

Technical Report

For:

EA03-005 Paramount Cameron Hills Extension

Submitted to:

Mackenzie Valley Environmental Impact Review Board

Submitted by:

Ka'a'Gee Tu First Nation

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1 Introduction

Paramount's project is in the Cameron Hills region of the Northwest Territories. This area comprises part of the traditional lands of the Ka'a'Gee Tu First Nation (KTFN), a member of the Deh Cho First Nations (DCFN).

The Ka'a'Gee Tu are the main traditional land users, caretakers and managers of the Cameron Hills area. They remain dependent upon the land and waters in the area for their culture and livelihood. Their constitutional rights to use and occupy these lands are guaranteed by treaty, and protected by s. 35(1) of the *Constitution Act, 1982*. Given their close ties to the land, they are aware of the extensive environmental, economic and social impacts that this project will bring to their way of life.

The KTFN have consistently taken the position that this project overlaps with their traditional and contemporary use area and as such potential impacts and mitigation measures must be fully addressed.

The KTFN are submitting this technical report to provide the Mackenzie Valley Environmental Impact Review Board (Review Board) with their experience with this project and their recommended measures that must be applied to this project.

2 The Ka'a'Gee Tu People

The Ka'a'Gee Tu have used this land since time immemorial. They have sustained their culture through practicing their aboriginal rights to trap, hunt, fish and gather, and share with the community what is harvested from the land. These rights are guaranteed through Treaty 11, and in particular, the right “to pursue their usual vocations of hunting, trapping and fishing.”

Although other First Nations have historic ties to the area, it is the Ka'a'Gee Tu who remain closely connected to this land to the present day. This connection was recognized at a meeting of the Dene National Assembly, August 12-19, 1996, where it was resolved that the Dene Nation fully endorsed the rights of the KTFN to have final approval in future economic and land use activities in their traditional area, which includes Cameron Hills. Given their close proximity to and their use of the Cameron Hills, the KTFN have the most at stake in the implementation of Paramount's project in the Cameron Hills.

3 The Relationship between the Ka'a'Gee Tu and the Land

The land is central to the identity and way of life of the KTFN. There is an expression in their language, which translates to mean, "we are the land." The KTFN have always lived on the land, and when they take something, they always work to give something back. An offering is one component of showing respect for the land.

The KTFN rely, on a year-round basis, on the land. Chief Chicot estimates that three-quarters of the food consumed by the Ka'a'Gee Tu comes from the land, through hunting, trapping, fishing and gathering roots and berries. Their treaty-protected rights to hunt, fish and trap are central to who the KTFN are as a people.

The KTFN continue to teach the young people to learn to live as their Elders did. To know their culture, the children need to know the land. As growing members of their community, the children repair nets and traps, gather foods, and prepare for upcoming seasons of hunting, trapping or fishing. More than keeping their children occupied, this involvement in traditional activities keeps them imbued in the culture of their people. For just one example of this dedication to passing on their heritage, in the first week of March 2004 the KTFN are conducting a trapper-training program in which Elders from the community will be going out on the land with students to teach them how to trap and skin animals.

The KTFN ask that the Review Board and its staff take the time to again watch the video, "The People of Tathlina", that was presented by the KTFN at the Public Hearing in Hay River and to read the KTFN's closing statement. The evident close connection to the land by everyone in the community from youth to Elders, and the importance of the Cameron Hills in particular, is the basis for everything that the KTFN have done in connection with this project to try to protect the land and the community from adverse impacts.

4 History of the Paramount Project

Paramount's operations, both those approved and those proposed, are capable of transforming the Cameron Hills region from a landscape which has supported the traditional way of life and livelihood of the KTFN for centuries, to supporting a large scale multi-year economic venture based on oil and gas production.

Despite limited resources, the KTFN have been involved in the environmental and regulatory processes since the outset of the proposed projects. During this period of time, there has been no workable accommodation for the interference they have and will experience to their economy and way of life caused by the project. While there has been consultation between the parties, this consultation has not been meaningful, and the end result has been that the KTFN have not been accommodated for the foreseeable infringements of the project on their way of life.

Since January 2002, the KTFN and Paramount have endeavored to reach agreement on draft compensation plans. Compensation plans are an extremely important element of the process. It is key to the KTFN that no irreversible steps are taken in this process before such agreements are in place. Compensation plans must address economic as well as cultural components, and not merely lost revenue from harvesting.

The KTFN do acknowledge that Paramount has agreed to meet with them on occasion, and that the parties have had positive and fruitful discussions. However, the end result remains that the project has the potential to infringe the treaty and aboriginal rights of the KTFN, and that no meaningful consultation or workable accommodation has yet been reached.

5 Ka'a'Gee Tu Participation in the EA Process

The Ka'a'Gee Tu First Nation has worked since the outset of the project to be involved in all of the environmental and regulatory processes. The Review Board must recognize the contributions made to date by the KTFN at all stages of this process, and draw upon their previous submissions and presentations.

However, given the limited financial resources that are available to communities to participate in the EA process, this participation has been extremely difficult, particularly with the large volume of material and the technical expertise required to understand and to work with the material. This lack of resources has been particularly difficult given that the KTFN have tried to be fully involved in all of the review processes but they only have a small membership of 40 people upon which their government funding is based.

As a result of their inability to fully participate in the environmental review processes, the KTFN remain concerned about the potential impacts and the effect these impacts have on their ability to sustain their aboriginal rights. These concerns will remain until the KTFN have been provided with adequate resources to determine for themselves how significant the impacts of this project will be on the land of their traditional territories.

In addition to the lack of resources, the KTFN have also been hindered by the difficulty in obtaining information pertaining to matters that are important to them. This problem in obtaining information is attributable to four causes:

1. The Review Board has refused to issue some of the Information Requests that were developed by the KTFN;
2. The Review Board and other parties have refused to answer Information Requests that were issued to them directly by the communities;
3. The Review Board has refused to enforce its Information Requests; and
4. The Review Board has not secured evidence that the measures from EA01-005 have been fulfilled.

Cause #1

The KTFN submitted Information Requests to the Review Board, however, the Review Board refused to issue some of the IRs to the intended IR recipients. This problem was largely in relation to the National Energy Board (NEB) and the Mackenzie Valley Land and Water Board (MVLWB).

In past EAs, and in this EA, the referring body has automatically been granted status as a party. The Review Board's Sept. 24th letter during this EA said that the MVLWB was automatically a party and did not need to apply to the Review Board according to the Rules of Procedure.

However, in the Review Board's Jan.26th letter to the KTFN the Review Board cited the fact that the MVLWB was not a party as the reason for not issuing IRs to the MVLWB. The KTFN do not agree with the Review Board's decision that the MVLWB is not a party to the EA in light of the fact that the MVLWB is the referring body for this EA.

With this decision, the Review Board is changing the rules mid-EA. This decision also allows the MVLWB to not be accountable to the EA process simply by refusing to register as a party.

The potential exists for this decision to be abused in future EAs. For example, if INAC had no issues in a particular EA and decided not to bother registering as a party, then would INAC be excused from participating in the EA?

