

**Kimberley Cliffe-Phillips**

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**From:** Albert Lafferty [pvmmetis@ssimicro.com]  
**Sent:** Tuesday, February 10, 2004 2:19 PM  
**To:** Kimberley Cliffe-Phillips  
**Cc:** joeacorn@theedge.ca  
**Subject:** Draft - Presentation Public Hearing - Paramount Resources

Hi Kim,

Here is our draft public hearing for you to consider. Mr. Joe Acorn, Consultant will be appearing before the hearing on our behalf.

Please be advised that we will likely be submitting changes, additions or revisions to this draft by the deadline on Thursday afternoon.

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A member of the Deh Cho First Nations in the southwestern portion of the Treaty 11 area in the N.W.T.

## **Feb. 18-19, 2004 Public Hearing Presentation to the Mackenzie Valley Environmental Impact Review Board (Review Board)**

**By the Fort Providence Metis Council (FPMC)**

**Presented by Joe Acorn, Consultant to the FPMC**

Hello. My name is Joe Acorn. I am an environmental and regulatory consultant and I have been retained by Deh Cho First Nation (DCFN) to work with the local Deh Cho communities on issues regarding Paramount Resources Ltd.'s Cameron Hills operations. I will be presenting the FPMC's position and recommendations on various topics.

The Fort Providence Metis Council is a directly affected party in this Public Hearing. The Cameron Hills area has been and continues to be used by the membership of the FPMC. Based on their traditional use of this area, it is the position of the FPMC that their members have the right to reap the rewards of development in the Cameron Hills and they also have the right to expect Paramount, the Review Board and others to work diligently with the FPMC to ensure the protection of the environment.

The FPMC's has been involved in this EA through the issuance and review of information requests. This presentation will focus on topics that the FPMC had previously addressed through the issuance of Information Requests, both through the Review Board and directly to other EA parties. These topics include:

- Traditional Harvesting
- Timber Harvesting
- Impact and Benefits Agreement
- Heritage Resources
- Consultation
- Business Opportunities
- Environmental Agreement
- Socio-Economic Agreement
- Fiduciary Duty

### **Traditional Harvesting**

During the 2001 environmental assessment on the Cameron Hills pipeline and gathering system, the lack of a community-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, 2002 *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 Go'tie First Nation, Fort Providence Metis, 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 FPMC 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. An enforcement mechanism such as was applied in the original measure #17 is necessary before the FPMC 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. The FPMC recommends that the Review Board re-apply Measures #13 and #15 as-is but that Measure #17 be rewritten to supply the enforcement mechanism that it was originally intended to provide. Specifically, the FPMC 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 potentially affected First Nation communities - Deh Gah Go'tie First Nation, Fort Providence Metis, 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.

2) 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.

3) The MVLWB and the NEB do not issue any additional authorizations in relation to this development until Measures #1 and #2 have been fulfilled.

### **Timber Harvesting**

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 FPMC 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 FPMC are concerned about adverse impacts on timber resources as a result of unregulated use of timber by Paramount. The FPMC recommends that the Review Board apply the following measures:

- 1) The GNWT 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.

### **Impact and Benefits Agreement**

In response to IR 1.2.23, Paramount states, “there is no requirement to negotiate an impact and benefits (IBA) with the FPMC.” 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...”

The FPMC disagree with Paramount’s conclusion that there is no requirement for it to negotiate an IBA with the FPMC. Paramount’s statements on this matter display a narrow, outdated view of IBAs that relies on legislation and regulations instead of the more powerful and encompassing aboriginal and treaty rights.

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

The FPMC believe that Paramount’s response to IR 1.2.23 clearly reveals its 1950s

attitude towards aboriginal communities and does not bode well for future Paramount activities in the Deh Cho region after the Deh Cho land claim has been settled.

The FPMC will be assessing the current situation and potentially pursuing an IBA agreement with Paramount through legal avenues.

### **Heritage Resources**

In its January 2002 Report of EA, the Review Board applied Measure #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. The FPMC recommends that the Review Board apply the following measure in this EA:

- 1) The NEB and the MVLWB apply the same heritage resource conditions to Paramount's future authorizations as were applied in the 2002 authorizations issued for the construction of the gathering system.

### **Consultation**

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 not 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 FPMC 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 communities, instead of incorporating the deep and meaningful discussions, including negotiations, to satisfy recent 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 FPMC issued an IR directly to Paramount asking why Paramount considered the FPMC to merely be its neighbors given that the project is on FPMC traditional lands. Paramount has refused to answer the community's IR and is instead using the Review Board's Rules of Procedure as a shield. A company that was truly interested in effective and open consultations with the FPMC would have simply answered the question being asked and not tried to duck the question.

For another example, Paramount has had significant erosion problems, pipeline breaks

and fuel spills in its Cameron Hills operations. Paramount failed to inform the communities of any of these problems and when questioned about it by the Ka'a'Gee Tu First Nation 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 communities to prove in advance that they are worthy of being consulted on specific issues.

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

Paramount has been clearly informed in the past that the communities 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 communities do not need to prove to Paramount that they are worthy of being consulted. Instead, it is Paramount who needs to prove to the communities that they are worthy of operating on the communities' traditional lands. To date, Paramount has not proven that they are.

As with the IBA issue, the FPMC will be assessing the current situation and potentially pursuing a remedy through legal avenues.

### **Business Opportunities**

In its response to IR 1.2.29, Paramount states, "Paramount is not aware of any FPMC offerings of goods and services and invites the FPMC to make Paramount aware of their associated contractors."

The FPMC will take Paramount up on its invitation and will be forwarding to Paramount a list of the FPMC's business capabilities. The FPMC note, however, that if Paramount had an effective and meaningful consultation process in place, Paramount would already be aware of the FPMC's business capabilities.

### **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 FPMC that this projects meets both requirements cited by INAC and that an environmental agreement should be in place for this project.

Paramount has a demonstrated history of not consulting with the local communities on environmental problems. Compounding this is the refusal of government and regulatory agencies to accept that they have a responsibility to consult with, or ensure that Paramount consults with, the local communities 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 and mitigation measures developed.

The FPMC is recommending that the Review Board apply the following measure:

- 1) Paramount, INAC, the GNWT and the local aboriginal communities must conclude an environmental agreement before the MVLWB and the NEB issue any additional authorizations for this project.

### **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."

For the reasons listed below, it is the position of the FPMC that a socio-economic agreement should be required for this project.

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 are no IBAs in place for this project and Paramount has stated that it does not intend to complete IBAs with the communities.
3. Paramount is refusing to adopt a sole-source contracting approach that would be more successful at creating local benefits from this project.
4. Paramount does not consider the development of sustainable local economies when making project decisions.
5. Paramount has not been employing a meaningful and effective consultation process to ensure that the concerns of the local communities are collected and incorporated into the project design and mitigation methods.
6. INAC has not fulfilled the terms of Measure #16 from the Review Board's Jan. 8, 2002 Report of EA concerning the content and distribution on Benefit Plan Annual Reports.

The FPMC is recommending that the Review Board apply the following measure:

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

### **Fiduciary Duty**

Due to an oversight on the Review Board's part, the FPMC's IR on fiduciary duty was issued late and has still not been answered. The FPMC will not be stating a position on this matter until it has had the opportunity to review the response to its IR.