigation plan for the Cameron Hills field to the regulatory agencies, to appropriate federal and/or territorial government air quality staff, and to the Ka'a'Gee Tu. Paramount shall also make the plan readily available through an approved distribution medium to other members of government and the public.

The emission mitigation plan will detail:

- a strategy for demonstrating that current and future SO₂, NO_x and H₂S emissions in the Cameron Hills field will not result in exceedences of relevant air quality standards;
- a statement describing Paramount's commitment to minimizing emissions from facilities in the Cameron Hills field;
- a contingency plan that includes a comprehensive listing and a decision tree for selection of all possible mitigation options to be implemented in the event that SO₂, NO_x and H₂S emissions in the Cameron Hills field result in measured or predicted exceedences of relevant air quality standards. the contingency plan will outline.
 - the mitigation options (e.g., pollution prevention planning, best management/environmental practices, best available technology, etc.) currently employed and proposed future options, along with triggers and/or timelines for implementation, and
 - the mitigation options considered and rejected, along with rationale for rejection.

Paramount shall be required to review and update the plan on an annual basis throughout the life of the Cameron Hills field.

NEB Proposed Modification to Recommended Measure 9

MVEIRB's Recommendation

The Review Board recommends that Paramount continue to monitor all work sites for erosion, and take appropriate measures in advance to avoid such problems. The Review Board recommends appropriate erosion mitigation measures be identified in advance¹ and authorized by the NEB and INAC inspectors, and that any remediation of sites be documented and reported to regulators and the Ka'a'Gee Tu First Nation on a quarterly basis.²

NEB Proposed Modification

The Review Board recommends continued monitoring for erosion by Paramount of all work sites, and the implementation of appropriate mitigation and remediation measures. Regulators should include appropriate permit conditions to prevent and remediate erosion. Paramount should be required to submit to regulatory agencies, and make readily available to the public and other government agencies, annual reports detailing remediation measures taken by Paramount in response to sediment deposits in water bodies and erosion. Any deposit of sediment into a water body / watercourse should require Paramount to immediately implement remediation measures and notify the appropriate government agencies and affected First Nations.

Ka'a'Gee Tu Response to NEB Modifications

1. The Ka'a'Gee Tu accept, as compared to the original measure, the proposed NEB modification clarifying responsibility for identification of mitigation measures and the requirement that both itself and the MVLWB to include erosion conditions in permits.
2. For reasons outlined earlier, the Ka'a'Gee Tu are opposed to modification to the reporting requirements. Paramount must be required to provide reports automatically and directly to the Ka'a'Gee Tu.
3. The Ka'a'Gee Tu submit that quarterly reporting is appropriate. If the NEB insists on a modification to annual reporting then the Ka'a'Gee Tu submit that the annual report have a due date of July 1st each year.
4. The Ka'a'Gee Tu accept that the additional requirement that Paramount notify "affected" First Nations if there is any deposit or sediment into a water body or watercourse is an improvement over the MVEIRB's recommendation. However, the use of the term "affected" is a concern and should be deleted. As demonstrated during the course of the EA, Paramount has a very narrow, and incorrect, view of what constitutes an "affected" First Nation. This view holds that if Paramount can fix the problem without the communities finding out, then the communities are not affected.

The modification would be acceptable if both the NEB and Paramount accepted that any environmental problems due to this project affect the First Nations. However, it would be easier to just remove any qualifier from Paramount's obligation to notify the First Nations.

Ka'a'Gee Tu Review of Paramount's Comments

Paramount is requesting that it not be required to do "continuous" monitoring.

The NEB should reject this request. Paramount has encountered erosion problems on this project, which justify continuous monitoring in some form. This could be as simple as training the project employees to recognize the signs of erosion, to always be on the look-out for erosion problems and to initiate proper procedures when erosion is discovered.

Paramount is requesting that the regulators not be required to include erosion prevention and remediation conditions in permits.

The NEB should reject this request. Regulators are supposed to impose conditions to protect the environment. Paramount's request is unusual and unjustified.