The KTFN also do not agree with the Review Board's refusal to issue IRs to the NEB. The NEB is the designated regulatory agency for this EA and holds valuable information that can and should be used during this EA. With the Review Board's decision, this information is largely inaccessible, to the detriment of the quality of the EA process, and also to the detriment of the quality of the Review Board's decisions.

Cause #2

On Jan. 8th, the KTFN issued 3 information requests to the Review Board. The Review Board refused to answer these questions. In its Jan. 26th letter to the KTFN, the Review Board said that IRs may not be directed at the Review Board but no reason was provided supporting that position. The KTFN wants to note that there is no prohibition against sending IRs to the Review Board in the Rules of Procedure.

The right to ask questions comes with a responsibility to answer questions. The Review Board has moved beyond facilitating the environmental assessment to being a participant in it by giving itself the right to ask questions. The Review Board should also be prepared to answer questions.

The questions that were posed by the KTFN do not fit within the Request for Ruling process, as the Review Board was not being asked to make decisions or rulings. The Review Board was being asked for information and positions.

Other organizations, including Paramount, the NEB, INAC and the MVLWB also refused to answer the KTFN's questions during this EA.

The NEB and the MVLWB both used the Review Board's decision that they were not parties to the EA as the basis for refusing to answer questions from the KTFN. This ignores that fact that both organizations have a responsibility to be responsive to, and to answer questions from, the community. The fact that the NEB and the MVLWB were not considered parties in the EA was the reason why the Review Board did not issue the IRs but that decision by the Review Board has no bearing on the right of the community to ask questions directly of the NEB and the MVLWB or on the responsibility of the NEB and the MVLWB to answer questions from the community. Both the NEB and the MVLWB failed to live up to their responsibilities to the KTFN.

Paramount and INAC both refused to answer questions from the KTFN by hiding behind the Review Board's EA process and refusing to answer questions that came directly from the community. The Rules of Procedure do not prevent or take away the right of parties

to ask questions of other parties. The EA process allows the community to ask questions directly of Paramount and INAC and allows them to respond. In fact, the parties dealing with each other directly is the best way to resolve issues and get information more quickly. The KTFN placed their IRs to Paramount and INAC on the Public Registry and asked that Paramount and INAC also place their responses on the Public Registry. In that way all parties, including the Review Board, would have had the benefit of the question and an answer during the EA process. However, both Paramount and INAC refused to respond. With these decisions, Paramount clearly revealed its lack of commitment to a meaningful relationship with the community and INAC failed to fulfill its fiduciary duty to the community.

Cause #3

Paramount refused to answer, or only gave partial answers to, many IRs, that would have provided the community with required information for them to determine for themselves how extensive the impacts due to this project have been and will be.

The value of the Review Board's IR process, and the EA process as a whole, is greatly diminished when Paramount and others can choose which IRs they will or will not answer.

By accepting and issuing the IRs, the Review Board took ownership of the community's IRs. The onus was on the Review Board to verify that the IRs had been answered in full and to take appropriate action if they had not been. However, the Review Board did not enforce its IR process and much valuable information is missing from the Public Registry.

Cause #4

In EA01-005 (the Pipeline and Gathering System EA), the Review Board applied 21 measures with 17 of them being directed to the NEB and/or the MVLWB. The Review Board did not secure evidence on whether or not these measures have been fulfilled.

The KTFN attempted to get this information on the Public Registry by using an IR to the MVLWB and the NEB but the Review Board refused to issue it because it does not consider them to be parties to the EA. When the KTFN went directly to the MVLWB and the NEB to get these questions answered, both organizations refused to answer. Through their combined actions, the Review Board, the NEB and the MVLWB have been placing roadblocks in front of the communities by making it difficult to get information.

As a result, there is no evidence that there is any value to the EA process. If these measures have not been fulfilled then EA01-005 was just a meaningless exercise and this current EA likely is as well.

The KTFN note that DCFN has had to go to court to try to enforce measures imposed by the Review Board but not implemented by the MVLWB on the Canadian Zinc project.

By failing to enforce its own measures on the Canadian Zinc project and by failing to obtain evidence that its measures have been fulfilled on this project, the Review Board is not fulfilling its responsibilities to the KTFN or to the *Mackenzie Valley Resource Management Act (MVRMA)* process as a whole.

Summary

Unless the Review Board and the Government of Canada address the issue of adequate participant funding, the extent of the KTFN's participation in the EA process will remain limited at best.

The Review Board also needs to address the causes of insufficient information being placed on the Public Registry. By not having all of the information that it needs, the Review Board is not going to be able to make the best decisions in its Report of EA.

6 Community Issues

The following are some of the issues that the KTFN have raised in this process and the KTFN's recommended measures to be applied by the Review Board.

6.1 Consultation and Accommodation

Full and meaningful consultation with the KTFN must be part of the environmental assessment process, as well as the project itself. This means that all steps of the process must include the time, the opportunity and the resources for the meaningful participation of the community. To date, the resources that are required to allow meaningful participation has not been available and this has severely limited the community's ability to put its positions before the Review Board. Further, the Review Board must address the obligations of the Crown and of Paramount with respect to consultation and accommodation in the project itself.

6.1.1 Legal Requirements for Consultation

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 treaty and aboriginal rights, including cultural interests and economic interests. All parties have obligations to make reasonable inquiries to determine what the community's protected constitutional rights are, and to ensure that they are met in this process.

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.*¹ and *Haida Nation v. B.C. and Weyerhaeuser.*²

The Crown's duty to consult Aboriginal people was first enunciated in the *R. v. Sparrow* case,³ where it was identified as one of the factors relevant to whether the Crown could justify an infringement of an aboriginal right. Since *Sparrow*, the Courts in British Columbia have articulated that the Crown has a duty to consult in circumstances in which the aboriginal right has not yet been proven in a court of law. The Supreme Court of Canada will consider these issues when the Court hears *Haida* and *Taku* in March 2004.

In the Supreme Court of Canada's *Delgamuukw* decision,⁴ Chief Justice Lamer stressed the importance of consultation by the Crown with Aboriginal people regarding decisions, actions and legislation of the Crown, which infringe aboriginal title. The Court found that the Crown's fiduciary duty to consult includes both procedural and substantive obligations. Procedurally, Aboriginal people must be given the relevant information and must be given an opportunity to have their views heard and considered. Substantively,

¹ 2002 BCCA 59 ("*Taku River*")

² 2002 BCCA 147 ("*Haida Nation #1*"); and *Haida Nation v. B.C. and Weyerhaeuser* 2002 BCCA 462 ("*Haida Nation #2*")

³ *R. v. Sparrow*, [1990] 1 S.C.R. 1075

⁴ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010

Aboriginal people must have their rights accommodated through the protection of their economic and cultural interests. Accommodation could include mitigation of harmful impacts or minimal impairment, or negotiated agreements.

In *Taku River*, the provincial Crown had issued a Project Approval Certificate to a developer to re-open a mine, which involved building a highway through the Taku River Tlingit First Nation's traditional territory. The certificate was issued after an extensive environmental assessment process. The majority of the Court of Appeal held that to accept the Crown's proposition that the obligation to consult is only triggered when an aboriginal right has been established in court proceedings would ignore the substance of what the Supreme Court has said, not only in *Sparrow* but in earlier decisions which have emphasized the responsibility of government to protect the rights of Indians arising from the special trust relationship established by history, treaties and legislation.

