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FAX COVER SHEET

DATE: December 21, 2005

CLIENT #: 216-00.4

TO: Mackenzie Valley Environmental Impact
Review Board
Attention: Vern Christensen, Executive Director

FAX: 1-867-766-7074

CC: Ka'a'Gee Tu First Nation
Attention: Chief Lloyd Chicot & Council and
Allan Landry

FAX: 1-867-825-2002

CC: Joe Acorn

FAX: 1-867-873-9190

FROM: Louise Mandell, Q.C.

RE: Environmental Assessment EA0506-007:
Paramount SDL-8 2-D Geophysical Program

ORIGINAL BEING SENT BY MAIL: No

NUMBER OF PAGES INCLUDING COVER SHEET: 48

MESSAGE

Please see attached correspondence and enclosures.

Thank you.

CONFIDENTIALITY CAUTION

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AS SOON AS POSSIBLE.**

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* Personal Law Corporation
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December 21, 2005

By Fax: (867) 766-7074

Mackenzie Valley Environmental Impact Review Board
Box 938 - 200 Scotia Centre
5102 - 50th Avenue
Yellowknife, NT X1A 2N7

Attention: **Vern Christensen**
Executive Director


Dear Sir:

**Re: Environmental Assessment EA0506-007:
Paramount SDL-8 2-D Geophysical Program -
Request for Ruling**

Further to your letter of December 20, 2005, please find attached a Request for Ruling, submitted by the Ka'a'Gee Tu First Nation.

Yours very truly,

MANDELL PINDER



Louise Mandell, Q.C.
Barrister and Solicitor

LM/dg

Encl. (Form 2 - Request for Ruling)

ccs: Clients

MVEIRB – FORM 2**Request for Ruling****Environmental Assessment EA0506-007:
Paramount SDL-8 2-D Geophysical Program**

TAKE NOTICE that a Request for Ruling will be made to the MVEIRB by the Ka'a'Gee Tu First Nation by written submission dated December 21, 2005 or as soon after that time as the Board may decide to address the Request.

The Ruling requested from the MVEIRB is as follows:

That the above-mentioned environmental assessment be immediately suspended, and shall not recommence, until such time as legal proceedings T-1379-05 and T-1996-05 in the Federal Court are completed, and the Ka'a'Gee Tu's rights and interests in relation to their territory affected by Paramount's development activities are properly addressed.

The facts or information relevant to this Request for Ruling which should be considered by the MVEIRB are as follows:

1. The above-mentioned environmental assessment is an assessment of Paramount's activities in the Cameron Hills area.
2. The Cameron Hills area is the Traditional Territory of the Ka'a'Gee Tu First Nation, of the Deh Cho Nation. The Ka'a'Gee Tu's rights and interests in respect of the Cameron Hills area are detailed in the attached Court proceedings.
3. Paramount's activities in the Cameron Hills have been subject to previous environmental assessments, including EA01-005 and EA03-005.
4. EA03-005 is currently the subject of legal proceedings in T-1379-05 and T-1996-05 in the Federal Court.
5. Issues raised in the legal proceedings include:
 - 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.

- 2 -

- 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.

6. These issues will arise again in the context of the above-mentioned environmental assessment.
7. The Board, in previous environmental assessments of Paramount's activities in the Cameron Hills area, including in EA01-005 and EA03-005, found a need for binding agreements to be entered into with the Ka'a'Gee Tu to properly address the impacts of Paramount's activities on Ka'a'Gee Tu rights and interests, including through a Harvester Compensation Plan and a Benefits Plan. No such agreements have ever been entered into.

The authority or grounds for the Ruling which should be considered by the MVEIRB are as follows:

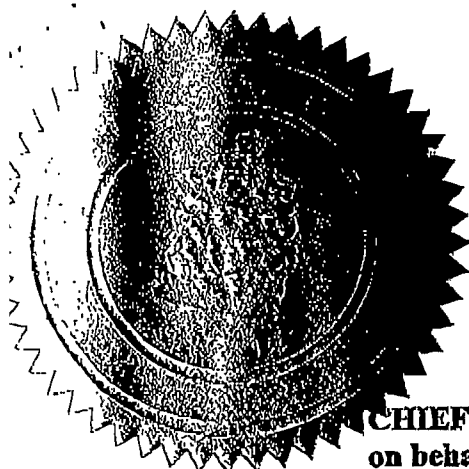
Relevant Rules include:

8. The Review Board may, in any proceeding, dispense with, vary or supplement these Rules by way of a direction on procedure.
9. The Review Board may issue a direction on procedure at any time during an environmental assessment or environmental impact review proceeding.
11. The Review Board may, on its own motion, or on a Request for Ruling by any party, lengthen or shorten the time for any action to be taken in an environmental assessment or environmental impact review proceeding subject to any conditions the Review Board may impose.
12. Where any issue arises during the course of a proceeding, the Review Board may take any action necessary consistent with these Rules, or permitted by law, in order to enable it to fairly and effectively decide on the issue.

AND FURTHER TAKE NOTICE that in support of this Request for Ruling, the Ka'a'Gee Tu rely on their Notice of Application in both T-1379-05 and T-1996-05 in the Federal Court, copies of which are provided herewith.

Dated at Vancouver, British Columbia, on (MM/DD/YY) 12/21/05.


 Louise Mandell, Q.C.



Court File No. V-1379-05

IN THE FEDERAL COURT

CHIEF LLOYD CHICOT suing on his own behalf and on behalf of all Members of the Ka'a'Gee Tu First Nation and the KA'A'GEE TU FIRST NATION

Applicant

AND:

**THE ATTORNEY GENERAL OF CANADA and
PARAMOUNT RESOURCES LTD.**

Respondents

NOTICE OF APPLICATION

APPLICATION UNDER Sections 17, 18, 18.1, 18.2 of the *Federal Courts Act*, and Part 5 of the *Federal Court Rules, 1998*

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at **Vancouver, British Columbia.**

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date) ~~1997~~ ^{AUG 09 2005} ORIGINAL SIGNED BY
LORNE FIDGETTE
Issued by: **REGISTRY OFFICER**
(Registry Officer) **AGENT DU GREFFE**

Address of local office: P. O. Box 10065, 701 West Georgia Street
Vancouver, B.C. V7Y 1B6

TO:

Attorney General of Canada
Department of Justice Canada
900 - 840 Howe Street
Vancouver, B.C. V6Z 2S9

Paramount Resources Ltd.
4700 Bankers Hall West
888 3rd Street S.W.
Calgary, Alberta T2P 5C5

Minister of Indian Affairs and Northern Development,
Minister of Fisheries and Oceans, and
Minister of the Environment
c/o Department of Justice Canada
900 - 840 Howe Street
Vancouver, B.C. V6Z 2S9

Hon. J. Michael Miltenberger
Minister of the Environment and Natural Resources
Government of the Northwest Territories
P. O. Box 1320
Yellowknife, Northwest Territories X1A 2L9

National Energy Board
444 Seventh Avenue S.W.
Calgary, Alberta T2P 0X8
Attention: Mr. T. M. Baker, Chief Conservation Officer

I HEREBY CERTIFY that the above document is a true copy of the original issued and filed in the Court on the _____ day of _____ A.D. 20____
Dated this _____ day of _____ A.D. 20____
Lorne Fidgette
Lorne Fidgette
Registry Officer
Agent du greffe

Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre
P.O. Box 938
5102 – 50th Avenue
Yellowknife, Northwest Territories X1A 2N7
Attention: Todd Burlingame, Chair

APPLICATION

This is an application for judicial review in respect of the July 5, 2005 decision (the "Ministers' Decision") by the Responsible Ministers (Indian and Northern Affairs Canada, Fisheries and Oceans Canada, Environment Canada, and the Government of the Northwest Territories' Department of Environment and Natural Resources) to approve the respondents' Cameron Hills Extension Project (the "Extension Project") pursuant to section 130(1)(b)(ii) of the *Mackenzie Valley Resource Management Act* (the "Act"). The Ministers' Decision is attached as Schedule "A" to this Application.

The Ministers' Decision was communicated to the applicant on July 11, 2005.

THE APPLICANT MAKES APPLICATION FOR:

- (a) an order quashing and setting aside the Ministers' Decision;
- (b) a declaration that the Ministers' Decision is invalid and unlawful;
- (c) a declaration that the Responsible Ministers breached their constitutional and legal obligation to consult with the Ka'a'Gee Tu First Nation (the "Ka'a'Gee Tu") and accommodate the Ka'a'Gee Tu's Aboriginal and Treaty rights before issuing the Ministers' Decision;
- (d) an order directing the Responsible Ministers to consult with the Ka'a'Gee Tu and accommodate the Ka'a'Gee Tu's Aboriginal and Treaty Rights before allowing the Extension Project to proceed;;
- (e) an order staying the Ministers' Decision and restraining Paramount Resources Ltd. from proceeding with the Extension Project pending the disposition of this application;
- (f) costs; and

- (g) such further and other relief as this Honourable Court may deem appropriate.