Paramount is requesting that it not be required to provide information to the Ka'a'Gee Tu upon request or to notify the Ka'a'Gee Tu if the project causes sedimentation problems.

The NEB should reject this request for the reasons discussed previously.

Ka'a'Gee Tu Proposed Modifications

The Ka'a'Gee Tu submit that the proposed modification be as follows:

The Review Board recommends continued monitoring for erosion by Paramount of all work sites, and the implementation of appropriate mitigation and remediation measures. Regulators should include appropriate permit conditions to prevent and remediate erosion. Paramount should be required to submit annual reports due on July 1st of each year detailing remediation measures taken by Paramount in response to sediment deposits in water bodies and erosion to regulatory agencies and to the aboriginal communities that were registered as parties in this EA. Paramount shall also make the reports readily available to the public and other government agencies. Any deposit of sediment into a water body / watercourse should require Paramount to immediately implement remediation measures and notify First Nations and the appropriate government agencies.

NEB Draft Condition 1

NEB Draft Condition 1 states:

Unless the Chief Conservation Officer otherwise directs, the applicant shall implement or cause to be implemented all of the policies, practices, mitigative measures, recommendations and procedures for the protection of the environment referred to in the Mackenzie Valley Environmental Impact Review Board Environmental Assessment process (EA 03-005), its application and any subsequent filings made in support thereof, and its undertakings to other regulatory agencies.

Ka'a'Gee Tu Response to Draft Condition 1

Draft Condition 1 is meant to address MVEIRB Measures 1, 8 and 10, which the NEB has accepted as written by the MVEIRB.

The Ka'a'Gee Tu are concerned about the words "unless the Chief Conservation Officer otherwise directs" in Draft Condition 1. Potentially, this language grants the discretion to the NEB to allow Paramount to not do what it has committed to do or what it has been instructed to do by the MVEIRB.

Such a result is not permissible. The NEB is required under the *MVRMA* to carry out and enforce the final measures adopted after an EA. The NEB does not have the discretion to choose to ignore or not enforce an adopted measure. Similarly, the implementation of all of the "policies, practices, mitigative measures, recommendations and procedures for the protection of the environment" that were referred to during the EA form part of the MVEIRB's decision and also must be enforced by the NEB. It is not clear on what legal basis the NEB asserts it may assume this discretionary authority in a condition. Indeed, for the NEB to be empowered to dispense with adopted MVEIRB recommendations on the discretion of the Chief Conservation Officer would undermine the integrity of the environmental assessment process.

If the NEB concludes that a clause granting discretion to the Chief Conservation Officer is permissible and necessary, then it is required that there be some structure to that discretion. As has been clarified by the Supreme Court of Canada in *R. v. Adams* [1996] 3 S.C.R. 101, where there is a lack of criteria pertaining to the exercise of discretion, a regulatory scheme must structure the exercise of a discretionary power to ensure that the power is exercised in a manner consistent with the Crown's special fiduciary duties towards aboriginal peoples. It is also established that constitutional provisions can act as a brake on apparently broad discretions. (*Slaight Communications v. Davidson* [1989] 1 S.C.R. 1038)

The NEB must clarify the purpose and on grounds on which it is assuming discretion to in relation to adopted MVEIRB recommendations, and either delete the phrase or appropriately structure this use of discretion to ensure that power is exercised in a manner consistent with the obligations owed to the Ka'a'Gee Tu.

Other than the issue of discretion, the Draft Condition is acceptable to the Ka'a'Gee Tu for implementing Measures 1, 8 and 10 with one exception. It must be clear to Paramount that in implementing Measure 10, it is not within Paramount's discretion to determine whether or not the Ka'a'Gee Tu are "affected" or "potentially affected" by a spill. Paramount must accept that the Ka'a'Gee Tu are affected by all spills that occur in their traditional territory and simply notify the Ka'a'Gee Tu. Language to this effect needs to be added to the Draft Condition.

Further, MVEIRB Measure 17 (Paramount directly notifying the Ka'a'Gee Tu of potential heritage resource discoveries) is similar in both its intent and application as Measure 8. Measure 17 should be brought under the enforcement umbrella of Draft Condition 1.