In the *Haida* case, the Crown had transferred to Weyerhaeuser a tree farm licence ("TFL"), granting exclusive timber harvesting rights respecting one-quarter of the land area of Haida Gwaii. The Haida challenged the decision to transfer the TFL without consultation with them and accommodation of their aboriginal interests, and presented considerable evidence on how the use of red cedar was integral to their culture. The Court of Appeal held that the Crown's fiduciary duty to consult and accommodate arises prior to a court determining their aboriginal rights. This duty is legally enforceable, meaning that the courts will hold the Crown accountable if the Crown fails to meet its obligation.

In *Haida* and *Taku* the Court of Appeal held that the duty to consult could arise before proof of an aboriginal right; the duty can arise where an aboriginal nation demonstrates a strong *prima facie* case of aboriginal rights or title. Where the Crown is making decisions, which are likely to have an impact upon aboriginal interests, there is a legal, equitable and fiduciary duty to consult with the affected group.

Consultation requires participation by all parties. In *Halfway River First Nation v. British Columbia (Minister of Forests)*⁵ the B.C. Court of Appeal affirmed that the Ministry of Forests had a duty to consult the Halfway River First Nation prior to making decisions that might affect aboriginal and treaty rights. The First Nation has a reciprocal duty to participate in consultation.

However, it is important to note, and we stress that this has been the case for the communities, that while the courts require Aboriginal peoples to be responsive to government consultation requests, this can be an onerous task for Aboriginal peoples who have inadequate financial and human resources.

With respect to the consultation obligations of third parties, in *Haida*, the Court of Appeal held that Weyerhaeuser had a legally enforceable duty to consult and accommodate the Haida's interests. The Court allowed the TFL to stand but noted that, given Weyerhaeuser's exclusive rights to the trees, the company's participation was

⁵ [1999] 4 C.N.L.R. 1 (B.C.C.A.)

necessary to achieving workable accommodation. Since the validity of licenses and permits issued by the Crown is legally vulnerable if the Crown does not consult with Aboriginal peoples, it is obviously in the interest of industry to ensure that government does consult or otherwise obtains the support of the Aboriginal people for the license or permit.

The Review Board has recently elaborated upon this in their February 10, 2004 "Report of Environmental Assessment and Reasons for Decision on the New Shoshoni Ventures Preliminary Diamond Exploration in Drybones Bay." In that EA the Review Board found that the developer's efforts to consult with Aboriginal parties did not lead to a greater understanding of the cultural importance and use of the area, thus limiting the mitigation measures proposed in the DAR. On the issue of developer consultation and accommodation it is the position of the KTFN that a similar finding should be made in this case.

The Cameron Hills project has the potential to infringe the treaty and aboriginal rights held by the KTFN and secured by treaty. As such, there is a fiduciary, legal and equitable obligation on both the Crown and Paramount to consult with the KTFN, and to seek workable accommodation, before taking actions that may infringe. From the perspective of the community, this legal obligation of the Crown and of Paramount has not been met.

Access and benefit agreements between Paramount and the KTFN are a practical way to provide mitigation of impacts on the community and accommodation of aboriginal interests. Likewise, socio-economic and environmental agreements with the Government of Canada can aid in fulfilling government's fiduciary duty to the community.

6.1.2 Paramount's Consultation Record

In its response to IR 1.2.28, Paramount states, "Paramount has actively consulted with potentially affected communities, including the KTFN and FPMC, regarding its Cameron Hills development. It believes that the extent that aboriginal and treaty rights will be interfered with by its project is minor. The degree of infringement is certainly not at the end of the spectrum requiring accommodation to the extent that the KTFN/FPMC would have to consent for the project to proceed."

The KTFN disagree completely with Paramount's assessment of its consultation efforts and the extent of aboriginal rights infringement. Paramount's consultation efforts have relied heavily on simply providing information to the community, instead of incorporating the deep and meaningful discussions, including negotiations, to satisfy case law. Paramount's consultation efforts have fallen far short of that which is required to accommodate the significant infringement of aboriginal rights as a result of this project.

For one example of Paramount's attitude towards community consultations, the KTFN issued an IR directly to Paramount asking why Paramount considered the community to merely be its neighbors given that the project is on the community's traditional lands. Paramount refused to answer the community's IR and instead used the Review Board's

Rules of Procedure as a shield. A company that was truly interested in effective and open consultations with the community would have simply answered the question posed.

For another example, Paramount has had significant erosion problems, pipeline breaks and fuel spills in its Cameron Hills operations. Paramount failed to inform the KTFN of any of these problems and when questioned about it responded by stating “Paramount is not aware of erosion and/or pipeline construction and engineering expertise within the Kakisa community membership; therefore, contact was not made with Kakisa about these specific issues.” Paramount is expecting the community to prove in advance that they are worthy of being consulted by Paramount on specific issues.

Paramount has been clearly informed in the past that the KTFN are interested in protecting the land and want to be informed of project activities that have harmed, or have the potential to harm, the environment. The community does not need to prove to Paramount that they are worthy of being consulted. Instead, it is Paramount who needs to prove to the community that they are worthy of operating on the community’s traditional lands. To date, Paramount has not proven that they are.

As revealed during the Public Hearing, Paramount has no consultation principles to guide its consultation efforts nor has Paramount submitted a consultation plan for the review and approval of the community to shape the consultative relationship.

In its response to IR 1.2.28, Paramount stated that consultation and accommodation for this project is primarily the responsibility of the Crown. However, during the Public Hearing, the Crown rejected this position advanced by Paramount.

Paramount’s actions and responses described above reveal a company that has no interest in developing an effective consultation process with the KTFN and demonstrates that Paramount has a very limited understanding about what effective and meaningful consultation actually entails.

6.1.3 Government of Canada’s Consultation Record

Since the validity of licenses and permits issued by the Crown is legally vulnerable if the Crown does not consult with Aboriginal peoples, it is obviously in the interest of Paramount to ensure that government does consult or otherwise obtains the support of the Aboriginal people for the required licenses and permits. To date, however, the Government of Canada and its agents such as the MVLWB and the NEB have failed in this regard.

In the Review Board’s report for the gathering system and pipeline EA, one of the measures that were applied was directed to INAC. Measure #16 required Indian and Northern Affairs Canada (INAC) to provide copies of Paramount’s Benefits Plan annual report to the potentially affected First Nation communities. INAC has not been distributing the annual reports as required and somewhat reluctantly finally agreed to fulfill Measure #16 more than two years later at the recent Public Hearing.

INAC has taken the position that it has no responsibility to consult with the KTFN about environmental problems in the Cameron Hills or to provide the KTFN with the inspection reports. Both the MVLWB and the NEB have also taken the position that they have no responsibility to inform the community about environmental problems and INAC has agreed with these positions.

In response to an IR on INAC's fiduciary duty to the communities, INAC stated that the Review Board and the MVLWB are the primary vehicles for effective environmental assessment consultation with First Nations and Métis groups impacted by proposed developments. INAC is attempting to shift its fiduciary duty to consult onto Boards that have not accepted that role. Consequently, there is a gap in the fiduciary duty process that is not being filled.

