

# **Technical Report**

**For:**

**EA0506-007 Paramount Significant Discovery License 8  
2D Geophysical Program**

**Submitted to:**

**Mackenzie Valley Environmental Impact Review Board**

**Submitted by:**

**Ka'a'Gee Tu First Nation**

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## **1 Introduction**

The Ka'a'Gee Tu First Nation (Ka'a'Gee Tu), a member of the Dehcho First Nations, is based at Kakisa, Northwest Territories. Paramount's Significant Discovery License (SDL) 8 is part of the land base that comprises the traditional and contemporary land use area of the Ka'a'Gee Tu over which the Ka'a'Gee Tu hold treaty and aboriginal title and rights. As such, potential impacts of Paramount's activities to the Ka'a'Gee Tu's title and rights must be addressed and mitigated, and an accommodation of the Ka'a'Gee Tu's title and rights achieved through, among other measures, a sharing of benefits.

The Ka'a'Gee Tu are the main traditional land users, caretakers and managers of this area. They remain dependent upon the land and waters in the area for their culture and livelihood. Their constitutional rights to use and occupy these lands are guaranteed by treaty, and protected by s. 35(1) of the *Constitution Act, 1982*. Given their close ties to the land, they are aware of the extensive environmental, economic and social impacts that this project and subsequent development projects, such as well drilling and pipeline construction and operation, on SDL 8 will bring to their way of life.

The Ka'a'Gee Tu are submitting this technical report to provide the Mackenzie Valley Environmental Impact Review Board (MVEIRB) with their knowledge, experience and their recommended measures that must be applied to this project.

## **2 The Ka'a'Gee Tu People**

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

The Ka'a'Gee Tu's close connection to this land was recognized and affirmed at a meeting of the Dene National Assembly, August 12-19, 1996, where it was resolved that the Dene Nation fully endorsed the rights of the Ka'a'Gee Tu to have final approval in future economic and land use activities in their traditional area. Given their close proximity to and their use of the project area, the Ka'a'Gee Tu have the most at stake in the implementation of Paramount's project.

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

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

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

During the previous Paramount EA, the Ka'a'Gee Tu presented a video during the public hearing and gave the MVEIRB a copy for the public registry. As there was no opportunity to present this video through a public hearing during this EA and since there have been changes to the MVEIRB membership and staff, the Ka'a'Gee Tu ask that the MVEIRB and its staff take the time to watch the video, “The People of Tathlina”, and to place the video on the public registry for this current seismic EA. The close connection to the land evident in the video by everyone in the community from youth to Elders is the basis for everything that the Ka'a'Gee Tu have done in connection with this project to try to protect the land and the community from adverse impacts.

### **3 History of Significant Discovery License 8**

To effectively understand the positions taken by the Ka'a'Gee Tu with regards to the current project, it is necessary to have some understanding of the history of SDL 8.

The Ka'a'Gee Tu First Nation was not involved in or consulted on 1) the granting of exploration rights to Paramount; 2) the drilling of well M-31; or 3) the granting of the significant discovery license.

The Government of Canada, the National Energy Board and Paramount conducted these transactions with no regard or consideration for the people whose lands these were and still are. In the years since these transactions, none of Canada, the NEB or Paramount have taken any steps to rectify these past wrongs. In fact, Paramount and Canada both persist in a business-as-usual attitude to this day that disregards the aboriginal and treaty rights of the Ka'a'Gee Tu.

Canada's failure to uphold the honour of the Crown by meaningfully consulting with the Ka'a'Gee Tu in relation to SDL 8, as outlined above, is a significant concern to the Ka'a'Gee Tu. The Ka'a'Gee Tu have already been required to initiate legal proceedings to protect their interests and constitutional rights in relation to Paramount's activities in their territory. The Ka'a'Gee Tu urge the MVEIRB to seriously consider and implement the recommendations in this Technical Report so that this project can proceed on a path of engagement and reconciliation, rather than conflict.

