

Mackenzie Valley Environmental Impact Review Board

IN THE MATTER OF: Environmental Assessment EA0506-007:
Paramount SDL-8-2-D Geophysical Program
pursuant to the Mackenzie Valley Resource
Management Act.

AND IN THE MATTER OF: A Request for Ruling to the MVEIRB by the
Ka'a'Gee Tu First Nation that EA0506-007 be
suspended and not recommenced until such time
as legal proceedings T-1379-05 and T-1996-05 in
the Federal Court are completed.

REASONS FOR DECISION

BACKGROUND:

The Department of Indian and Northern Affairs (DIAND) referred the proposed development to Environmental Assessment on November 23, 2005, pursuant to the Settlement Agreement between the Dehcho First Nation and the Government of Canada of July 8, 2005. The Ka'a'Gee Tu First Nation (KTFN) had written to DIAND on September 22, 2005 requesting a referral. The KTFN "*is of the opinion that the proposed project could have an adverse impact on the environment of the Ka'a'Gee Tu's traditional territory*". The proposed development is located between the Cameron Hills and Highway 1, just north of the NWT/Alberta border.

A Work Plan for this environmental assessment was issued December 19, 2005. On December 21, 2005 the Review Board received correspondence from Mandell Pinder Barristers & Solicitors on behalf of Ka'a'Gee Tu First Nation for the above noted Request for Ruling from the Board. On December 23, 2005 the Review Board invited comments from interested parties on the Request for Ruling, to be submitted to the Board by January 10, 2006. Ka'a'Gee Tu First Nation was given until noon, January 13, 2006 to provide any reply.

Four parties responded to the Board: Paramount Resources Ltd., Deh Gah Gotie Dene Council, Fort Providence Metis Council and Indian and Northern Affairs Canada. A reply was received by the Board from Mandell Pinder Barristers & Solicitors on January 12, 2006.



ANALYSIS:

The Review Board makes the following observations in relation to this environmental assessment.

The development in question is distinct from Paramount's Cameron Hills activities assessed earlier in EA03-005, the Cameron Hills Exploration Drilling and Extension Project. It is located at the toe of the Cameron Hills, just north of the Alberta border, approximately 6 km in from highway 1 (see attached map). This is a different geographical area and this Geophysical Program is not related to either of the previous environmental assessments in the Cameron Hills area. In its Request for Ruling, the applicant does not demonstrate a direct link between the activities for this proposed development and previous environmental assessments conducted on different developments by the same developer.

The Review Board notes that the issues raised in legal proceedings in T-1379-05 and T-1996-05 in the federal court and reiterated to the Board in the December 21, 2005 Request for Ruling are matters that are outside the scope of this environmental assessment and are largely outside the Board's authority. An environmental assessment is not the proper venue to address matters related to concerns about:

- The scope of the Responsible Ministers' power to modify recommendations of the Board;
- The proper process to be followed in a consult to modify process;
- The scope and nature of the Crown's duty to consult the Ka'a'Gee Tu in respect of proposed activities in their Traditional Territory, including Cameron Hills, and
- The scope and nature of the Crown's duty to accommodate the Ka'a'Gee Tu's rights in respect of proposed activities in their Traditional Territory, including Cameron Hills.

The Review Board is of the opinion that the proper forum for addressing such considerations is a court of law and that the Review Board does not have the legal authority required to make a ruling on such matters.

The Review Board notes that the *Taku River Tlingit* case indicates that the Crown's consultation may take place, at least in part, through and in concert with environmental impact assessment processes. Furthermore, an environmental assessment even if complete and approved does not give a developer the authority to proceed. Only regulatory authorizations do that.

Considering these matters and after reviewing the submissions from the parties regarding this Request for Ruling, the Review Board is of the opinion that it is not appropriate to grant a stay of proceedings for EA0506-007 at this time.



DECISION:

The Review Board is respectful of the legal proceedings T-1379-05 and T-1996-05 currently in the Federal Court. The Board believes that is the best venue to deal with the issues raised by the Ka'a'Gee Tu First Nation. It is the view of the Review Board that there should be no further delays in carrying out environmental assessment EA0506-007 and based on the Review Board's analysis of all information received to date, the Request for Ruling is denied. The environmental assessment shall proceed as envisioned in the Work Plan as issued.