THE GROUNDS FOR THE APPLICATION ARE:

1. The Ministers' Decision is unconstitutional and outside of the Responsible Ministers' jurisdiction because:
 - (a) the Responsible Ministers knew that the Ka'a'Gee Tu have a *prima facie* case to Aboriginal and Treaty Rights in the lands which are affected by the Extension Project;
 - (b) the Responsible Ministers knew that the Ministers' Decision would potentially have a serious adverse effect on the Ka'a'Gee Tu's Aboriginal and Treaty Rights; and
 - (c) the Responsible Ministers did not fulfill their constitutional and legal obligation to consult with the Ka'a'Gee Tu and accommodate the Ka'a'Gee Tu's Aboriginal and Treaty Rights before issuing the Ministers' Decision.
2. The Ministers' Decision is also outside of the Responsible Ministers' jurisdiction under the Act because it:
 - (a) rejected the recommendations of the Mackenzie Valley Environmental Impact Review Board (the "Review Board") and therefore exceeds the Responsible Ministers' jurisdiction under s.130(1)(b)(ii) of the Act;
 - (b) involved a wide-ranging consideration of new evidence and made substantial changes to the Review Board's recommendations and therefore exceeds the Responsible Ministers' jurisdiction under s.130(1)(b)(ii) of the Act; and
 - (c) violated the applicable rules of fairness and natural justice.
3. The Ka'a'Gee Tu First Nation is an Indian Band within the meaning of the *Indian Act* and is an Aboriginal people within the meaning of section 35(1) of the *Constitution Act, 1982*.

4. At all material times representatives of Her Majesty the Queen in Right of Canada (the "Federal Crown"), including the Responsible Ministers, have had knowledge of a *prima facie* case to Aboriginal and Treaty rights that the Ka'a'Gee Tu assert to the lands affected by the Extension Project (the "Land"). Those rights include, but are not limited to:
 - (a) rights of exclusive possession to and control over the Land and resources and in the Land;
 - (b) self-government rights of jurisdiction and management over the Land;
 - (c) cultural rights to the Land; and
 - (d) rights to hunt, trap, travel and gather on and over the Land.
5. The federal Crown and the ancestors of the Ka'a'Gee Tu signed Treaty 11 in or about 1921. The federal Crown and the Ka'a'Gee Tu disagree on the interpretation of Treaty 11.
6. The Ka'a'Gee Tu First Nation is a Deh Cho First Nation and as such is engaged in the Deh Cho Process. The Federal Crown has agreed that the objective of the Deh Cho Process is to complete a Deh Cho final agreement that will clarify Deh Cho Aboriginal and Treaty rights and implement a Deh Cho government.
7. The Deh Cho Process is governed by a Framework Agreement that was signed by the Deh Cho First Nations, the Federal Crown and the Government of the Northwest Territories ("GNWT") on May 23, 2001. The Framework Agreement recognizes that the Deh Cho First Nations assert that the Deh Cho territory has been their traditional territory since time immemorial and that:
 - (a) The Federal Crown recognizes that the inherent right of self-government is an existing Aboriginal right recognized and affirmed by s. 35 of the *Constitution Act, 1982*;
 - (b) the members of the Deh Cho First Nations are Aboriginal people within the meaning of s. 35 of the *Constitution Act, 1982*;

- (c) the Deh Cho First Nations, the Federal Crown and the GNWT agree to negotiate on a government-to-government basis within the framework of the Constitution of Canada; and
 - (d) the parties agree to negotiate in order to set out land, resources, and governance rights to apply in the Deh Cho territory.
8. The parties to the Framework Agreement have negotiated the Deh Cho Process Interim Measures Agreement, dated May 23, 2001, and the Deh Cho Interim Resource Development Agreement, dated April 17, 2001.

Project History

(a) The Original Project

9. Paramount Resources Ltd. ("Paramount") obtained statutory rights to oil and natural gas reserves in the Cameron Hills Northwest Territories area in the late 1980's and early 1990's. The Cameron Hills project area is within the claimed traditional territory of the Ka'a'Gee Tu.
10. In late 2000 and early 2001 Paramount brought applications to various regulatory authorities to construct a pipeline project (the "Pipeline Project") and a drilling project (the "Drilling Project") in the Cameron Hills (collectively the "Original Project").
11. At all material times, the Responsible Ministers knew that the Ka'a'Gee Tu have a *prima facie* case to Aboriginal and Treaty rights in the lands which are affected by the Original Project and that approving the Original Project would potentially have a serious adverse effect on those rights.
12. The Drilling Project was a proposal to drill and test new oil and gas wells. Its components included: a winter access road, a winter airstrip, constructing two ice bridges on the Cameron River and one bridge on a tributary of the Cameron River, constructing up to six temporary twenty-man camps, and the drilling of wells.

13. The Pipeline Project was a proposal to build a pipeline gathering system, running from wells to a central battery, and a transborder pipeline running from the Cameron Hills into Alberta. It included the following components: a central battery, a satellite battery, a gas and oil gathering system to tie wells into the proposed central battery, a water disposal pipeline, on-site living quarters, a warehouse complex at the proposed battery, an airstrip, and an all-weather access road connecting the airstrip to the central battery, borrow pits, one permanent vehicle bridge and three all-terrain vehicle bridges, and overhead power lines connecting some wells to the proposed central battery.
14. The Original Project fell under the jurisdiction of the National Energy Board (the "NEB") and the Review Board. The Review Board referred the Original Project for environmental assessments pursuant to s. 126(3) of the Act. The NEB and Review Board agreed that the Review Board's environmental review process would be used by the NEB.
15. The Ka'a'Gee Tu participated in the Original Project's environmental assessments to the best of their ability, but lacked adequate funding and resources.
16. The Review Board issued its report on the Pipeline Project on December 3, 2001, and its report on the Drilling Project on October 16, 2001. Pursuant to s. 128(1)(b)(ii) of the Act, the Review Board recommended that the Original Project be approved subject to the imposition of a number of measures that it considered necessary to prevent significant adverse impacts from the Project. In the Pipeline Project Report, the Review Board made the following recommendations which directly addressed some of the Ka'a'Gee Tu's concerns:
 - R-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.

- R-14 The MVLWB [Mackenzie Valley Land and Water Board] and the NEB ensure that Paramount includes mitigative measures in the TK [Traditional Knowledge] study to address impacts identified by the TK study. The MVLWB and the NEB should obtain copies of the completed TK study from Paramount along with evidence of community approval of the study. The MVLWB and the NEB should ensure that authorization terms and conditions are amended as appropriate to address any impacts identified by the study that have not already been addressed with existing terms and conditions.
- R-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.
- R-16 INAC ensures that the amended Benefits Plan requires Paramount to provide copies of the Annual Reports required by the Benefits Plan to the GNWT, the Review Board, the MVLWB and the local communities in addition to INAC. The scope of the Annual Reports should be expanded beyond what is currently required. The Annual Reports should detail consultations undertaken with the local communities, discuss what concerns were raised by the communities, describe how Paramount has addressed or intends to address these concerns and discuss what actions Paramount will take to enhance positive socio-economic impacts and mitigate negative socio-economic impacts.
17. Following receipt of the Pipeline Report, on January 1, 2002 the Responsible Ministers exercised their power under s. 130(1)(b)(ii) and approved the Pipeline Project but significantly modified or deleted Recommendations 13-16 to the detriment of the Ka'a'Gee Tu without any consultation or accommodation. The Ka'a'Gee Tu strongly objected to the lack of consultation by the Responsible Ministers and the result that they reached.

(b) The Extension Project

18. In 2003, Paramount made applications to get regulatory approval for the Extension Project. Paramount proposes to drill up to 48 new oil and gas wells and build associated tie-ins to an existing pipeline over the next 10 years in the Cameron Hills. The Extension Project is an extension of the Original Project.
19. Like the Original Project, the Extension Project proceeded to an environmental assessment under the Act where the Review Board's review process would be used by the NEB.
20. At all material times, the Responsible Ministers knew that the Ka'a'Gee Tu have a *prima facie* case to Aboriginal and Treaty rights in the lands which are affected by the Extension Project and that approving the Extension Project would potentially have a serious adverse effect on those rights.
21. The Ka'a'Gee Tu participated in the Extension Project's environmental assessment to the best of their ability, but lacked adequate funding and resources.
22. On June 1, 2004, the Review Board issued a report under s. 128(1)(b)(ii) of the Act in which it recommended that the approval of the Extension Project be made subject to the imposition of certain measures that it considered necessary to prevent significant adverse impacts (the "Extension Project Report").
23. As it relates to the Ka'a'Gee Tu's interests, the Extension Project Report concluded that:
 - (a) The Cameron Hills is an important traditional use area for the Ka'a'Gee Tu both historically and today.
 - (b) Some of the commitments to mitigation measures regarding harvester compensation made by Paramount relating to the Original Project were not fulfilled.
 - (c) There is a need for air quality monitoring in the Northwest Territories (NWT) emerging as a result of oil and gas development

and an emerging need for enforceable air quality standards.

- (d) The cumulative effects of ongoing development in the Cameron Hills may result in adverse effects on the regional boreal caribou population.

24. The Extension Project Report stated that the issue of a compensation plan had remained unresolved from the Original Project and that “[f]urther delay is not acceptable in light of the proposed expansion of the development for which the original plan was recommended.” The Review Board also noted disagreement between the Ka’a’Gee Tu, INAC and Paramount on the interpretation of the breadth of concerns associated with traditional harvesting, suitable compensation, and the level of authority of Aboriginal communities in operational planning should concerns about infringement on Treaty rights arise and said that:

This disagreement must be resolved in order to ensure reasonable and fair compensation for damages incurred relative to the Paramount’s activities.