## **4 Community Issues**

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

### **4.1 Consultation and Accommodation**

Full and meaningful consultation with the Ka'a'Gee Tu, directed towards a workable accommodation of Ka'a'Gee Tu title and rights must be part of the process of designing, reviewing, implementing and monitoring this project. This means that all steps of the process must include the time, the opportunity and the resources for the meaningful participation of the community. Thus far, this has not occurred.

#### **4.1.1 Legal Requirements for Consultation**

Consultation and accommodation in this process is more than adherence to an existing regulatory process. The duty to consult includes an obligation to reach workable accommodation of treaty and aboriginal title and rights, including cultural interests and economic interests. The duty to consult and accommodate is rooted in the principle of the honour of the Crown, which governs all dealings between the Crown and Aboriginal peoples (*Haida v. British Columbia and Weyerhaeuser*, SCC).

This project, as with other projects proposed by Paramount in the Cameron Hills area, has the potential to infringe the treaty and aboriginal title and rights held by the Ka'a'Gee Tu. As such, the Crown is to consult with the Ka'a'Gee Tu and seek workable accommodation, before taking actions that may infringe. From the perspective of the community, this legal obligation of the Crown has not been met.

#### **4.1.2 Paramount's Consultation Record**

The practice of the Crown is to rely on the company to provide information to, and engage with, the community. In respect of this EA, Paramount has not engaged in any way with the Ka'a'Gee Tu. As pointed out by the Ka'a'Gee Tu's representative at the scoping hearing and confirmed by Paramount in Section C of its DAR, the entire extent of Paramount's consultation efforts for this project consisted of a mass mail-out in August of 2005 that provided an update on Paramount's entire Cameron Hills operation with 1 paragraph providing an extremely brief statement that this seismic project was coming up.

Paramount's actions and responses reveal a company that has no interest in developing an effective discussion process or relationship with the Ka'a'Gee Tu. This lack of engagement by Paramount is a serious and ongoing concern of the Ka'a'Gee Tu.

Paramount's failure to engage with the Ka'a'Gee Tu also underlines the necessity of the Crown fully discharging its legal duty of consultation.

### **4.1.3 Government of Canada's Consultation Record**

The Crown has not met its obligations to consult with and accommodate the Ka'a'Gee Tu.

INAC has taken the position in previous EAs that it will wait until after the EA and regulatory process have been completed before it will take up its s. 35 duties. Its conduct to date on this project is consistent with this position, as INAC has not met or consulted with the Ka'a'Gee Tu regarding this project. In past EAs, no meaningful consultation occurred with the Crown after the issuance of a report by the MVEIRB; indeed, INAC has twice now deliberately excluded the Ka'a'Gee Tu from the consult-to-modify process. A failure to meet constitutional obligations prior to issuance of permits and/or licenses is unlawful, and INAC's consistent pattern of conduct indicates no meaningful intention to uphold the honour of the Crown and meet its duties to the Ka'a'Gee Tu.

### **4.1.4 Dehcho Consultation Principles**

The Ka'a'Gee Tu ask that when the MVEIRB is considering whether the duty of consultation has been met in this case, that they consider the Dehcho Consultation Principles, available on the public registry of the previous Paramount environmental assessment. These principles are summarized below, and include:

1. government agencies have a duty to consult;
2. coordination by the government agencies is crucial;
3. negotiations must be part of consultations;
4. Dehcho leaders must be respected;
5. Dehcho consultations are more than mere "public" consultations;
6. proponents and the Crown must involve Dehcho leaders at the early planning stage;
7. consultations must analyze the impact on Dehcho title and rights;
8. the Crown and the proponent must accommodate Dehcho title and rights;
9. project approval depends on accommodation;
10. communities must have the capacity to consult;
11. community representative may participate in discussions on a without prejudice basis;
12. consultation as defined in the Interim Measures Agreement, is not adequate.

To date, neither Paramount nor Canada has provided any response to these consultation principles since we put them forward during the previous Paramount EA. The EA process regarding SDL 8 has not followed nor fulfilled these principles.

#### **4.1.5 Recommendations**

The Ka'a'Gee Tu is recommending that MVEIRB reject this project on the basis that there will be significant public concern if this project is advanced any further with no meaningful consultation having taken place.