Ka'a'Gee Tu Proposed Modifications

The NEB should apply Draft Condition 1 to Measure 17. The NEB must also clarify the issue relating to the discretion it is to be granted, and the basis for that discretion. Draft Condition 1 should be modified as follows:

~~Unless the Chief Conservation Officer otherwise directs, the~~ The applicant shall implement or cause to be implemented all of the policies, practices, mitigative measures, recommendations and procedures for the protection of the environment referred to in the Mackenzie Valley Environmental Impact Review Board Environmental Assessment process (EA 03-005), its application and any subsequent filings made in support thereof, and its undertakings to other regulatory agencies. For additional clarity, in implementing Review Board Measure 10, Paramount is to notify the Ka'a'Gee Tu. It is not within Paramount's discretion to determine whether or not the Ka'a'Gee Tu are "affected" or "potentially affected".

NEB Draft Condition 2

NEB Draft Condition 2 states:

For the time period that the Chief Conservation Officer, in consultation with appropriate

federal and/or territorial government air quality staff, determines is appropriate, the applicant shall as a component of environmental protection planning required under section 60. of the Production and Conservation Regulations ensure that:

- a. a qualified air quality specialist install over the winter of 2004/2005 and maintain in the Cameron Hills SDL(s) and PL(s),
 - i. meteorological monitoring equipment to monitor and record wind speed, wind direction, standard deviation of wind direction and temperature on an instantaneous continuous basis,
 - ii. instantaneous, continuous gas analysis monitoring to track ambient air quality, including, at a minimum, calculation and recording of 1 hour average SO₂, NO₂ and H₂S concentrations;
- b. following Chief Conservation Officer approval of sufficient collection of meteorological data as per condition 2.a.i., detailed re-modeling of the various development scenarios for the Cameron Hills field is undertaken by a qualified air quality specialist;
- c. plain language annual reports on that status of air quality at Cameron Hills, incorporating the data collected as per condition 2.a.ii., are prepared by a qualified air quality specialist;
- d. data, re-modeling and reports collected or prepared as per conditions 2.a., b., and c. are made readily available to the public and other government agencies in a manner approved by the Chief Conservation Officer;
- e. an environmental protection plan is submitted to the Chief Conservation Officer, that outlines,
 - i. current mitigation, monitoring and remediation commitments with respect to environmental protection for all construction and operation activities to be carried out in the Cameron Hills field,
 - ii. a plan for notification of government agencies and other affected parties in the event of an unforeseen construction or operational incident that affects components of the environment, and,
 - iii. a contemporary Cameron Hills field emission mitigation plan that details,
 - a strategy for demonstrating that current and future SO₂, NO_x and H₂S emissions in the Cameron Hills field will not result in exceedences of relevant air quality standards,
 - a statement describing Paramount's commitment to minimizing emissions from facilities in the Cameron Hills field,
 - a contingency plan that includes a comprehensive listing and a decision tree for selection of all possible mitigation options to be implemented in the event that SO₂, NO_x and H₂S emissions in the Cameron Hills field result in measured or predicted exceedences of relevant air quality standards, the contingency plan will outline,
 - ⇒ the mitigation options (e.g., pollution prevention planning, best management/environmental practices, best available technology, etc.)

- currently employed and proposed future options, along with triggers and/or timelines for implementation, and
- ⇒ the mitigation options considered and rejected, along with rationale for rejection;
- f. data, re-modeling, reports or plans collected or prepared as per conditions 2.a., b., c. and e.iii. are submitted to the Chief Conservation Officer and air quality staff at Environment Canada and the Government of Northwest Territories in a manner approved by the Chief Conservation Officer; and,
- g. in the event of any deposit of sediment into a water body / watercourse, it immediately implement remediation measures and notify the Chief Conservation Officer, appropriate government agencies and affected First Nations.

Ka'a'Gee Tu Response to Draft Condition 2

Draft Condition 2 is meant to address Review Board Measures 3, 4, 5, 6 and 9, which the NEB has proposed to modify. Due to concerns expressed earlier, Draft Condition 2 is not capable of fulfilling MVEIRB Measures 5 and 6, which should be implemented as written. The NEB will have to develop new conditions for Measures 5 and 6.