INAC has taken the position that it will wait until after the EA and regulatory process have been completed before it will deal with assertions that aboriginal and treaty rights have been infringed. The KTFN does not accept this response and questions the rationale for waiting until the project permits have been issued before addressing potential infringements.

INAC has also failed to provide responses to questions that were posed to it by the KTFN at the Public Hearing.

The Government of Canada has not presented the KTFN with any consultation plan for their review and approval and has made no efforts to satisfy its fiduciary duty to the community.

The NEB, which is an agent of the Government of Canada, has approved project variations that have increased SO₂ emissions without informing or consulting the KTFN.

6.1.4 Deh Cho Consultation Principles

The KTFN ask that when the Review Board is considering whether the duty of consultation has been met in this case, that they consider the Deh Cho Consultation Principles, available on the Public Registry of this environmental assessment. These principles are summarized as follows:

1. government agencies have a duty to consult;
2. coordination by the government agencies is crucial;
3. project proponents have a duty to consult;
4. negotiations must be part of consultations;
5. Deh Cho leaders must be respected;
6. Deh Cho consultations are more than mere "public" consultations;
7. proponents and the Crown must involve Deh Cho leaders at the early planning stage;
8. consultations must analyze the impact on Deh Cho rights;
9. the Crown and the proponent must accommodate Deh Cho rights;
10. project approval depends on accommodation;

11. communities must have the capacity to consult;
12. community representative may participate in discussions on a without prejudice basis;
13. consultation as defined in the Interim Measures Agreement, is not adequate.

The KTFN assert that both the Crown and Paramount owe a fiduciary duty of consultation and accommodation to the community, who can demonstrate a potential infringement of their treaty and aboriginal rights. However, neither organization has come close to fulfilling its responsibilities to the communities under the Deh Cho Consultation Principles.

The KTFN have noted that the Review Board issued an IR asking when the Consultation Principles were publicly available. It is the position of the community that the date of issuance of the Principles is irrelevant as the Principles are directly based upon case law that has been available for varying periods of time. If Paramount and the Government of Canada were interested in an effective and meaningful consultation process, they would have been incorporating the latest court decisions into their consultation processes as these decisions were issued.

The duty of consultation is one of meaningful consultation, and the duty of accommodation is to seek workable accommodation. The position of the KTFN is that these duties have not, as of yet, been met, and that this has resulted in significant social impacts and public concern in the community.

6.1.5 Recommendations

The KTFN is recommending that the following measures be applied by the Review Board:

- 1) Paramount and the Government of Canada each must submit a draft consultation plan to the KTFN that adheres to the Deh Cho Consultation Principles and that fulfills each organization's specific responsibilities to the community. The Government of Canada consultation plan is to cover the activities of its agents including the NEB and the MVLWB.
- 2) The KTFN will review, amend and approve the Paramount and Government of Canada consultation plans in consultations with each organization.
- 3) These two community-approved consultation plans must be in place prior to any additional authorizations being issued by the MVLWB or the NEB to Paramount for this project.
- 4) The NEB is to inform and consult with the KTFN on any project variation applications received from Paramount.
- 5) The NEB is to provide the KTFN with copies of the Annual Reports required from Paramount on its Cameron Hills operations. If NEB approval of these reports is

required then the NEB is to consult with the KTFN prior to that approval being issued.

6.2 Access and Benefits Agreement

Access and benefits agreements between resource developers and aboriginal communities are one of the best and most practical ways to develop the conditions under which the developers are allowed access to First Nation's traditional lands, to determine how to mitigate impacts and promote benefits to the communities and the environment, and to accommodate aboriginal interests.

In response to IR 1.2.57, Paramount states, "there is no requirement to negotiate an impact and benefits (IBA)..." Paramount goes on to state, "Paramount is not aware of any regulatory or legislative requirements applicable to the Cameron Hills project area ... that requires a negotiated Benefits Agreement..." Paramount reiterated its refusal to willingly enter into ABA negotiations during the Public Hearing.

The KTFN disagrees with Paramount's conclusion that there is no requirement for it to negotiate an ABA. Paramount's statements on this matter display a narrow, outdated view of ABAs that relies on legislation and regulations instead of the more powerful and encompassing aboriginal and treaty rights.

The KTFN notes that the lack of any regulatory or legislative requirement did not prevent BHP and Diavik from entering into agreements with the communities affected by their respective diamond mines.

The KTFN believes that Paramount's response to IR 1.2.23 and its statements during the Public Hearing clearly reveals its outdated attitude towards aboriginal communities and does not bode well for future Paramount activities outside of its current Significant Discovery License (SDL) area.

The KTFN acknowledge that Paramount did propose a community investment plan but note that the plan was not found to fully address the broader issues that would be contained within an ABA. Consequently, the KTFN did not accept it. The KTFN would be prepared to re-consider the draft community investment plan as part of larger ABA negotiations.

Recommendations

The KTFN is recommending that the following measures be applied by the Review Board:

- 1) Paramount must enter into Access and Benefits Agreement negotiations with the KTFN.
- 2) INAC must fulfill the commitment it made in response to IR 1.2.31 in which INAC stated that it would provide funding to the KTFN for Access and Benefits Agreement negotiations.

- 3) An Access and Benefits Agreement must be in place for the KTFN prior to any additional authorizations being issued by the MVLWB or the NEB to Paramount for its Cameron Hills project.

6.3 Socio-Economic Agreement

In its response to IR 1.2.31(e), INAC states, “A Socio-Economic Agreement is a contractual agreement that captures commitments with respect to opportunities for employment, training and business. It also captures commitments with respect to community and cultural well-being.”

The KTFN recognize the potential value in having a socio-economic agreement in addition to an ABA. A socio-economic agreement would encompass broader public issues beyond the realm of the community and allow the Government of the Northwest Territories (GNWT) to have a formal role in how the project unfolds and impacts the Northwest Territories as a whole.

It is the position of the KTFN that a socio-economic agreement should be required for this project. Some of the reasons for this position are listed below:

1. In response to IR 1.2.26, INAC states, “The Benefits Plan is a best-case scenario. The legislation makes no reference to enforcing the Benefits Plan.” Basically, the Benefits Plan is not enforceable.
2. There is no ABA in place for this project and Paramount has stated that it does not intend to complete an ABA with the KTFN. If the Review Board does not accept the ABA measure recommended by the KTFN, then a socio-economic agreement would be much more important.
3. The GNWT has no formal role in how the project unfolds and impacts the Northwest Territories as a whole.
4. Paramount is refusing to adopt a sole-source contracting approach that would be more successful at creating local benefits from this project.
5. Paramount has refused to establish northern employment or business targets.
6. Paramount does not consider the development of sustainable local economies when making project decisions.
7. Paramount has not been employing a meaningful and effective consultation process to ensure that the concerns of the KTFN are collected and incorporated into the project design and mitigation methods.
8. INAC has not been fulfilling Measure #16 from the Review Board’s Jan. 8, 2002 Report of EA concerning the content and distribution of Benefit Plan Annual Reports. It remains to be seen if INAC will follow through on its recent commitment to fulfill Measure #16.
9. Paramount has a history of being slow to pay its contractors, creating hardship for small northern companies and requiring the GNWT to provide assistance to these companies. In response to IR 1.2.98, Paramount refused to provide the information that was requested on this matter. The KTFN expect that this issue could be addressed within a socio-economic agreement.