25. Similarly, the Extension Project Report stated:

The Review Board supports the communities’ requests for a socio-economic agreement with Paramount. The Review Board also concurs with the GNWT on the effectiveness of socio-economic agreements to aid in assessing the impact on the social and the cultural aspects of northern development (Hearing Transcripts, Vol. 1, p. 154). The Review Board further acknowledges the efforts of the Deh Cho First Nation in establishing the Deh Cho First Nation Consultation Principles (see Appendix D), and supports the use of these principles as guidelines to conducting meaningful consultation with Deh Cho communities.

26. The Extension Project Report included the following Recommendations which directly addressed some of the Ka’a’Gee Tu’s concerns:

R-15 The Review Board recommends that Paramount and the other parties to the unfinished Cameron Hills Wildlife and Resources Harvesting Compensation Plan developed in response to measures 13 and 15 of EA01-005 [the Pipeline Project Report] complete the compensation plan. If a compensation plan cannot be completed by these parties within 90 days of the federal Minister’s acceptance of this report, this matter will proceed to binding arbitration, pursuant to the *NWT Arbitration Act*. A letter signed by the

parties, indicating agreement to the compensation plan or in the case of arbitration, the arbitrator's decision must be filed with NEB and MVLWB prior to the commencement of Paramount's operations under land use permit MV2002A0046.

R-16 The Review Board recommends that the GNWT develop a socio-economic agreement with Paramount in consultation with affected communities before operations proceed under the land use permit MV2002A0046. The socio-economic agreement is to address issues such as employment targets, educational and training opportunities for local residents and a detailed ongoing community consultation plan.

27. The Review Board was also concerned about the lack of an enforceable framework for air quality in the NWT. In the Extension Project Report, the Review Board pointed out that in December, 1999, it made a recommendation about air quality standards in a previous environmental assessment (the Ranger-Chevron EA) but that "little or no progress has been made to satisfy the Review Board's 1999 recommendation." The Review Board stated that to "prevent significant adverse impacts on air quality":

R-7 The Review Board recommends that the Government of Canada (INAC and Environment Canada) and the Government of the Northwest Territories, implement recommendation 7 from the Ranger-Chevron EA by June 2005 [relating to air quality guidelines].

28. Like in the Original Project, the Responsible Ministers exercised their power to engage the consult-to-modify provisions contained in s. 130(1)(b)(ii) of the Act. On July 5, 2005 the Responsible Ministers issued the Ministers' Decision and approved the Extension Project. The Ministers' Decision deleted Recommendation 7 and replaced it with a suggestion, and substantially rejected Recommendations 15 and 16 to the serious detriment of the Ka'a'Gee Tu.

29. The Ministers' Decision contained no acknowledgement of the efforts of the Deh Cho First Nation in establishing the Deh Cho First Nations Consultation Principles, and said nothing about using those principles as guidelines to conduct meaningful consultation with Deh Cho communities.

30. Section 35 of the *Constitution Act, 1982* and the honour of the Crown required that the Responsible Ministers consult in good faith and endeavour to seek workable accommodation with the Ka'a'Gee Tu in respect of their Aboriginal and Treaty rights prior to allowing the Extension Project to proceed. The Responsible Ministers breached their duties to the Ka'a'Gee Tu. In particular:

- (a) There was no consultation in the consult-to-modify process because the Responsible Ministers took the position that the Crown was not required to consult at all. The Responsible Ministers failed to create or discuss a reasonable and structured process for consultation before undertaking the consult-to-modify process under the Act.
- (b) The Responsible Ministers failed to establish any, or any reasonable, process for future consultation with respect to economic accommodation for Paramount's ongoing resource activity in Cameron Hills.
- (c) The actual exchanges of information during the consult-to-modify process were flawed and misleading. There were no face-to-face meetings with the Ka'a'Gee Tu and the Ka'a'Gee Tu were given incomplete information.
- (d) The Responsible Ministers relied on material from outside of the Review Board's process and failed to notify the Ka'a'Gee Tu of that material so that they could respond.
- (e) The Ministers' Decision is irrational.
- (f) The scope of the consultation in the consult-to-modify process was improperly limited. The Responsible Ministers did not consult in respect of Aboriginal title and self-government rights.
- (g) The Ka'a'Gee Tu did not have adequate funding to participate in the process.
- (h) The Ministers' Decision was made before the consultation process with the Ka'a'Gee Tu was complete and in particular:
 - (i) there were no community consultation plans in place to guide the Ka'a'Gee Tu's relationship with Paramount and the Federal Crown;

- (ii) there were no access or impact benefits agreements between the Ka'a'Gee Tu and Paramount;
 - (iii) there was no environmental agreement between the Ka'a'Gee Tu and Paramount;
 - (iv) there was no meaningful traditional use study funded by Paramount and completed in partnership with the Ka'a'Gee Tu;
 - (v) there was no meaningful Heritage Resource Impact Assessment;
 - (vi) there was no spill rate study on Paramount's operations;
 - (vii) there was no meaningful traditional plant use study and traditional wildlife use studies; and
 - (viii) there was no development of pipeline and access route selection criteria.
31. The Responsible Ministers also failed to accommodate the Ka'a'Gee Tu's Aboriginal and Treaty rights. In particular, the Ministers' Decision did not take into consideration or accommodate the potential infringement to Aboriginal title and the right to self-government. Also, because of the failures in the consultation process, the Ministers' Decision failed to accommodate the potential infringements on other Aboriginal and Treaty rights, including cultural rights and the rights to hunt, trap, fish and gather resources on and over the Land.
32. As a result, the Ministers' Decision is unconstitutional and exceeds the Responsible Ministers' jurisdiction.
33. The Ministers' Decision also exceeds the Responsible Ministers' jurisdiction under the Act for the following reasons:
- (a) Since the Ministers' Decision fundamentally alters the purpose, substance or effect of the Review Board's recommendations it is tantamount to a rejection and the Responsible Ministers have no jurisdiction to approve the Extension Project – they must order a full environmental impact review under s. 130(1)(b)(ii). As a result the Ministers' Decision is unlawful and void.


- (b) In any event, the Ministers' Decision exceeds the limited modification power granted by the Act. Section 130(1)(b)(ii) does not allow a wide-ranging consideration of new evidence and it does not allow the Responsible Ministers to make substantial changes to the Review Board's recommendations.
- (c) For the reasons set out in paragraph 30 above, the Responsible Ministers violated the rules of fairness and natural justice that apply to the Ministers' Decision.

34. Such further and additional grounds as counsel may identify and this Honourable Court may consider.

This application will be supported by the following material:

- (a) Affidavit of Chief Lloyd Chicot to be sworn and filed;
- (b) the record before the Review Board and the Responsible Ministers; and
- (c) such further and additional materials as counsel may advise.

Date: August 9, 2005



Louise Mandell, Q.C.
Mandell Pinder
Barristers & Solicitors
500 - 1080 Mainland St.
Vancouver, BC V6B 2T4
Tel: (604) 681-4146
Fax: (604) 681-0959

Counsel for the Applicant

SCHEDULE "A"

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
Indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

RECEIVED
8:30 Am UP
JUL 11 2005
MACKENZIE VALLEY
ENVIRONMENTAL IMPACT
REVIEW BOARD

FICHE DE TRANSMISSION FAC-SIMILE
FAX TRANSMITTAL FORM

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NUMBER DE PAGES: 7 INCLUANT COUVERTURE
NUMBER OF PAGES: 7 (INCLUDING COVER)

TO/AI: Mary Lapelle

FROM/DE: Ken Andy Scott

COMMENTS/COMMENTAIRES:
7

FAX NUMBER: (819) 953-4941

PHONE NUMBER: (819) 997-0002

Canada

A10824

July 5 2005

Ms. Gabrielle Mackenzie-Scott
Chair
Mackenzie Valley Environmental Impact Review Board
PO Box 938
YELLOWKNIFE NT X1A 2N7

Dear Ms. Mackenzie-Scott:

I am writing on behalf of the Responsible Ministers (Indian and Northern Affairs Canada, Fisheries and Oceans Canada, Environment Canada, and the Government of the Northwest Territories' Department of Environment and Natural Resources) with jurisdiction relating to the Paramount Resources Limited (Paramount), Cameron Hills Extension Project (Project), to convey our decision on the Mackenzie Valley Environmental Impact Review Board's (Review Board) recommendation to approve the Project subject to mitigation measures as outlined in the Environmental Assessment Report. This decision was taken after:

- considering the above-noted Report and Reasons for Decision for the Paramount Project;
- undertaking consultation with the Review Board on the mitigation measures contained in the Report of Environmental Assessment, pursuant to paragraph 130(1)(b)(ii) of the *Mackenzie Valley Resource Management Act* (the Act);
- considering letters to Indian and Northern Affairs Canada from Paramount (June 14, and December 17, 2004); from the Ka'a'Gee Tu First Nation (June 24, and August 10, 2004); from the Ka'a'Gee Tu First Nation's legal counsel, (July 20, August 31, November 19, December 13, 2004, and March 24, and April 28, 2005); from the Canadian Association of Petroleum Producers (July 30, 2004); from the Fort Providence Resource Management Resource Board (August 10, 2004); from the West Point First Nation (August 10, 2004); from the Deh Cho First Nation (July 7, 2004, and April 12, 2005); and from the Fort Providence Métis Council Local #57 (January 22, 2005);

.../2

- 2 -

- considering comments received from the Parties to the Environmental Assessment by the Review Board with respect to the proposed modifications of the Responsible Ministers to the mitigation measures (process initiated November 29, 2004); and
- considering the letter from the Review Board to Indian and Northern Affairs Canada (March 15, 2005).