Draft Condition 2 can cover modified Measures 3, 4 and 9 with some changes required to address the suggested modifications that were described previously for the NEB's proposed modified measures.

Ka'a'Gee Tu Proposed Modifications

The Ka'a'Gee Tu submit that Draft Condition 2 should be modified as follows:

For the time period that the Chief Conservation Officer, in annual consultation with appropriate federal and/or territorial government air quality staff, determines is appropriate, the applicant shall as a component of environmental protection planning required under section 60. of the Production and Conservation Regulations ensure that:

- a. a qualified air quality specialist install ~~over the winter of 2004/2005~~ and maintain in the Cameron Hills SDL(s) and PL(s),
- i. meteorological monitoring equipment to monitor and record wind speed, wind direction, standard deviation of wind direction and temperature on an instantaneous continuous basis,
- ii. instantaneous, continuous gas analysis monitoring to track ambient air quality, including, at a minimum, calculation and recording of 1 hour average SO₂, NO_x and H₂S concentrations;
- b. the equipment referred to in 2.a. will be operational by March 31, 2005;
- c. ~~following Chief Conservation Officer approval of sufficient collection of meteorological data as per condition 2.a.i.,~~ by May 31, 2006, and on an annual basis thereafter, detailed re-modeling of the various development scenarios for the Cameron Hills field is undertaken by a qualified air quality specialist;

- d. plain language annual reports on that status of air quality at Cameron Hills, incorporating the data collected as per condition 2.a.ii., are prepared by a qualified air quality specialist;
- e. data, re-modeling and reports collected or prepared as per conditions 2.a., ~~b.c.~~, and ~~e.~~ d. are provided by Paramount to appropriate government agencies and the Ka'a'Gee Tu. Paramount shall also make the reports readily available to the public and other government agencies in a manner approved by the Chief Conservation Officer;
- f. prior to any new production from the Cameron Hills field, an environmental protection plan is submitted (and reviewed and updated annually) to the Chief Conservation Officer and the Ka'a'Gee Tu, that outlines,
 - i. current mitigation, monitoring and remediation commitments with respect to environmental protection for all construction and operation activities to be carried out in the Cameron Hills field,
 - ii. a plan for notification of the Ka'a'Gee Tu, government agencies and other affected parties in the event of an unforeseen construction or operational incident that affects components of the environment, and,
 - iii. a contemporary Cameron Hills field emission mitigation plan that details,
 - a strategy for demonstrating that current and future SO₂, NO_x and H₂S emissions in the Cameron Hills field will not result in exceedences of relevant air quality standards,
 - a statement describing Paramount's commitment to minimizing emissions from facilities in the Cameron Hills field,
 - a contingency plan that includes a comprehensive listing and a decision tree for selection of all possible mitigation options to be implemented in the event that SO₂, NO_x and H₂S emissions in the Cameron Hills field result in measured or predicted exceedences of relevant air quality standards, the contingency plan will outline,
 - ⇒ the mitigation options (e.g., pollution prevention planning, best management/environmental practices, best available technology, etc.) currently employed and proposed future options, along with triggers and/or timelines for implementation, and
 - ⇒ the mitigation options considered and rejected, along with rationale for rejection;
- g. data, re-modeling, reports or plans collected or prepared as per conditions 2.a., ~~b.c.~~ and ~~e.~~ c., d. and f. iii. are submitted to the Chief Conservation Officer, the Ka'a'Gee Tu, and air quality staff at Environment Canada and the Government of Northwest Territories in a manner approved by the Chief Conservation Officer; and,
- h. in the event of any deposit of sediment into a water body / watercourse, it immediately implement remediation measures and notify the Chief Conservation Officer, appropriate government agencies and ~~affected~~-First Nations.