Recommendations

The KTFN is recommending that the following measure be applied by the Review Board:

- 1) Paramount, the GNWT and the KTFN must conclude a socio-economic agreement before the MVLWB and the NEB issue any additional authorizations to Paramount for this project.

6.4 Environmental Agreement

In its response to IR 1.2.31(e), INAC states, “Environmental agreements for projects are considered on a case-by-case basis, generally where gaps in the regulatory legislation exist, or for projects that require long term monitoring.”

It is the position of the KTFN that this project meets both requirements cited by INAC and that an environmental agreement should be in place for this project.

Paramount has a demonstrated history of environmental problems with this project and has not been consulting with the KTFN on these problems.

Compounding this is the refusal of government and regulatory agencies, particularly the NEB, the MVLWB and INAC, to accept that they have a responsibility to consult with, or to ensure that Paramount consults with, the KTFN on environmental problems.

With a lifespan of 20+ years, this project will require long-term monitoring. To date the monitoring that has occurred has been disjointed with various studies being undertaken with no clear, consistent environmental management system for having these studies reviewed by the KTFN and appropriate mitigation measures developed. Some examples of the lack of KTFN involvement include the following:

- Paramount did not consult with the KTFN on the VECs to be used in their Developer’s Assessment Report (DAR) for this EA;
- Paramount did not inform or involve the KTFN in the studies that were completed or the remediation efforts in relation to the erosion problems, pipeline breaks and fuel spills;
- Paramount was not required to consult with the KTFN on the design of its wildlife monitoring program or to submit its reports to the community;
- Paramount was not required to consult with the KTFN on the design of its revegetation plan or to submit its reports to the community;
- Paramount was not required to consult with the KTFN on the design of its revegetation monitoring program or to submit its reports to the community;
- Paramount was not required to consult with the KTFN on the design of its noise surveys or to submit its reports to the community;
- Paramount has not completed a Heritage Resources Impact Assessment or a Traditional Use Study that has been led and approved by the community;
- Paramount was not required to consult with the KTFN on the design of its permafrost monitoring program or to submit its reports to the community;

- Paramount did not consult with the KTFN on or provide copies of its Environmental Protection Plan Manual;
- The NEB did not consult with the KTFN prior to approving Paramount's Environmental Protection Plan;
- Paramount, the NEB, the MVLWB and INAC all deny that they have any responsibility to inform or consult with the KTFN about environmental problems associated with the project;
- The NEB has approved project variations that increased SO₂ emissions without informing or consulting with the KTFN; and
- The NEB has not been providing the KTFN with copies of the Annual Report required from Paramount on its Cameron Hills operations.

Recommendations

The KTFN is recommending that the following measure be applied by the Review Board:

- 1) Paramount, the Government of Canada (including the NEB), the GNWT and the communities must conclude an environmental agreement before the MVLWB and the NEB issue any additional authorizations to Paramount for this project.

6.5 Traditional Harvesting

During the 2001 environmental assessment on the Cameron Hills pipeline and gathering system, the lack of a KTFN-accepted, comprehensive process for compensating impacted resource harvesters was a major concern. In response to that concern, the Review Board concluded in its December 3rd, 2001 *Report of Environmental Assessment on the Paramount Resources Ltd. Cameron Hills Gathering System and Pipeline Development* that to prevent significant adverse impacts, the following measures needed to be applied:

- 13) INAC ensures that Paramount discusses its proposed compensation plan with the affected communities and the GNWT. Paramount should widen the scope of the compensation plan as required to ensure that reasonable and credible land and resource use impacts caused by the development and identified by the communities are eligible for compensation.
- 15) INAC and Paramount amend the Benefits Plan approved by INAC on September 25, 2001 to include the revised compensation plan developed as a result of Review Board Measure #13 or that a separate compensation plan be developed to address these concerns. Should Paramount and the communities be unable to come to an agreement on the contents of the revised compensation plan, then INAC should make the final decision and proceed with its approval of the amended Benefits Plan.
- 17) The MVLWB, the NEB and INAC do not take any irreversible steps in relation to this development until INAC has accepted this recommendation for an amended Benefits Plan. When complete, a copy of the amended Plan should be provided to each of the potentially impacted communities and to the Review Board, the MVLWB, the NEB, INAC and the GNWT.

As a result of the post-Report of EA consultations with the federal Minister and the NEB, Measures #13 and #15 were modified and Measure #17 was deleted:

- 13) Paramount is to discuss, develop and implement a wildlife and resource harvesting compensation plan with potentially affected First Nation communities – Deh Gah Got'ie First Nation, Fort Providence Métis, Ka'a'Gee Tu First Nation, K'atlodeeche First Nation and West Point First Nation. The scope of the plan is to include compensation for hunting, trapping, fishing and other resource harvesting activity losses resulting from the development as agreed to by Paramount and the communities. Paramount is to commence the consultations as soon as possible, with a draft plan submitted to the communities within 60 days of EA Report acceptance by the INAC Minister and a final plan submitted to the communities within 90 days of EA Report acceptance. The plan is to apply retroactively to impacts arising from the start of construction of the gathering facilities and pipeline. If requested by Paramount or any of the communities, the GNWT and INAC are to facilitate the discussions on the plan.
- 15) Paramount and the communities are to cooperate to the fullest extent possible in developing the wildlife and resource harvesting compensation plan. If the parties are unable to come to an agreement on the contents of the plan within the 90-day period, an independent arbitrator shall be jointly appointed within 30 days by the GNWT and INAC. The arbitration process shall conclude within 30 days of the appointment of the arbitrator.
- 17) This measure has been deleted.

The proposed process described by the modified Measures #13 and #15 was unsuccessful. It became clear to the KTFN during this process that the lack of any real enforcement mechanism to require Paramount to come to an agreement with the communities was undermining the negotiating process. The communities also felt that Paramount was attempting to play the communities against each other by applying Paramount's baseless policy that it will only sign on to one agreement with all of the communities as a collective.

An enforcement mechanism such as was applied in the original Measure #17 is necessary before the KTFN expects any meaningful negotiations by Paramount.

Given the failure of Measures #13 and #15, the Review Board is obligated either to ensure that the measures are finally fulfilled or to apply new measures.

Recommendations

The KTFN is recommending that the following measures be applied by the Review Board:

- 1) Paramount is to discuss, develop and implement a wildlife and resource harvesting

compensation plan with the Ka'a'Gee Tu First Nation. The scope of the plan is to include compensation for resource harvesting activity losses resulting from the development such as for hunting, trapping, fishing and other traditional activities as agreed to by Paramount and the community. The wildlife and resource harvesting compensation plan is to be completed as part of the Access and Benefits Agreement (ABA) negotiations.

- 2) Unless otherwise approved by the KTFN, the wildlife and resource harvesting compensation plan must be in place prior to any additional authorizations being issued by the MVLWB or the NEB to Paramount for this project.

6.6 Traditional Land Use and Traditional Knowledge Studies

The Cameron Hills has always been and will always be part of the traditional land use area of the KTFN. However, Paramount consistently tries to define traditional land use in the Cameron Hills, and consequently aboriginal and treaty rights, solely on the basis of current activities. This does not respect the fact that traditional land use varies from season to season, year to year and decade to decade.