All further recommendations provided by the Ka'a'Gee Tu in this technical report are simply provided in case the MVEIRB decides not to reject this project. These other recommendations should in no way be considered as methods of mitigating the significant public concern which arises due to the lack of meaningful consultation.



## **4.2 Access and Benefits Agreement**

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

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

The Ka'a'Gee Tu disagree with Paramount's position. The Ka'a'Gee Tu's title and rights, and treaty rights, have an economic component, which must be accommodated in the form of both compensation for impacts, and share of benefits.

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

With regards to the *COGOA* Benefits Plan approved by the Minister of INAC, there is absolutely no community involvement in the preparation, approval and monitoring of these plans. These Benefits Plans are nothing more than a shell of an agreement that INAC and Paramount continually use to defend themselves over the lack of any agreements that have the involvement and approval of the Ka'a'Gee Tu and affected communities. The Benefits Plan is not enforceable, making it little more than an empty promise. For example, Paramount has continuously operated in the Cameron Hills while providing no compensation to harvesters despite the provision of compensation being a requirement of the Benefits Plan's Statement of Principles.

### **Recommendations**

The Ka'a'Gee Tu recommend that the following measures be applied by the MVEIRB:

- 1) Paramount must enter into Access and Benefits Agreement negotiations with the Ka'a'Gee Tu.
- 2) An Access and Benefits Agreement must be in place for the Ka'a'Gee Tu prior to any additional authorizations being issued by the MVLWB or the NEB to Paramount for its Cameron Hills project.

### **4.3 Traditional Harvesting**

As with the previous environmental assessments of Paramount's Cameron Hills projects, the lack of a Ka'a'Gee Tu-accepted, comprehensive process for compensating impacted resource harvesters remains a major concern.

In response to that concern, the MVEIRB concluded in its December 3rd, 2001 *Report of Environmental Assessment on the Paramount Resources Ltd. Cameron Hills Gathering System and Pipeline Development* that to prevent significant adverse impacts, the following measures needed to be applied:

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

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

- 13) Paramount is to discuss, develop and implement a wildlife and resource harvesting compensation plan with potentially affected First Nation communities – Deh Gah Got'ie First Nation, Fort Providence Métis, Ka'a'Gee Tu First Nation, K'atlodeeche First Nation and West Point First Nation. The scope of the plan is to include compensation for hunting, trapping, fishing and other resource harvesting activity losses resulting from the development as agreed to by Paramount and the communities. Paramount is to commence the consultations as soon as possible, with a draft plan submitted to the communities within 60 days of EA Report acceptance by the INAC Minister and a final plan submitted to the communities within 90 days of EA Report acceptance. The plan is to apply retroactively to impacts arising from the start of construction of the gathering facilities and pipeline. If requested by Paramount or any of the communities, the GNWT and

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INAC are to facilitate the discussions on the plan.

- 15) Paramount and the communities are to cooperate to the fullest extent possible in developing the wildlife and resource harvesting compensation plan. If the parties are unable to come to an agreement on the contents of the plan within the 90-day period, an independent arbitrator shall be jointly appointed within 30 days by the GNWT and INAC. The arbitration process shall conclude within 30 days of the appointment of the arbitrator.
- 17) This measure has been deleted.

These changes, which directly affect the Ka'a'Gee Tu's rights and interests, were made without any meaningful consultation with the Ka'a'Gee Tu and were opposed by the Ka'a'Gee Tu. Nonetheless, the Ka'a'Gee Tu attempted to engage in the process contemplated in revised Measures #13 and #15.

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

An enforcement mechanism such as was applied in the original Measure #17 is necessary before the Ka'a'Gee Tu expects any meaningful negotiations by Paramount.

**Recommendations**

The Ka'a'Gee Tu is recommending that the following measures be applied by the Review Board:

- 1) Paramount is to discuss, develop and implement a wildlife and resource harvesting compensation plan with the Ka'a'Gee Tu First Nation. The scope of the plan is to include compensation for resource harvesting activity losses resulting from the development such as for hunting, trapping, fishing and other traditional activities as agreed to by Paramount and the community. The wildlife and resource harvesting compensation plan is to be completed as part of the Access and Benefits Agreement (ABA) negotiations.
- 2) Unless otherwise agreed to by the Ka'a'Gee Tu, the wildlife and resource harvesting compensation plan must be in place prior to any authorizations being issued by the MVLWB or the NEB to Paramount for this project.