DATED: January 27th, 2006

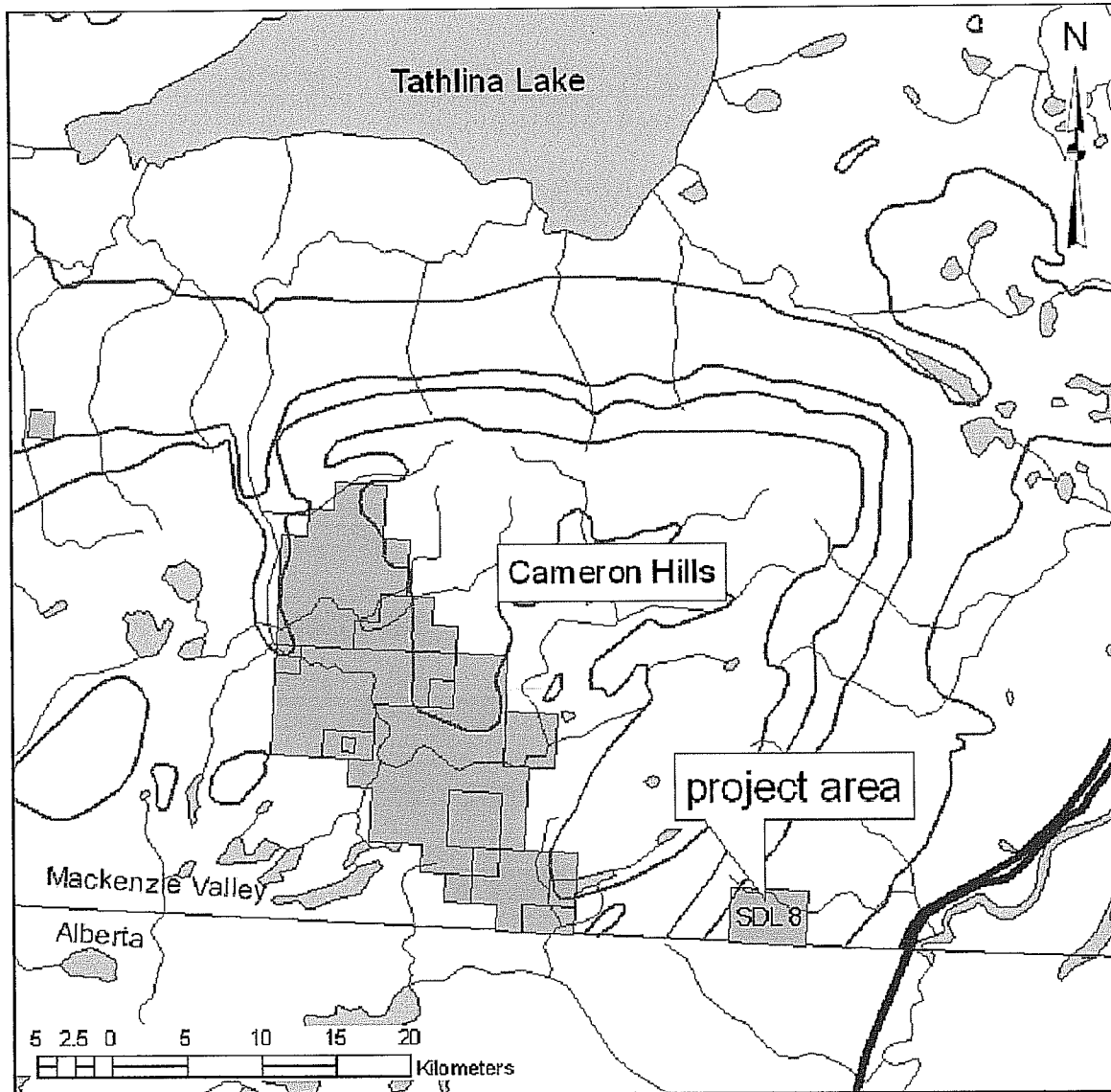
For the Mackenzie Valley Environmental Impact Review Board:

Gabrielle Mackenzie-Scott

Ms. Gabrielle Mackenzie-Scott
Chairperson



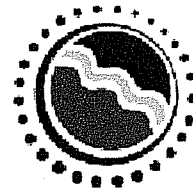
EA0506-007 Paramount SDL 8 2D Geophysical Program



Legend

- roads
- contours
- oil & gas rights

For illustration only.
Not a legal document.
For more information
contact MVEIRB
(867) 766-7050



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Environmental Impact Review Board