To understand the impact of this project on traditional land use and to incorporate traditional knowledge into project design and mitigation, much consultation work with members of the community needs to be done by Paramount. In the view of the community, consultation with the individual traditional land users and knowledge-holders is very important.

To date, however, Paramount has not studied nor even identified many community members who have used or are currently using the area. More consultation work is necessary to identify the short-term and long-term implications to this fundamental aboriginal practice and right.

The importance of this work was demonstrated at the community meeting in Kakisa. The Review Board was informed by a couple of Ka'a'Gee Tu trappers that they have not used the Cameron Hills area in the last couple of years. This does not mean that these individuals have given up their right to use the Cameron Hills in the future, nor have they given up their right to have a say in determining how development will occur on the Cameron Hills.

The two trappers who said they have not used the area recently said the reason for this is that they were not getting as many animals as they used to and they felt that the animals were voiding the area due to the increasing amount of development on the plateau. These statements alone are proof of the infringement of aboriginal rights and title as a result of this project.

When the people of the KTFN cannot use the land as they have in the past without being concerned about contamination or without trying to avoid developed areas, then that is an infringement of their aboriginal and treaty rights.

The KTFN realize that to have this traditional land use and traditional knowledge work completed, Paramount must be provided with access to the appropriate community members. However, the community is not just going to hand over the names and phone numbers of its traditional land users to a company that has refused to even acknowledge that aboriginal and treaty rights exist in the Cameron Hills and has refused to enter into any access and benefits negotiations that are not required by legislation or regulations.

The first step in the process of effectively integrating traditional land users and traditional knowledge into the project design process is for Paramount to recognize and acknowledge the aboriginal and treaty rights that exist in the Cameron Hills and agree to enter into ABA negotiations. It is through that process that Paramount will be provided access to the community's traditional land use information and traditional knowledge. However, given statements made by Paramount at the Public Hearing regarding aboriginal and treaty rights and access and benefits negotiations, it is apparent to the KTFN that this work will only get done if Paramount has no choice but to do it.

Recommendations

The KTFN is recommending that the following measures be applied by the Review Board:

- 1) Paramount is to fund traditional land use and traditional knowledge studies that are led by the KTFN working with Paramount and its consultants. The particulars of completing these studies are to be discussed as part of the Access and Benefits Agreement negotiations.
- 2) Unless otherwise approved by the KTFN, these traditional land use and traditional knowledge studies are to be completed prior to any additional authorizations being issued by the MVLWB or the NEB to Paramount for this project.
- 3) Any required mitigative measures identified by the studies must be incorporated into the project design and operations.

6.7 Heritage Resources

Paramount has completed a Heritage Resource Impact Assessment (HRIA) but this study was not done in partnership with or under the leadership of the KTFN. For such a study to be considered accurate and valid, it must be funded adequately by Paramount but led by the KTFN working with Paramount and its consultants. However, during the Public Hearing, Paramount refused to commit to undertaking such a study.

As stated by KTFN Elders during the Kakisa community meeting, the KTFN have burial sites located inland, including in the Cameron Hills, however the exact locations of these sites are not currently documented.

It is the position of the KTFN that a HRIA must be completed to appropriately and accurately document the heritage resources of the Cameron Hills and to assess and mitigate potential impacts to them.

In its January 2002 Report of EA, the Review Board applied Measure #12:

- 12) The MVLWB and/or the NEB ensure that Paramount revises its proposed heritage resource discovery process to incorporate the concerns of local communities, including the hiring of local environmental monitors to identify potential heritage resource discoveries.

In response to this measure, both the NEB and the MVLWB included conditions in their authorizations, including the following condition by the NEB in Order EPO-01-2002:

“Paramount shall ensure that a local person hired as an environmental monitor has responsibility for identifying aboriginal heritage resources during the project clearing, ground-breaking and trenching activities.”

Recommendations

The KTFN is recommending that the following measures be applied by the Review Board:

- 1) Paramount is to fund a Heritage Resource Impact Assessment (HRIA) that is led by the KTFN working with Paramount and its consultants. The particulars of completing this study are to be discussed as part of the Access and Benefits Agreement negotiations.
- 2) Unless otherwise approved by the KTFN, the HRIA must be completed prior to any additional authorizations being issued by the MVLWB or the NEB to Paramount for this project.
- 3) Any required mitigative measures identified by the HRIA must be incorporated into the project design and operations.
- 4) Paramount shall ensure that a KTFN member hired as an environmental monitor has responsibility for identifying aboriginal heritage resources during the project clearing, ground-breaking and trenching activities.
- 5) Paramount is to directly inform the KTFN when a potential heritage resource is discovered.

6.8 Timber Harvesting and Windrowing

Paramount says that some of the timber that it cuts down will be used for the construction of corduroy roads.

In response to IR 1.2.22(c), the GNWT stated the following:

“There currently are no Forest Management Authorizations required by Paramount to conduct their activities. ... However, the timber remains

under the control of the GNWT. Therefore, Paramount cannot use the timber for any purpose... If Paramount wishes to use the timber for any purpose (for example: construction of corduroy roads or chipping for insulation) a Forest Management Authorization would be required. If this occurs, timber cutting and reforestation dues would be paid to the GNWT.”

In Section 5 (Regulatory Regime) of its EA report, Paramount did not identify a GNWT Forest Management Authorization as a requirement of the project.

The KTFN is interested in knowing if Paramount has been in violation of GNWT legislation through the past use of timber for its own purposes without acquiring a Forest Management Authorization. The KTFN is concerned about adverse impacts on timber resources as a result of unregulated use of timber by Paramount.

Paramount is also proposing that slash and unused timber be windrowed along the rights-of-way with windrow breaks of at least 10 m breaks every 400 m. Paramount states that its proposed spacing is to minimize the potential wicking effect during forest fires and to promote wildlife movement.

In response to IR 1.2.50, the GNWT stated that it does not agree that Paramount’s proposed windrow break spacing is sufficient. The GNWT requested a minimum break width of 10 m at a maximum distance of every 100 m.

Recommendations

The KTFN is recommending that the following measures be applied by the Review Board:

- 1) The GNWT is to investigate Paramount’s past use of timber to determine if Paramount has violated GNWT legislation. If yes, then the GNWT is to take appropriate steps to recover timber cutting and reforestation dues that should have been paid and to apply punitive measures to the extent of the GNWT’s authority.
- 2) Paramount must apply for a Forest Management Authorization for any use of timber, such as the construction of corduroy roads.
- 3) Paramount must create windrow breaks at least 10 m in width at a maximum spacing of 100 m.

6.9 Watershed Protection

The KTFN is very dependent upon the water and the land not becoming polluted. It is of utmost importance to maintain the Tathlina Lake/Kakisa Lake watershed in a pollution free state. Tathlina Lake is particularly sensitive to pollution because it is a shallow lake and does not have the volume and flow required to dilute or flush out materials.

Potential impacts of this project are not confined to the plateau of the Cameron Hills as the water flows off the Cameron Hills into the Tathlina Lake watershed. In addition to their concerns about the quality of the water itself, the community is very concerned about the impact of pollution on their aboriginal right to fish.