Pursuant to section 130(1)(b)(ii) of the Act, the Responsible Ministers have agreed to adopt the recommendation of the Review Board with modifications. The modifications are in regard to six of the recommended mitigation measures identified by the Review Board as being necessary to prevent a likely significant adverse impact on the environment. The final measures, as modified and approved by the Responsible Ministers, are enclosed and reflect the views expressed by the Review Board in the consultation process, and in its letter of March 15, 2005.

I wish to thank the Review Board for discharging its duties under the Act in this matter.

Yours sincerely,
*Original signed by
a signé l'original*

The Honourable Andy Scott, PC, MP

Encl.

c.c.: The Honourable Stéphane Dion, PC, MP
The Honourable Geoff Regan, PC, MP
The Honourable Michael J. Miltenberger, MLA

**The Final Mitigation Measures as Modified and Approved by the Responsible
Ministers for the Paramount Resources Limited Cameron
Hills Extension Project**

RECOMMENDED MEASURE 1 (not modified)

The Review Board recommends that regulatory authorities include in their authorizations those items set out in the Developer's commitment, outlined in Appendix A, that are within their jurisdiction.

RECOMMENDED MEASURE 2

National Energy Board

RECOMMENDED MEASURE 3

National Energy Board

RECOMMENDED MEASURE 4

National Energy Board

RECOMMENDED MEASURE 5

National Energy Board

RECOMMENDED MEASURE 6

National Energy Board

**RECOMMENDED MEASURE 7 - (as modified)
Replacement with New Suggestion 7**

The Review Board suggests that the appropriate regulatory and other government agencies work together to finalize enforceable Air Quality Guidelines specific to the Northwest Territories.

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RECOMMENDED MEASURE 8 (not modified)

The Review Board recommends that Paramount modify its spill reporting procedures for the Paramount Cameron Hills developments to include notice of spill occurrences to potentially affected communities. Spills must be reported according to the Northwest Territories Spill Reporting Procedures.

RECOMMENDED MEASURE 9

National Energy Board

RECOMMENDED MEASURE 10 (not modified)

The Review Board recommends that Paramount, in the case of an isolated water crossing, maintain downstream water flow at pre-in-stream work levels. All in-stream work must be completed as expediently as possible to mitigate disruption of fish movements.

RECOMMENDED MEASURE 11 (as modified)

The Review Board recommends that the Department of Fisheries and Oceans conduct regular site visits to the Cameron Hills to inspect for, and determine if any impacts to fish or fish habitat have occurred. Reports of these inspections, if not related to an enforcement investigation, must be made publicly available via The Department of Fisheries and Oceans and also be sent directly to Ka'a'Gee Tu First Nation, in a plain language version.

RECOMMENDED MEASURE 12 (as modified)

The Review Board recommends that the Department of Environment and Natural Resources will, within the next six months, initiate the formation of a Deh Cho Boreal Caribou Working Group. The Department of Environment and Natural Resources shall lead the Deh Cho Boreal Caribou Working Group in the development of a Boreal Caribou Management Plan for boreal caribou populations in the southern Deh Cho (south of the Mackenzie River and east of the Liard River) within 18 months. In developing the Boreal Caribou Management Plan, the Department of Environment and Natural Resources shall ensure that the Deh Cho Boreal Caribou Working Group considers, among other things: habitat identification, range plan development,

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thresholds, monitoring systems, adaptive mitigation, research programs and cumulative effects models. The Department of Environment and Natural Resources shall also co-ordinate the Deh Cho Boreal Caribou Working Group's activities with similar working groups in Alberta and British Columbia; and operate within the framework of recovery planning for Boreal Caribou in the Northwest Territories, and develop a Range Plan within the overall Boreal Caribou Management Plan specifically for the Cameron Hills area. The Department of Environment and Natural Resources shall provide applicable thresholds for the Project to the Mackenzie Valley Land and Water Board over time based on the outcomes of future research and natural changes to the boreal caribou habitat.

RECOMMENDED MEASURE 13 (as modified)

The Review Board recommends that the Mackenzie Valley Land and Water Board adopt as an interim measure an average linear disturbance target of 1.8 km per km squared as a boreal caribou disturbance threshold for land use permits in the area encompassed by Ecodistricts 250 and 251 in the Northwest Territories¹. In order to prevent significant adverse environmental impacts on boreal caribou populations whose range includes the Paramount Significant Discovery Licence and surrounding area. The linear disturbance target and other related conditions will be reviewed annually by Mackenzie Valley Land and Water Board and appropriate regulatory authorities, and adjusted as necessary, based on the best available scientific information and traditional knowledge, and project area information, including Paramount reports and plans.

Paramount will submit an annual report to the Mackenzie Valley Land and Water Board detailing disturbance to boreal caribou habitat resulting from past Project activities and the state of a re-growth of disturbances. The annual report will be similar to proponent reports done in other jurisdictions such as British Columbia or Alberta. Paramount will also include in the report any of its plans that may affect boreal caribou habitat for the upcoming year.

Modification (Part 2) - New Suggestion 8

The Review Board suggests that in all future land use applications for Ecodistricts 250 and 251 in the Northwest Territories¹, the appropriate regulatory authorities give full consideration to the boreal caribou disturbance threshold in place at the time.

¹ As described in *Terrestrial Ecozones, Ecoregions and Ecodistricts of the Northwest Territories, Canada*. Ecological Stratification Working Group. 1995. National Ecological Framework for Canada. Agriculture and Agri-Food Canada, Research Branch, Centre for Land and Biological Resources Research and Environment Canada, State of the Environment Directorate, Ecozone Analysis Branch, Ottawa/Hull. Report and national map at 1:7,500,000 scale.

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RECOMMENDED MEASURE 14 (not modified)

The Review Board recommends that Paramount locate at least 50 percent of all proposed and planned development in the Cameron Hills Significant Discovery Licence, as described in Paramount's Developer's Assessment Report, on areas that are currently disturbed (as of the date of Ministerial approval of this Report of Environmental Assessment). This requirement should be included as a condition in land use permit MV2002A0046.

RECOMMENDED MEASURE 15 (as modified)

The Review Board recommends that Paramount commit, in a letter to the Parties to the Environmental Assessment, to compensate the Ka'a'Gee Tu First Nation and other affected Aboriginal groups for any direct wildlife harvesting and resource harvesting losses suffered as a result of project activities, and to consider indirect losses on a case-by-case basis.

RECOMMENDED MEASURE 16 (as modified)

The Review Board recommends that Paramount report annually to the Government of the Northwest Territories and the other Parties to the Environmental Assessment, documenting its performance in the provision of socio-economic benefits, such as employment and training opportunities for local residents, including a detailed ongoing community consultation plan describing the steps it has taken and will take to improve its performance in those areas. The Government of the Northwest Territories will review this report with Paramount in collaboration with the other Parties to the Environmental Assessment.

RECOMMENDED MEASURE 17 (not modified)

The Review Board recommends that the Ka'a'Gee Tu First Nation be notified directly if any heritage resources are suspected or encountered during Paramount's activities in the Cameron Hills.

Court File No. _____

IN THE FEDERAL COURT

BETWEEN:

**CHIEF LLOYD CHICOT suing on his own behalf and
on behalf of all Members of the Ka'a'Gee Tu First
Nation and the KA'A'GEE TU FIRST NATION**

Applicant

AND:

**THE ATTORNEY GENERAL OF CANADA and
PARAMOUNT RESOURCES LTD.**

Respondents

NOTICE OF APPLICATION

**MANDELL PINDER
Barristers & Solicitors
Suite 422 - 1080 Mainland St.
Vancouver, B.C. V6B 2T4
Tel.: (604) 681-4146
Fax: (604) 681-0959**

Per: Louise Mandell, Q.C.

Counsel for the Applicant



Court File No. T-1996-05

FEDERAL COURT

CHIEF LLOYD CHICOT suing on his own behalf and on behalf of all Members of the Ka'a'Gee Tu First Nation and the KA'A'GEE TU FIRST NATION

Applicants

AND:

**MINISTER OF INDIAN AND NORTHERN AFFAIRS
CANADA,
PARAMOUNT RESOURCES LTD., the
MACKENZIE VALLEY LAND AND WATER BOARD
and TODD BURLINGAME (in his capacity as Chair of
the Mackenzie Valley Land and Water Board)**

Respondents

NOTICE OF APPLICATION

APPLICATION UNDER Sections 17, 18, 18.1, 18.2 of the *Federal Courts Act*, and Part 5 of the *Federal Court Rules, 1998*

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicants. The relief claimed by the applicants appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicants. The applicants request that this application be heard at **Vancouver, British Columbia.**

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicants' solicitor, or where the applicants are self-represented, on the applicants, **WITHIN 10 DAYS** after being served with this notice of

application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

NOV 04 2005

Date issued: _____

Issued by: Original signed by
Sheila de Santos
Registry Office

Address of local office: P. O. Box 10065, 701 West Georgia Street
Vancouver, B.C. V7Y 1B6

TO:

Minister of Indian and Northern Affairs Canada
c/o Department of Justice
211 Bank of Montreal Building
10199 - 101st Street
Edmonton, Alberta T5J 3Y4
Attention: Donna Tomljanovic