NEB Draft Condition 3

NEB proposed Draft Condition 3 states:

For a time period that the Chief Conservation Officer, in consultation with appropriate federal and/or territorial government air quality staff, determines is appropriate, the applicant shall by 1 June of each year provide evidence to the Chief Conservation Officer that:

- a. current SO₂, NO_x and H₂S emissions in the Cameron Hills field do not result in exceedences of relevant air quality standards; and,
- b. cumulative sulphur emissions from all sources in the Cameron Hills field do not exceed 1.0 tonne/day.

Ka'a'Gee Tu Response to NEB Draft Condition 3

Draft Condition 3 is meant to address Review Board Measures 3, 4, 5, and 6, which the NEB has proposed to modify. Due to concerns expressed earlier, Draft Condition 3 is not capable of fulfilling Review Board Measure 5 and 6, which should be implemented as written. The NEB will have to develop new conditions for Measures 5 and 6.

Draft Condition 3 can cover modified Measures 3 and 4 with a couple of changes required to address the suggested modifications that were described previously for the NEB's proposed modified measures.

Ka'a'Gee Tu Proposed Modifications

For a time period that the Chief Conservation Officer, in annual consultation with appropriate federal and/or territorial government air quality staff, determines is appropriate, the applicant shall by 1 June of each year provide evidence to the Chief Conservation Officer and to the Ka'a'Gee Tu that:

- a. current SO₂, NO_x and H₂S emissions in the Cameron Hills field do not result in exceedences of relevant air quality standards; and,
- b. cumulative sulphur emissions from all sources in the Cameron Hills field do not exceed 1.0 tonne/day.
- c.

NEB Draft Condition 4

The NEB's proposed Draft Condition 4 states:

The applicant shall include in the annual environment report submitted to the Chief Conservation Officer for the Cameron Hills field (section 88. of the Production and Conservation Regulations):

- a. a confirmation, by an officer of the company, that the approved facilities were completed and constructed in compliance with all applicable conditions in this [authorization (or approval)]. If compliance with any of these conditions cannot be confirmed, the officer of the company shall file with the Chief Conservation Officer details as to why compliance cannot be confirmed; and,

- b. a description of all environmental remediation measures taken by Paramount in the Cameron Hills field during the course of the previous year.

Ka'a'Gee Tu Response to Draft Condition 4

Draft Condition 4 is meant to address Review Board Measures 2 and 9, which the NEB has proposed to modify. Draft Condition 4 can cover modified measures 2 and 9 with a couple of changes required to address the suggested modifications that were described previously for the NEB's proposed modified measures.

Ka'a'Gee Tu Proposed Modification

The Ka'a'Gee Tu submit that Draft Condition 4 should be modified as follows:

The applicant shall include in the plain language annual environment report submitted to the Chief Conservation Officer, and to the Ka'a'Gee Tu, for the Cameron Hills field (section 88. of the Production and Conservation Regulations):

- b. a confirmation, by an officer of the company, that the approved facilities were completed and constructed in compliance with all applicable conditions in this [authorization (or approval)]. If compliance with any of these conditions cannot be confirmed, the officer of the company shall file with the Chief Conservation Officer and to the Ka'a'Gee Tu details as to why compliance cannot be confirmed; and,
- c. a description of all environmental remediation measures taken by Paramount in the Cameron Hills field during the course of the previous year.

NEB Draft Condition 5

NEB's Draft Condition 5 states:

Unless otherwise directed by the Chief Conservation Officer, the applicant shall ensure that the annual environmental report prepared as per condition 4. is made readily available to the public and other government agencies in a manner approved by the Chief Conservation Officer.

Ka'a'Gee Tu Response to Draft Condition 5

Draft Condition 5 is meant to address Review Board Measures 2 and 9, which the NEB has proposed to modify.

The Ka'a'Gee Tu make no comments on the wording of Draft Condition 5.

Conclusion

The Ka'a'Gee Tu appreciate this opportunity to make a submission concerning the NEB's proposed modifications. They look forward to being fully included in all further aspects of the post-Report decision-making process.

Yours truly,

MANDELL PINDER



for

Louise Mandell, Q.C.
Barrister & Solicitor

LM/dg

ccs: MVEIRB
Paramount Resources Ltd.
Clients