The community is concerned about the potential for future pipeline breaks occurring that could pollute the water. They are also concerned about erosion and resulting sedimentation into water bodies.

Although the KTFN are aware that Paramount is supposed to adhere to Department of Fisheries and Oceans (DFO) protocols for water crossings and water withdrawals, the community does not have faith in DFO's ability to enforce these protocols through timely inspections. The community also notes that the water withdrawal protocol is still being refined.

The KTFN also remained concerned about the lack of site-specific data that would enable an evaluation of potential water quality impacts due to the high air emissions of this project.

Recommendations

The KTFN is recommending that the following measures be applied by the Review Board:

- 1) Paramount, the NEB, the MVLWB and INAC must inform and consult with the KTFN on potential or confirmed impacts to water quality. This includes, but is not limited to, any problems related to erosion, pipeline breaks, sedimentation, water crossings and water withdrawals.
- 2) Paramount, in consultation and partnership with the KTFN, must complete baseline water sampling and implement a monitoring program with 3-month sampling intervals to determine if air emissions are having an effect on water quality.

6.10 Accidents and Malfunctions

The KTFN remains concerned about the reliability of monitoring and shut-off controls associated with the facility. They are concerned that any accident or malfunction will lead to polluted land and watercourses. There have been large spills in the area arising from Paramount's operations, and the KTFN is concerned that other spills will occur without their knowledge.

The KTFN is also concerned that not enough study has been undertaken to understand the relationships between heat transfer from the pipelines to the surrounding ground, melting permafrost, erosion and pipeline breaks.

From reading the INAC inspection reports, it is clear the Paramount does not have an adequate understanding of permafrost issues and has not been acting to repair problems

in a timely fashion. For example, a quote from INAC's Sept. 26th, 2003 inspection report is: "Subsidence of the trench, between the north and south drainage, is still occurring and appears to be the result of permafrost melting back from the trench walls. The trench is now as wide as 4 m in places."

There are also numerous other issues identified in the INAC inspection reports that require follow-up. It is apparent from reviewing that inspection reports and INAC's summary of outstanding issues that Paramount has been doing a poor job of handling its drilling muds and cuttings and that Paramount has been having problems with sump subsidence.

The consequences of melting permafrost, pipeline breaks, erosion, contamination from mishandling drillings muds and cuttings, and sump releases could range from minor to severe. Paramount must address these problems.

Paramount did not provide the KTFN with the information that was requested in IR 1.2.102 on the Cameron Hills statistics on well blowouts, pipeline breaks and spills and comparing these figures to industry-wide figures. Although Paramount agreed to provide this information during the Public Hearing, it has still not been provided.

The KTFN is not aware of any well blowouts in the Cameron Hills and so they are unable to calculate the frequency of such events.

Paramount stated in the DAR that on an industry-wide basis, the probability of a pipeline either leaking or rupturing was 10.7×10^{-4} incidents/km of pipeline/year. The KTFN is aware of three pipeline breaks in the Cameron Hills in the 2-year history of the gathering system. The KTFN wanted Paramount to provide a comparison of these numbers to the industry-wide figure. Paramount has not complied with this request.

Working backwards from the industry-wide break frequency and using Paramount's 3 breaks and 2 year operating history, the KTFN has calculated that to be at the industry average, Paramount would have to have about 1400 km of pipelines in the Cameron Hills gathering system. As Paramount clearly has far less than 1400 kilometers of pipelines, this leads the KTFN to conclude that Paramount is a high-risk operator that needs to be closely monitored.

Similarly, Paramount has also failed to provide the KTFN with its Cameron Hills statistics on spills and a comparison of this figure to the industry-wide figure of 2% (Note: Paramount incorrectly had this figure at 0.02% in its DAR.) Using information from Table 5.1-1 in IR 1.2.36 (a high estimate of 45 facilities) and the spill list in IR 1.2.102 (37 spills in the last 2 years), the KTFN calculates Paramount's spill rate to be approximately 40%, which far exceeds the industry-wide figure of 2%. Again, this leads the KTFN to conclude that Paramount is a high-risk operator that needs to be closely monitored.

The KTFN note that Paramount, the NEB, the MVLWB and INAC have all denied that they have any responsibility to inform and consult with the KTFN about environmental problems. INAC has also said that it has no requirement to provide the community with its inspection reports.

Recommendations

The KTFN is recommending that the following measures be applied by the Review Board:

- 1) Paramount must directly inform and consult with the KTFN on any erosion problems, pipeline breaks and spills. Community notification must occur within a similar timeframe as notification is provided to the NEB, the GNWT, INAC and/or the MVLWB.
- 2) Paramount must complete a study on the potential relationships between heat transfer from the pipelines to the surrounding ground, melting permafrost, erosion and pipelines breaks. Paramount must develop and implement mitigative measures as part of this study. Paramount is to work with the KTFN on the completion of this study.
- 3) Paramount must undertake a study to investigate why its spill rate is far higher than the industry-wide figure. Paramount must develop and implement mitigative measures to bring its statistics in line with the industry-wide figure of 2%. Paramount is to work with the KTFN on the completion of this study.
- 4) Paramount must develop and implement a protocol to improve its handling of drilling muds and cuttings. Paramount is to work with the KTFN on the completion of this protocol
- 5) Paramount must study the cause of its problems with sump subsidence, the potential impacts and risks of sump releases, and develop and implement mitigative measures. Paramount is to work with the KTFN on the completion of this study.
- 6) INAC and the NEB must provide the KTFN with copies of inspection reports within 1 week of the inspection occurring. INAC and the NEB must also provide the KTFN with copies of any orders or instructions that are issued to Paramount within 1 week of the order or instruction being issued.

6.11 Access

The KTFN is concerned that this project will increase access to their traditional territories by non-community members. Their concern is that this will lead to increased pressure on the hunting and fishing resources upon which they rely, and over which they have aboriginal rights, due to more people entering the area.

Representatives of the KTFN recently visited the Cameron Hills and noted that there was no gate being used on the winter road. There was only a trailer with a staff person who records license plate numbers as vehicles pass.

Recommendations

The KTFN is recommending that the following measure be applied by the Review Board:

- 1) Paramount must install, and keep locked, a gate across the winter access road to the Cameron Hills. The gate is to be unlocked only to allow Paramount vehicles to pass. Community vehicles will also be permitted to go through the gate.

6.12 Air Quality

The KTFN has consistently raised the concern that there has been inadequate consideration of the impacts on air quality. These concerns have been borne out by the evidence being presented in this EA by Environment Canada and the GNWT. The KTFN is very supportive of the efforts and recommendations being made by the Government of the Northwest Territories and Environment Canada on the issue of air quality.

The KTFN is very concerned about Paramount's method of increasing stack heights until the air emissions are just below the guidelines. The KTFN wants the total emissions reduced, not just spread over a larger area. The KTFN is also concerned about the negative aesthetic impacts of having very tall stacks (as high as 19 m) that are much higher than the surrounding vegetation.

The KTFN has concerns about the baseline meteorological data from Fort Smith being used at Cameron Hills. The KTFN wants a meteorological station installed on the Cameron Hills to collect data.

The communities are concerned about the apparent lack of monitoring and enforcement of air quality emission limits.