Paramount Resources Ltd.
c/o Gowling Lafleur Henderson
Suite 1400, 700 - 2nd Street
Calgary, Alberta T2P 4V5
Attention: Alan Hollingworth

Mackenzie Valley Land and Water Board
Box 2130
7th Floor - 4910 50th Avenue
Yellowknife, NT X1A 2P6

Todd Burlingame, Chair
Mackenzie Valley Land and Water Board
Box 2130
7th Floor - 4910 50th Avenue
Yellowknife, NT X1A 2P6

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on this _____ day of NOV 04 2005 A.D. 20
dated this _____ day of NOV 04 2005 20

Sheila de Santos
Registry Officer
Agent du greffe

AND ON NOTICE TO:

Hon. J. Michael Miltenberger
Minister of the Environment and Natural Resources
Government of the Northwest Territories
c/o Attorney General of the Northwest Territories
P.O. Box 1320, Station Main
4570 48th Street
Yellowknife, NWT X1A 2L9

National Energy Board
444 Seventh Avenue S.W.
Calgary, Alberta T2P 0X8
Attention: Mr. T. M. Baker, Chief Conservation Officer

Mackenzie Valley Environmental Impact Review Board
c/o John Donihee, Barrister & Solicitor
3516 Underhill Drive N.W.
Calgary, Alberta T2N 4E8

APPLICATION

This is an application for judicial review in respect of the decision of the Mackenzie Valley Land and Water Board (the "Land and Water Board") to issue amended land use permit MV2002A0046 (the "Amended Land Use Permit") to Paramount Resources Ltd. ("Paramount") on September 29, 2005 pursuant to its powers under the *Mackenzie Valley Resource Management Act* (the "Act") and associated regulations.

The Land and Water Board's decision was made in reliance on a previous decision of the Responsible Ministers (Indian and Northern Affairs Canada (INAC), Fisheries and Oceans Canada, Environment Canada, and the Government of the Northwest Territories' Department of Environment and Natural Resources) made July 5, 2005 and subject to challenge by the Applicants in Federal Court judicial review application T-1379-05 ("Application T-1379-05").

The issuance of the Amended Land Use Permit was first communicated to the Applicants on October 11, 2005.

THE APPLICANTS MAKES APPLICATION FOR:

- (a) a declaration that the issuance of the Amended Land Use Permit is unconstitutional and *ultra vires*, because the Responsible Ministers breached their constitutional and legal obligation to consult with the Ka'a'Gee Tu First Nation (the "Ka'a'Gee Tu") and accommodate the Ka'a'Gee Tu's Aboriginal and Treaty rights;
- (b) an order directing the Responsible Ministers to consult with the Ka'a'Gee Tu and accommodate the Ka'a'Gee Tu's Aboriginal and Treaty Rights before allowing the Extension Project, as defined below, to proceed;
- (c) an order quashing and setting aside the Amended Land Use Permit;
- (d) a declaration that the issuance of the Amended Land Use Permit is *ultra vires* the Land and Water Board because the requirements of Part 5 of the Act have not been complied with;
- (e) a declaration that the issuance of the Amended Land Use Permit is invalid and unlawful, because the Land and Water Board has failed to include conditions in the Amended Land Use Permit that are required to be included under the Act.
- (f) a declaration that the Minister acted illegally and *ultra vires* his powers under s. 12 of the Act in appointing Todd Burlingame as Chair of the Land and Water Board, and that Mr. Burlingame's participation in the decision to issue the Amended Land Use Permit accordingly renders that decision illegal and *ultra vires*;
- (g) a declaration that the issuance of the Amended Land Use Permit was made in breach of the duties of procedural fairness and natural justice;
- (h) an order staying the Amended Land Use Permit and restraining Paramount from proceeding with any activities authorized pursuant to the Amended Land Use Permit pending the disposition of this application;
- (i) costs; and
- (j) such further and other relief as this Honourable Court may deem appropriate.

THE GROUNDS FOR THE APPLICATION ARE:

1. The Ka'a'Gee Tu is an Indian Band within the meaning of the *Indian Act* and is an Aboriginal people within the meaning of section 35(1) of the *Constitution Act, 1982*.
2. At all material times representatives of Her Majesty the Queen in Right of Canada (the "Federal Crown"), including the Responsible Ministers and the Land and Water Board, have had knowledge of the Ka'a'Gee Tu's Treaty rights and *prima facie* case to Aboriginal rights and Title to the lands affected by the Extension Project (as defined below), particulars of which are provided in paragraphs 5 – 23 of the Affidavit of Chief Gary Chicot sworn September 13, 2005 and filed in Application T-1379-05.
3. The Federal Crown and the ancestors of the Ka'a'Gee Tu signed Treaty 11 in or about 1921. The Federal Crown and the Ka'a'Gee Tu disagree on the interpretation of Treaty 11.
4. The Ka'a'Gee Tu First Nation is a Deh Cho First Nation and as such is engaged in the Deh Cho Process. The Federal Crown has agreed that the objective of the Deh Cho Process is to complete a Deh Cho final agreement that will clarify Deh Cho Aboriginal and Treaty rights and implement a Deh Cho government.
5. The Deh Cho Process is governed by a Framework Agreement that was signed by the Deh Cho First Nations, the Federal Crown and the Government of the Northwest Territories ("GNWT") on May 23, 2001. The Framework Agreement recognizes that the Deh Cho First Nations assert that the Deh Cho territory has been their traditional territory since time immemorial and that:
 - (a) The Federal Crown recognizes that the inherent right of self-government is an existing Aboriginal right recognized and affirmed by s. 35 of the *Constitution Act, 1982*;
 - (b) the members of the Deh Cho First Nations are Aboriginal people

within the meaning of s. 35 of the *Constitution Act, 1982*;

- (c) the Deh Cho First Nations, the Federal Crown and the GNWT agree to negotiate on a government-to-government basis within the framework of the Constitution of Canada; and
 - (d) the parties agree to negotiate in order to set out land, resources, and governance rights to apply in the Deh Cho territory.
6. The parties to the Framework Agreement have negotiated the Deh Cho Process Interim Measures Agreement, dated May 23, 2001, and the Deh Cho Interim Resource Development Agreement, dated April 17, 2001. The Deh Cho First Nations have also adopted and provided to the Federal Crown the Deh Cho First Nations Consultation Principles as guidelines for meaningful consultation with the Deh Cho First Nations.

Project History

(a) The Original Project

7. Paramount obtained statutory rights to oil and natural gas reserves in the Cameron Hills Northwest Territories area in the late 1980's and early 1990's. The Cameron Hills project area is within the claimed traditional territory of the Ka'a'Gee Tu.
8. In late 2000 and early 2001 Paramount brought applications to various regulatory authorities to construct a pipeline project (the "Pipeline Project") and a drilling project (the "Drilling Project") in the Cameron Hills (collectively the "Original Project").
9. At all material times, the Responsible Ministers knew that the Ka'a'Gee Tu have a *prima facie* case to Aboriginal and Treaty rights in the lands which are affected by the Original Project and that approving the Original Project would potentially have a serious adverse effect on those rights.
10. The Drilling Project was a proposal to drill and test new oil and gas wells. Its components included: a winter access road, a winter airstrip, constructing two ice bridges on the Cameron River and one bridge on a tributary of the Cameron River,

constructing up to six temporary twenty-man camps, and the drilling of wells.

11. The Pipeline Project was a proposal to build a pipeline gathering system, running from wells to a central battery, and a transborder pipeline running from the Cameron Hills into Alberta. It included the following components: a central battery, a satellite battery, a gas and oil gathering system to tie wells into the proposed central battery, a water disposal pipeline, on-site living quarters, a warehouse complex at the proposed battery, an airstrip, and an all-weather access road connecting the airstrip to the central battery, borrow pits, one permanent vehicle bridge and three all-terrain vehicle bridges, and overhead power lines connecting some wells to the proposed central battery.
12. The Original Project fell under the jurisdiction of the National Energy Board (the "NEB") and the Mackenzie Valley Environmental Impact Review Board (the "Review Board"). The Review Board referred the Original Project for environmental assessments pursuant to s. 126(3) of the Act. The NEB and Review Board agreed that the Review Board's environmental review process would be used by the NEB.
13. The Ka'a'Gee Tu participated in the Original Project's environmental assessments to the best of their ability, but lacked adequate funding and resources.
14. The Review Board issued its report on the Pipeline Project on December 3, 2001, and its report on the Drilling Project on October 16, 2001. Pursuant to s. 128(1)(b)(ii) of the Act, the Review Board recommended that the Original Project be approved subject to the imposition of a number of measures that it considered necessary to prevent significant adverse impacts from the Project. In the Pipeline Project Report, the Review Board made the following recommendations which directly addressed some of the Ka'a'Gee Tu's concerns:

R-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.