#### **4.4 Traditional Land Use and Traditional Knowledge Studies**

The Cameron Hills is part of the traditional land use area of the Ka'a'Gee Tu. However, Paramount consistently defines traditional land use, and consequently aboriginal and treaty rights, solely on the basis of current activities. The Ka'a'Gee Tu do not accept this definition and approach to traditional land use, which must be assessed in regard to the history and pattern of use with full community participation.

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

The first step in the process of effectively integrating traditional land users and traditional knowledge into the project design process is for Paramount to recognize and acknowledge the aboriginal and treaty rights that exist in the project area and agree to enter into ABA negotiations. This will put in place the conditions necessary to a proper and respectful engagement between Paramount and the community, in which information regarding traditional land use can be shared and developed. However, given statements made by Paramount over the years regarding aboriginal and treaty rights and access and benefits negotiations, it is apparent to the Ka'a'Gee Tu that this work will only get done if Paramount has no choice but to do it. The Ka'a'Gee Tu therefore reiterate their request that the negotiation of an ABA be made a precondition to Paramount proceeding with its work.

In their DAR, Paramount continually refers back to 1) the 2001 report completed by Paramount that was never accepted or approved by the Ka'a'Gee Tu and 2) to Paramount's use of a token "aboriginal trapper" who is not a member of the Ka'a'Gee Tu or a holder of Ka'a'Gee Tu traditional knowledge. Furthermore, as evidenced by the comments of Chief Fabian at the scoping hearing, this individual is not even accepted by the community as representative of his own community's traditional knowledge holders.

In responding to questions from the MVEIRB in its DAR, Paramount was unable to provide a single piece of TK that did not come from this discredited 2001 study or this single unrepresentative trapper.

Given that the MVEIRB rejected the Ka'a'Gee Tu's proposed IRs on these matters, we can only assume that the MVEIRB has a firm grasp on the Ka'a'Gee Tu's position on these matters. If the MVEIRB were to then, once again, simply ignore this issue after not allowing us to explore this matter further through the use of IRs, then this EA will have a significant fairness issue that will need to be resolved.

**Recommendations**

The Ka'a'Gee Tu are recommending that the following measures be applied by the MVEIRB:

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

#### **4.5 Heritage Resources**

Paramount has not completed any heritage resource assessment work for this project. Such work is considered standard procedure by the Ka'a'Gee Tu for companies working on Ka'a'Gee Tu lands. A heritage resource impact assessment must be completed prior to this project occurring.

#### **Recommendations**

The Ka'a'Gee Tu is recommending that the following measures be applied by the MVEIRB:

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

#### **4.6 Seismic Techniques**

Seismic lines and other linear disturbances such as access roads have been scientifically proven to have direct, significant negative impacts upon wildlife, particularly caribou. This proposed project therefore represents a real infringement upon the Ka'a'Gee Tu's rights and interests with regards to their traditional and subsistence harvesting practices.

The Ka'a'Gee Tu has consistently expressed concern about the creation of new cutlines on its traditional lands and believe that seismic line techniques must be chosen primarily on the basis of reducing environmental impacts through the use of narrow cutlines.

When asked in IR 15 to provide the source of its definition of low impact seismic (LIS), Paramount refers to Alberta guidelines which clearly state that to be considered LIS, line widths can be 4.5 m average and 5 m maximum. Lines of 6 m width, as proposed by Paramount, are considered conventional seismic. Using this definition of LIS, Paramount appears to have been dishonestly referring to its proposed project as LIS and fails to provide any explanation as to why it was characterizing its proposed 6 m lines as LIS.

In IR 14, the MVEIRB asked the NEB about best practices on seismic techniques. The NEB responded by referring to 1) a severely outdated and discredited 18-year old manual from INAC which should no longer be in use and 2) an industry manual from CAPP and the CAGC, the lobby groups for those industries that have effectively decimated the caribou population in Alberta through the use of their so-called "best practices".