Recommendations

The KTFN is recommending that the following measures be applied by the Review Board:

- 1) Paramount is not to install any stacks that are higher than the average height of the surrounding vegetation.
- 2) Paramount is to immediately install a fuel gas sweetening system.
- 3) Paramount is to install a meteorological station and air quality monitoring equipment on the Cameron Hills.
- 4) The NEB, the MVLWB, INAC, the GNWT and Environment Canada are to work together, and with the KTFN, to develop an air quality monitoring and enforcement protocol for this project. This protocol must be in place prior to any

additional authorizations being issued by the MVLWB or the NEB to Paramount for this project.

- 5) All recommendations made by the GNWT and Environment Canada must be implemented.

6.13 Drugs and Alcohol

The KTFN is concerned about the use of drugs and alcohol in industrial camps on their traditional territory. As the inspecting agencies, the KTFN wants the NEB and INAC to include any drug and/or alcohol observations in their inspection reports.

Recommendations

The KTFN is recommending that the following measure be applied by the Review Board:

- 1) The NEB and INAC must look for and include any drug or alcohol observations in their inspection reports.

6.14 Plants

In addition to hunting and fishing, the KTFN also gathers roots and berries from the land for sustenance and for medicinal purposes. For example, there is one plant, rat root, which is a medicine used by the community to diminish pain. This plant grows in creeks and marshes, and is usually gathered in the fall. The community is concerned that the impact on their gathering patterns and on the plants themselves has not been adequately studied.

Recommendations

The KTFN is recommending that the following measures be applied by the Review Board:

- 1) Paramount is to fund a traditional plant use study led by the KTFN working with Paramount and its consultants. The study is to evaluate how the project impacts upon traditionally used plants, such as rat root, and how the project impacts upon the community's plant gathering patterns. This study can be completed as part of the traditional land use study recommended in Section 7.6. The particulars of completing this study is to be discussed as part of the Access and Benefits Agreement negotiations.
- 2) Unless otherwise approved by the KTFN, this plant study is to be completed prior to any additional authorizations being issued by the MVLWB or the NEB to Paramount for this project.
- 3) Any required mitigative measures identified by the study must be incorporated into the project design and operations.

6.15 Wildlife

Hunting and trapping is fundamental to the KTFN's way of life. It is not yet known what impact this project will have on migratory patterns, and the long-term effects on the ability of the community to sustain themselves and their children. The concerns with respect to moose and caribou include over-hunting related to access, and changes in populations related to the intensity of the project's activities on our traditional territory.

The KTFN has reviewed the wildlife analysis and recommendations being made by the GNWT. The KTFN strongly support all of the recommendations being made by the GNWT and feel that the formation of the Deh Cho Boreal Caribou Working Group and the completion of the Boreal Caribou Range Plan are essential steps to try to ensure the protection and survival of the caribou in the area.

The KTFN remains concerned about the lack of any study of the potential impacts on wolves and wolverines. Paramount has refused to provide the analysis that was requested by the community.

The impacts on wolves is of significant interest to the community not only from an environmental perspective but from an economical perspective as local trappers get prices as high as \$400 for wolf pelts.

Wolverines are known to be a sensitive species and the community feels that special mitigative measures must be applied. However, without appropriate impact analysis, it is difficult to determine what those measures should be.

Paramount has also refused to provide an adequate response to IR 1.2.64, which dealt with impacts on wildlife due to odors and reduced visibility.

During a recent site visit, representatives of the KTFN easily noticed strong odors while driving in the project area. Paramount's response to IR 1.2.64 was that because air quality guidelines are not exceeded, there is no requirement to assess the impacts of odor. This is not an acceptable response for the community.

Given the statements by Paramount representatives about the low levels of wildlife use on the Cameron Hills, the KTFN is concerned that the wildlife monitoring program developed by Paramount is not adequately assessing the level of wildlife use of the Cameron Hills. The KTFN believes that their input into the design of the monitoring program would significantly improve the quality of the data collected.

Recommendations

The KTFN is recommending that the following measures be applied by the Review Board:

- 1) All recommendations made by the GNWT must be implemented.
- 2) Paramount is to fund a study of the impacts on wolves and wolverines. The study

is to be led by the community working with Paramount and its consultants.

- 3) Paramount is to fund a study of the impacts on wildlife due to project odors and reduced visibility. The study is to be led by the community working with Paramount and its consultants.
- 4) Unless otherwise approved by the KTFN, these wildlife studies are to be completed prior to any additional authorizations being issued by the MVLWB or the NEB to Paramount for this project.
- 5) Any required mitigative measures identified by the wildlife studies must be incorporated into the project design and operations.
- 6) Paramount is to consult with the KTFN on modifications to its wildlife monitoring program.

6.16 Pipeline and Access Route Selection

The KTFN has consistently expressed concern about the creation of new cutlines and believe that route selection should primarily be made on the basis of utilizing existing cutlines. However, Paramount did not answer our Information Request on this matter, and did not provide a satisfactory answer on this issue during the Public Hearings.

The NEB, the MVLWB and the Review Board all refused to provide answers to the KTFN's IR on this subject and the GNWT and INAC responded that they have no set criteria or criteria weighting that should be applied.

Recommendations

The KTFN is recommending that the following measure be applied by the Review Board:

- 1) The NEB and the MVLWB, in consultation with the KTFN, must establish a set of criteria and criteria weighting to be used for the selection of project pipeline and access routes.

7 Conclusion

Assessing the long-term impacts of this project on the sustainability of the KTFN is very difficult. This means that an ABA and other agreements between the parties are very important. Once these agreements have been reached, and a full assessment of the long-term impacts of this project on the traditional way of life of the community has been realized, then the community can assess their ability to participate in the new economy of their traditional territory. Until these agreements are in place, the KTFN feels that no additional authorizations should be issued to Paramount for this project.

If additional authorizations are issued without these agreements, the KTFN is concerned that the project will go forward without meaningful consultation and workable accommodation and without respect for their land and the future sustainability of their community. In the absence of resolution of the fundamental issues of conflicting land use between Paramount and the community, and until such time as there has been meaningful consultation and workable accommodation, the community adamantly opposes this project.

The KTFN want to point out that the federal government, prior to the Deh Cho Process and with no aboriginal involvement or consent, issued the Significant Discovery License held by Paramount in the Cameron Hills. It is primarily for that reason that we are in the situation that we are in today. However, there have been numerous opportunities for both Paramount and the federal government to rectify past mistakes through the building of close working relationships with the community. So far neither Paramount nor the federal government have taken those opportunities.

The corporate attitude of Paramount must change. Paramount needs to realize that the KTFN is not their “neighbours” but are actually the caretakers of the land where Paramount seeks to have their project. Paramount operates on the traditional lands of the KTFN. Paramount’s dealings with the community need to reflect that fact with the proper respect given to the community through adequate consultation and accommodation. Thus far, that respect has not been shown.

The KTFN are looking forward to a report from the Review Board that emphasizes the significance of the community being a part of the development process. The KTFN also want to remind the Review Board and the Government of Canada of the following quote from the Speech from the Throne 2004, delivered on Feb. 2nd, 2004:

“Safeguarding our natural environment — in the here and now, and for generations to come — is one of the great responsibilities of citizens and governments in the 21st century.”