- R-14 The MVLWB [Mackenzie Valley Land and Water Board] and the NEB ensure that Paramount includes mitigative measures in the TK [Traditional Knowledge] study to address impacts identified by the TK study. The MVLWB and the NEB should obtain copies of the completed TK study from Paramount along with evidence of community approval of the study. The MVLWB and the NEB should ensure that authorization terms and conditions are amended as appropriate to address any impacts identified by the study that have not already been addressed with existing terms and conditions.
- R-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.
- R-16 INAC ensures that the amended Benefits Plan requires Paramount to provide copies of the Annual Reports required by the Benefits Plan to the GNWT, the Review Board, the MVLWB and the local communities in addition to INAC. The scope of the Annual Reports should be expanded beyond what is currently required. The Annual Reports should detail consultations undertaken with the local communities, discuss what concerns were raised by the communities, describe how Paramount has addressed or intends to address these concerns and discuss what actions Paramount will take to enhance positive socio-economic impacts and mitigate negative socio-economic impacts.
15. Following receipt of the Pipeline Report, on January 1, 2002 the Responsible Ministers exercised their power under s. 130(1)(b)(ii) and approved the Pipeline Project but significantly modified or deleted Recommendations 13-16 to the detriment of the Ka'a'Gee Tu without any consultation or accommodation. The Ka'a'Gee Tu strongly objected to the lack of consultation by the Responsible Ministers and the result that they reached.

(b) The Extension Project

16. In 2003, Paramount made applications to get regulatory approval for the Extension Project. Paramount proposes to drill up to 48 new oil and gas wells and build associated tie-ins to an existing pipeline over the next 10 years in the Cameron Hills. The Extension Project is an extension of the Original Project.
17. Like the Original Project, the Extension Project proceeded to an environmental assessment under the Act where the Review Board's review process would be used by the NEB.
18. At all material times, the Responsible Ministers knew that the Ka'a'Gee Tu have a *prima facie* case to Aboriginal and Treaty rights in the lands which are affected by the Extension Project and that approving the Extension Project would potentially have a serious adverse effect on those rights.
19. The Ka'a'Gee Tu participated in the Extension Project's environmental assessment to the best of their ability, but lacked adequate funding and resources.
20. On June 1, 2004, the Review Board issued a report under s. 128(1)(b)(ii) of the Act in which it recommended that the approval of the Extension Project be made subject to the imposition of certain measures that it considered necessary to prevent significant adverse impacts (the "Extension Project Report").
21. As it relates to the Ka'a'Gee Tu's interests, the Extension Project Report concluded that:
 - (a) The Cameron Hills is an important traditional use area for the Ka'a'Gee Tu both historically and today.
 - (b) Some of the commitments to mitigation measures regarding harvester compensation made by Paramount relating to the Original Project were not fulfilled.
 - (c) There is a need for air quality monitoring in the Northwest Territories (NWT) emerging as a result of oil and gas development and an emerging need for enforceable air quality standards.

- (d) The cumulative effects of ongoing development in the Cameron Hills may result in adverse effects on the regional boreal caribou population.

22. The Extension Project Report stated that the issue of a compensation plan had remained unresolved from the Original Project and that “[f]urther delay is not acceptable in light of the proposed expansion of the development for which the original plan was recommended.” The Review Board also noted disagreement between the Ka’a’Gee Tu, INAC and Paramount on the interpretation of the breadth of concerns associated with traditional harvesting, suitable compensation, and the level of authority of Aboriginal communities in operational planning should concerns about infringement on Treaty rights arise and said that:

This disagreement must be resolved in order to ensure reasonable and fair compensation for damages incurred relative to the Paramount’s activities.

23. Similarly, the Extension Project Report stated:

The Review Board supports the communities’ requests for a socio-economic agreement with Paramount. The Review Board also concurs with the GNWT on the effectiveness of socio-economic agreements to aid in assessing the impact on the social and the cultural aspects of northern development (Hearing Transcripts, Vol. 1, p. 154). The Review Board further acknowledges the efforts of the Deh Cho First Nation in establishing the Deh Cho First Nation Consultation Principles (see Appendix D), and supports the use of these principles as guidelines to conducting meaningful consultation with Deh Cho communities.

24. The Extension Project Report included the following Recommendations which directly addressed some of the Ka’a’Gee Tu’s concerns:

R-15 The Review Board recommends that Paramount and the other parties to the unfinished Cameron Hills Wildlife and Resources Harvesting Compensation Plan developed in response to measures 13 and 15 of EA01-005 [the Pipeline Project Report] complete the compensation plan. If a compensation plan cannot be completed by these parties within 90 days of the federal Minister’s acceptance of this report, this matter will proceed to binding arbitration, pursuant to the *NWT Arbitration Act*. A letter signed by the parties, indicating agreement to the compensation plan or in the case of arbitration, the arbitrator’s decision must be filed with NEB

and MVLWB prior to the commencement of Paramount's operations under land use permit MV2002A0046.

R-16 The Review Board recommends that the GNWT develop a socio-economic agreement with Paramount in consultation with affected communities before operations proceed under the land use permit MV2002A0046. The socio-economic agreement is to address issues such as employment targets, educational and training opportunities for local residents and a detailed ongoing community consultation plan.

25. The Review Board was also concerned about the lack of an enforceable framework for air quality in the NWT. In the Extension Project Report, the Review Board pointed out that in December, 1999, it made a recommendation about air quality standards in a previous environmental assessment (the Ranger-Chevron EA) but that "little or no progress has been made to satisfy the Review Board's 1999 recommendation." The Review Board stated that to "prevent significant adverse impacts on air quality":

R-7 The Review Board recommends that the Government of Canada (INAC and Environment Canada) and the Government of the Northwest Territories, implement recommendation 7 from the Ranger-Chevron EA by June 2005 [relating to air quality guidelines].

26. Like in the Original Project, the Responsible Ministers exercised their power to engage the consult-to-modify provisions contained in s. 130(1)(b)(ii) of the Act. On July 5, 2005 the Responsible Ministers issued the Ministers' Decision and approved the Extension Project. The Ministers' Decision deleted Recommendation 7 and replaced it with a suggestion, and substantially rejected Recommendations 15 and 16 to the serious detriment of the Ka'a'Gee Tu.
27. The Ministers' Decision contained no acknowledgement of the efforts of the Deh Cho First Nation in establishing the Deh Cho First Nations Consultation Principles, and said nothing about using those principles as guidelines to conduct meaningful consultation with Deh Cho communities.
28. Section 35 of the *Constitution Act, 1982* and the honour of the Crown required

that the Responsible Ministers consult in good faith and endeavour to seek workable accommodation with the Ka'a'Gee Tu in respect of their Aboriginal and Treaty rights prior to allowing the Extension Project to proceed. The Responsible Ministers breached their duties to the Ka'a'Gee Tu in that regard, as set out in paragraph 30 of the Notice of Application filed in Application T-1379-05.

29. The Responsible Ministers also failed to accommodate the Ka'a'Gee Tu's Aboriginal and Treaty rights, as set out in paragraph 31 of the Notice of Application filed in Application T-1379-05.
30. As a result, the Ministers' Decision is unconstitutional and exceeds the Responsible Ministers' jurisdiction.
31. The Ministers' Decision also exceeds the Responsible Ministers' jurisdiction under the Act for the reasons stated in paragraph 33 of the Notice of Application filed in Application T-1379-05.

(c) The issuance of the Amended Land Use Permit

32. The Chair of the Review Board during the environmental assessment of the Extension Project was Mr. Todd Burlingame, who sat as Chair of the panel that conducted the environmental assessment.
33. Mr. Burlingame signed the Extension Project Report as Chair of the Review Board. At p. vi the Extension Project Report expresses the conclusion that "the proposed development should proceed to the regulatory phase for approval".
34. The issuance by the Land and Water Board of the Amended Land Use Permit that is the subject of this application, is the first stage in the regulatory approval of the Extension Project.
35. On or about the end of January, 2005 Mr. Burlingame's appointment as Chair of the Review Board ended.

36. Prior to the end of his appointment, the Review Board participated with the Responsible Ministers in the consult to modify process, including a meeting between the Review Board, the Responsible Ministers and the NEB on January 24, 2005 to discuss proposed modifications to the Review Board recommendations.
37. In January, 2005 the Land and Water Board provided to the Minister a list of three recommended candidates for the position of Chair of that Board, pursuant to s. 12(1) of the Act. Mr. Burlingame's name was not on that list.
38. On or about March 9, 2005 the Minister appointed Mr. Burlingame as Chair of the Land and Water Board. As detailed below, Mr. Burlingame then participated in the decision to issue the Amended Land Use Permit.
39. In appointing Mr. Burlingame as Chair of the Land and Water Board, the Minister:
- (a) Did not consult with the Land and Water Board regarding the three candidates it had nominated to discuss why those candidates were not acceptable to the Minister; and
 - (b) Did not provide the Land and Water Board with a reasonable time in which to provide further candidates for the Minister's consideration.
40. On August 9, 2005 the Ka'a'Gee Tu, as represented by the present Applicants, filed Application T-1379-05 challenging the Responsible Ministers' decision.
41. On June 21, 2005, after publication of the Extension Project Report but before the issuance of the Responsible Ministers' decision on July 5, 2005, Paramount applied to the Land and Water Board to further amend the original April 2003 land use permit and water licence amendment applications (the "Second Amendment Application"). The Second Amendment Application alters the location of the undertakings originally proposed by Paramount.

42. By letter dated June 25, 2005 the Land and Water Board advised Paramount that it would not process the Second Amendment Application until the Responsible Ministers had approved the Extension Project Report.
43. After the Responsible Ministers' decision on July 5, 2005 the Land and Water Board forwarded the Second Amendment Application to the parties to the environmental assessment by letter dated July 22, seeking comments by August 1, 2005 (subsequently extended to August 2).
44. The lack of a meaningful traditional use study prepared in partnership with the Ka'a'Gee Tu meant that the Ka'a'Gee Tu could not evaluate the implications of the changes proposed in the Second Amendment Application for their traditional uses and practices.
45. By letter dated August 3, 2005 addressed to Bob Overvold, Regional Director General, INAC, the Land and Water Board advised the Minister that it was exercising its powers under s. 22(2)(b) of the *Mackenzie Valley Land Use Regulation* (the "Regulation") to initiate an investigation into whether the Federal Crown had conducted appropriate consultation and accommodation with the Ka'a'Gee Tu. It further advised the Minister that it would not be issuing the Amended Land Use Permit until it had received details regarding the Crown's consultation and accommodation efforts in relation to the Ka'a'Gee Tu.
46. By letter dated August 29, 2005 the Minister responded to the Land and Water Board advising that he was unable to provide the requested details, and stating that it is the Minister's position that the Crown met its legal duty to consult in the circumstances.
47. On September 29, 2005 the Land and Water Board approved Paramount's Second Amendment Application and issued the Amended Land Use Permit to Paramount without notice to the Ka'a'Gee Tu. In making that decision the Land and Water Board:

- (a) Ended its investigation under s. 22(2)(b) of the Regulation into the adequacy of the Federal Crown's consultation and accommodation of the Ka'a'Gee Tu;
 - (b) Made an effective determination pursuant to that investigation, that the Federal Crown's consultation and accommodation of the Ka'a'Gee Tu met the Federal Crown's obligations; and
 - (c) Accepted Paramount's changes to the original Amendment Application without referring those changes to the Review Board for review, and without any opportunity for the Ka'a'Gee Tu to prepare a meaningful evaluation of the implications of those changes for their traditional uses and practices.
48. On October 11, 2005 the Land and Water Board issued Reasons for Decision in support of its September 29 decision, and also provided notice of the decision and the Reasons for Decision to the Ka'a'Gee Tu. Mr. Burlingame signed the Reasons for Decision in his capacity as Chair of the Land and Water Board, and participated in the September 29 decision.

The grounds for review

49. The Applicants rely on and adopt the grounds and particulars thereof stated in Application T-1379-05 in support of this application.
50. The issuance of the Amended Land Use Permit is unconstitutional and *ultra vires* the Land and Water Board, because it rests on the preceding decision of the Responsible Ministers that is unconstitutional and outside of the Responsible Ministers' jurisdiction and is contrary to the honour of the Crown, for the reasons stated in paragraph 1 of the Notice of Application filed in Application T-1379-05.
51. The issuance of the Amended Land Use Permit is further *ultra vires* the Land and Water Board, because the Land and Water Board may not issue any permit to

Paramount until the conditions of Part 5 of the Act (the environmental assessment process) have been complied with and:

- (a) The Responsible Ministers' breach of their duty to consult with and accommodate the Ka'a'Gee Tu as stated above, is a failure to comply with their duties under Part 5;
 - (b) Further, the Responsible Ministers' Decision is outside the Responsible Ministers' jurisdiction and in breach of Part 5 for the reasons stated in paragraph 2 of the Notice of Application filed in Application T-1379-05.
52. The issuance of the Amended Land Use Permit is invalid and unlawful because it fails to contain and implement consultation and accommodation measures arising from the environmental assessment process, as required by the Act.
53. The Minister acted illegally and *ultra vires* his powers under s. 12 of the Act in appointing Mr. Burlingame, with the result that the decision to issue the Amended Land Use Permit in which Mr. Burlingame participated is illegal and *ultra vires*, because:
- (a) Section 12(1) of the Act states that the Minister shall appoint the Chair of the Board "from persons nominated by a majority of the members";
 - (b) Section 12(2) states a narrow exception to the rule stated in s. 12(1), which is that the Minister may appoint someone not on the list of Board nominees if "a majority of the members [of the Board do] not nominate a person acceptable to the federal Minister within a reasonable time";
 - (c) The purpose and intention of s. 12 is that the Chair of the Board shall be selected from candidates nominated by the Board, and the Minister may only appoint a candidate not nominated by the Board after first identifying to the Board why its nominees are unacceptable, and after providing a reasonable time in which the Board may consider further candidates;

- (d) The Minister's appointment of Mr. Burlingame was thus illegal, *ultra vires* and made contrary to the express and implied intention of s. 12, and the Act as a whole;
 - (e) As a consequence of his illegal appointment, Mr. Burlingame had no authority to exercise any powers whatsoever in relation to the Amended Land Use Permit application, and his participation in that decision renders the decision illegal, *ultra vires* and void.
54. The Land and Water Board breached the rules of procedural fairness and natural justice, by permitting Mr. Burlingame to participate in the determination of the investigation initiated by the Land and Water Board under s. 22(2)(b) of the Regulation:
- (a) Mr. Burlingame participated in the environmental assessment process, and the consult to modify process between the Review Board and the Responsible Ministers, in his capacity as Chair of the Review Board panel;
 - (b) The subject matter of the investigation was whether the Federal Crown had complied with its duty to consult with and accommodate the Ka'a'Gee Tu, including through the environmental assessment process and the consult to modify process;
 - (c) Mr. Burlingame thus participated in the investigation and determination of a question in which he had a direct role and interest, thereby irrevocably tainting the decision to conclude the investigation and issue the Amended Land Use Permit with an appearance of bias and conflict of interest.
55. The Land and Water Board further breached the rules of procedural fairness and natural justice by permitting Mr. Burlingame to participate in the decision to approve and issue the Amended Land Use Permit:
- (a) The Review Board and Land and Water Board are legally distinct and

independent entities that exercise independent statutory powers of review and approval;

- (b) In exercising its statutory powers of decision, the Land and Water Board must maintain an impartial and open mind and address each application on its merits, within the scope of its statutory powers and duties;
- (c) The Land and Water Board owes this duty to the public in general, and the Ka'a'Gee Tu in particular as a directly affected First Nation and participant in the environmental assessment process;
- (d) Mr. Burlingame, in his capacity as Chair of the Review Board, had formed the opinion and expressed the conclusion that the Extension Project should be approved, including through the issuance of the Amended Land Use Permit authorizing the first stage of the Extension Project;
- (e) Mr. Burlingame then participated in rendering a decision on the Amended Land Use Permit application in his capacity as Chair of the Land and Water Board.
- (f) The Land and Water Board thus breached its duties of procedural fairness and natural justice, and created a reasonable apprehension that it had predetermined the manner in which it should exercise its powers, had a closed mind with respect to the proper disposition of the Amended Land Use Permit, and was biased towards a particular disposition of Paramount's amendment application.

56. The Land and Water Board further breached the rules of procedural fairness and natural justice because:


- (a) Mr. Burlingame's letter of appointment from the Minister grants him an annual salary payable from funds provided by INAC, along with benefits and an annual vacation entitlement;

- (b) The Land and Water Board's policy and practice, with the exception of Mr. Burlingame, is to pay Board members honoraria on a *per diem* basis without benefits or vacation;
 - (c) The terms of Mr. Burlingame's appointment grant him a unique benefit derived from the Minister and entirely within the Minister's power and control, and are contrary to Board policy;
 - (d) The specific circumstances of Mr. Burlingame's appointment and his ongoing relationship and communications with the Minister, including the terms of his appointment and compensation, give rise to a reasonable apprehension that he will not bring the requisite independence to any decisions before the Land and Water Board that involve or relate to the Minister and/or INAC;
 - (e) The decision to terminate the investigation and issue the Amended Land Use Permit was a decision involving and relating to the Minister and INAC.
57. The Act, including ss. 5(2), 12, 58, 62, 118, 128 and 130 thereof and associated regulations, and ss. 18 and 18.1 of the *Federal Courts Act*.
58. Such further and additional grounds as counsel may identify and this Honourable Court may consider.

This application will be supported by the following material:

- (a) The full record of materials filed in application T-1379-05.
- (b) The Second Affidavit of Joe Acorn to be filed;
- (c) The record before the Land and Water Board; and
- (d) Such further and additional materials as counsel may advise.

Date: November 3, 2005



Louise Mandell, Q.C.
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500 – 1080 Mainland St.
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Tel.: (604) 681-4146
Fax: (604) 681-0959
Counsel for the Applicant

Rule 317 Request

Pursuant to Rule 317 the Applicants request that the Land and Water Board and Minister produce all records in their possession relevant to the issues raised in this judicial review application, and not already in the Applicants' possession. This request includes but is not limited to:

- (a) All records regarding the Land and Water Board's review and assessment of Paramount's amendment applications.
- (b) Any record of communications between the Land and Water Board and the Minister or his Department, regarding the issuance of the Amended Land Use Permit and Paramount's amendment applications.
- (c) All records regarding the Land and Water Board's investigation pursuant to s. 22(2)(b) of the Regulation, including but not limited to any internal records of Board discussions, and any records of communications with other parties.
- (d) All records of discussions between the Land and Water Board and any other parties, or within the Board and between Board members and staff, regarding the inclusion of conditions in the Amended Land Use Permit, including conditions arising from the Responsible Ministers' s. 130(1)(b)(ii) decision.
- (e) All records pertaining to the appointment of Mr. Burlingame to the Land and Water Board, including the original list of nominees provided by the Land and Water Board to the Minister, all records evidencing communications between the Minister, the Land and Water Board and Mr. Burlingame regarding the list of nominees and/or his appointment, and all internal records of INAC and the Land and Water Board on the subject of the appointment of the Chair of the Land and Water Board.
- (f) All records of communications between Mr. Burlingame and the Minister and his Department, INAC, since the date of Mr. Burlingame's appointment as Chair of the Land and Water Board.

Court File No.

FEDERAL COURT

BETWEEN:

**CHIEF LLOYD CHICOT suing on his own behalf and
on behalf of all Members of the Ka'a'Gee Tu First
Nation and the KA'A'GEE TU FIRST NATION**

Applicants

AND:

**MINISTER OF INDIAN AND NORTHERN AFFAIRS
CANADA,
PARAMOUNT RESOURCES LTD., the
MACKENZIE VALLEY LAND AND WATER BOARD
and TODD BURLINGAME (in his capacity as Chair of
the Mackenzie Valley Land and Water Board)**

Respondents

NOTICE OF APPLICATION

**MANDELL PINDER
Barristers & Solicitors
Suite 422 – 1080 Mainland St.
Vancouver, B.C. V6B 2T4
Tel: (604) 681-4146
Fax: (604) 681-0959**

Per: Louise Mandell, Q.C.

Counsel for the Applicant

Mandell Pinder
Barristers & Solicitors

422 -- 1080 MAINLAND STREET, VANCOUVER BC V6B 2T4
TEL: (604) 681-4146 FAX: (604) 681-0959

FAX COVER SHEET

DATE: December 21, 2005 **CLIENT #:** 216-00.4

TO: Mackenzie Valley Environmental Impact Review Board
Attention: Vern Christensen, Executive Director **FAX:** 1-867-766-7074

CC: Ka'a'Gee Tu First Nation
Attention: Chief Lloyd Chicot & Council and Allan Landry **FAX:** 1-867-825-2002

CC: Joe Acorn **FAX:** 1-867-873-9190

FROM: Louise Mandell, Q.C.

RE: Environmental Assessment EA0506-007:
Paramount SDL-8 2-D Geophysical Program

ORIGINAL BEING SENT BY MAIL: No

NUMBER OF PAGES INCLUDING COVER SHEET: 48

MESSAGE

Please see attached correspondence and enclosures.

Thank you.

CONFIDENTIALITY CAUTION

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Mandell Pinder
Barristers & Solicitors

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M. LOUISE MANDELL, Q.C.*†	CLARINE OSTROVE†
BRENDA GAERTNER*	MARY LOCKE MACAULAY††
BRUCE ELWOOD	TIMOTHY HOWARD
ROSHAN DANESH	LINDSAY WADDELL
JANELLE DWYER*	SHAIN JACKSON

* Personal Law Corporation
† Also of the Alberta Bar
†† Also of the Ontario Bar

December 21, 2005

By Fax: (867) 766-7074

Mackenzie Valley Environmental Impact Review Board
Box 938 - 200 Scotia Centre
5102 - 50th Avenue
Yellowknife, NT X1A 2N7

Attention: Vern Christensen
Executive Director

Dear Sir:

Re: Environmental Assessment EA0506-007:
Paramount SDL-8 2-D Geophysical Program -
Request for Ruling

Further to your letter of December 20, 2005, please find attached a Request for Ruling, submitted by the Ka'a'Gee Tu First Nation.

Yours very truly,

MANDELL PINDER



Louise Mandell, Q.C.
Barrister and Solicitor

LM/dg
Encl. (Form 2 - Request for Ruling)
ccs: Clients

MVEIRB – FORM 2

Request for Ruling

Environmental Assessment EA0506-007: Paramount SDL-8 2-D Geophysical Program

TAKE NOTICE that a Request for Ruling will be made to the MVEIRB by the Ka'a'Gee Tu First Nation by written submission dated December 21, 2005 or as soon after that time as the Board may decide to address the Request.

The Ruling requested from the MVEIRB is as follows:

That the above-mentioned environmental assessment be immediately suspended, and shall not recommence, until such time as legal proceedings T-1379-05 and T-1996-05 in the Federal Court are completed, and the Ka'a'Gee Tu's rights and interests in relation to their territory affected by Paramount's development activities are properly addressed.

The facts or information relevant to this Request for Ruling which should be considered by the MVEIRB are as follows:

1. The above-mentioned environmental assessment is an assessment of Paramount's activities in the Cameron Hills area.
2. The Cameron Hills area is the Traditional Territory of the Ka'a'Gee Tu First Nation, of the Deh Cho Nation. The Ka'a'Gee Tu's rights and interests in respect of the Cameron Hills area are detailed in the attached Court proceedings.
3. Paramount's activities in the Cameron Hills have been subject to previous environmental assessments, including EA01-005 and EA03-005.
4. EA03-005 is currently the subject of legal proceedings in T-1379-05 and T-1996-05 in the Federal Court.
5. Issues raised in the legal proceedings include:
 - 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.

*** RX REPORT ***

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CONFIDENTIALITY CAUTION

Thank you.

Please see attached correspondence and enclosures.

MESSAGE

NUMBER OF PAGES INCLUDING COVER SHEET: 48

ORIGINAL BEING SENT BY MAIL: No

RE: Environmental Assessment EA0506-007: Paramount SDL-8-2-D Geophysical Program

FROM: Louise Mandell, Q.C.

CC: Joe Acorn FAX: 1-867-873-9190

CC: Ka'a'Gee Tu First Nation Attention: Chief Lloyd Chicot & Council and Allan Landry FAX: 1-867-825-2002

TO: Mackenzie Valley Environmental Impact Review Board Attention: Vern Christensen, Executive Director FAX: 1-867-766-7074

DATE: December 21, 2005 CLIENT #: 216-004

FAX COVER SHEET

Mandell Pinder Barristers & Solicitors

422 - 1080 MAINLAND STREET, VANCOUVER BC V6B 2T4 TEL: (604) 681-4146 FAX: (604) 681-0859

LM/dg
Encl. (Form 2 - Request for Ruling)
ccs: Clients

Louise Mandell, Q.C.
Barrister and Solicitor

MANDELL PINDER

Yours very truly,

Further to your letter of December 20, 2005, please find attached a Request for Ruling, submitted by the Ka'a'Gee Tu First Nation.

**Re: Environmental Assessment EA0506-007:
Paramount SDL-8-2-D Geophysical Program -
Request for Ruling**

Dear Sir:

**Attention: Vern Christensen
Executive Director**

Mackenzie Valley Environmental Impact Review Board
Box 938 - 200 Scotia Centre
5102 - 50th Avenue
Yellowknife, NT X1A 2N7

By Fax: (867) 766-7074

December 21, 2005

* Personal Law Corporation
† Also of the Alberta Bar
‡ Also of the Ontario Bar

M. LOUISE MANDELL, Q.C.,[†] CLARINE OSTROVE[‡]
BRENDA GAERTNER*
MARY LOCKE MACAULAY^{††}
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Mandell Pinder
Barristers & Solicitors

MVEIRB - FORM 2

Request for Ruling

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Paramount SDL-8-2-D Geophysical Program**

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RLM /
Louise Mandell, Q.C.

Dated at Vancouver, British Columbia, on (MM/DD/YY) 12/21/05

AND FURTHER TAKE NOTICE that in support of this Request for Ruling, the Ka'a'Gee Tu rely on their Notice of Application in both T-1379-05 and T-1996-05 in the Federal Court, copies of which are provided herewith.

12. Where any issue arises during the course of a proceeding, the Review Board may take any action necessary consistent with these Rules, or permitted by law, in order to enable it to fairly and effectively decide on the issue.

- (d) The Minister's appointment of Mr. Burlingame was thus illegal, *ultra vires* and made contrary to the express and implied intention of s. 12, and the Act as a whole;
 - (e) As a consequence of his illegal appointment, Mr. Burlingame had no authority to exercise any powers whatsoever in relation to the Amended Land Use Permit application, and his participation in that decision renders the decision illegal, *ultra vires* and void.
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57. The Act, including ss. 5(2), 12, 58, 62, 118, 128 and 130 thereof and associated regulations, and ss. 18 and 18.1 of the *Federal Courts Act*.
58. Such further and additional grounds as counsel may identify and this Honourable Court may consider.

This application will be supported by the following material:

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- (b) The Second Affidavit of Joe Acorn to be filed;
- (c) The record before the Land and Water Board; and
- (d) Such further and additional materials as counsel may advise.

Date: November 3, 2005



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Counsel for the Applicant

Rule 317 Request

Pursuant to Rule 317 the Applicants request that the Land and Water Board and Minister produce all records in their possession relevant to the issues raised in this judicial review application, and not already in the Applicants' possession. This request includes but is not limited to:

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- (f) All records of communications between Mr. Burlingame and the Minister and his Department, INAC, since the date of Mr. Burlingame's appointment as Chair of the Land and Water Board.

Court File No.

FEDERAL COURT

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**CHIEF LLOYD CHICOT suing on his own behalf and
on behalf of all Members of the Ka'a'Gee Tu First
Nation and the KA'A'GEE TU FIRST NATION**

Applicants

AND:

**MINISTER OF INDIAN AND NORTHERN AFFAIRS
CANADA,
PARAMOUNT RESOURCES LTD., the
MACKENZIE VALLEY LAND AND WATER BOARD
and TODD BURLINGAME (in his capacity as Chair of
the Mackenzie Valley Land and Water Board)**

Respondents

NOTICE OF APPLICATION

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Suite 422 - 1080 Mainland St.
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Tel.: (604) 681-4146
Fax: (604) 681-0959**

Per: Louise Mandell, Q.C.

Counsel for the Applicant