Rather than looking to ineffective and outdated material from the federal government or using the "best practices" of industry lobby groups, the MVEIRB should chart a new course towards a northern-developed and implemented set of best practices that can work to prevent, rather than just react to, the kinds of environmental impacts caused by the seismic industry in Alberta and elsewhere.

We would point out, however, that even if the MVEIRB does decide to accept and use the industry lobby groups' "best practices", Paramount still fails to even meet that standard with the 6 m line widths requested by Paramount exceeding the industry standards.

In responding to IR 13, the NEB wrote that: *"To date, the NEB staff are satisfied that authorized geophysical operations in the Northwest Territories have protected the environment when the company's proposed mitigation measures, operating practices, and permit conditions have been fully implemented."*

With respect to the NEB staff, this opinion should carry no weight with the MVEIRB in making its decision on this EA. Since it is the NEB staff who are the ones authorizing these geophysical authorizations, this opinion from the NEB staff is akin to asking someone if they are good at their job. The answer, of course, is usually "yes" and the NEB staff are clearly no exception.

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A more credible and objective review of the current industry and regulatory practices with regards to protection of the environment needs to come from knowledgeable and experienced non-regulators such as various NGOs (e.g. Pembina Institute) and the GNWT.

In discussing the seismic techniques that it intends to use, Paramount consistently implies that financial considerations due to equipment availability will override environmental protection considerations. For example, Paramount suggests (DAR Section D(2)) that the use of mulchers would enable the use of narrower seismic lines but that the higher cost might prevent mulchers from being used.

The mulcher issue was raised again in Paramount's response to IR 16: "*Nevertheless, when regulatory approvals are in hand, frozen ground conditions exist, and the call for the equipment goes out, experience has shown that it can be difficult to obtain mulchers at the time they are needed.*"

It is our view that at the right price, Paramount could likely obtain mulchers at any time that it might need them. However, even if Paramount is correct and mulchers might not be available, the Ka'a'Gee Tu do not believe that that is justification for proceeding with methods that produce greater impacts upon the environment. If lower impact equipment, such as mulchers, are not available, then the project should be delayed until they are available. Operational expediency should not trump low impacts methods.

The cost factor was again raised in its Oct. 13, 2005 submission to the MVLWB as a reason for not using heli-portable seismic. Paramount stated: "*Paramount concluded that the mitigation techniques proposed for the vibroseis or dynamite techniques far outweigh the potential safety risk of heli-portable seismic during darkness in winter, the blade downwash from low flying helicopters, associated helicopter noise and significant increase in project cost.*"

It is clear in reviewing Paramount's various statements that the dominant, overriding factors in the selection of seismic techniques are cost and expediency. Everything else, including mitigating impacts upon the environment, are secondary factors with Paramount's reasoning constructed to support the lowest cost, fastest alternative. Potential disadvantages of heli-portable seismic are significantly overstated and the benefits are understated while the reverse is true of Paramount's preferred approach of 6 m wide lines using dynamite or vibroseis.

For example, one of the factors Paramount cites in refusing to use heli-portable seismic is perceived safety reasons. However, when asked to provide statistics to back up this claim in IR 18(2), Paramount fails to provide any evidence or statistics that heli-portable seismic has a safety record that is worse than standard seismic techniques. Paramount cites the shorter work day as a factor against heli-portable seismic, which once again basically comes down to saving money for the company taking precedence over reducing impacts upon the environment.



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Hand-cutting is obviously viable as Paramount is proposing to use 1.5 m wide hand-cut lines (DAR Section D(4)) in steeply sloping areas but refuses to conduct the entire program using hand-cut lines because of the apparently greater cost to the company while at the same time stating that hand-cutting is less safe. If hand-cutting is so dangerous, as Paramount seems to be implying in its response to IR 18(2), then why is Paramount proposing to use any hand-cutting? Why not just skip the steeply sloping areas?

It is our view that if safety procedures can be put in place to allow Paramount to use hand-cutting on steeply sloping areas, then these same safety procedures can also be used to hand-cut the entire seismic program. Hand-cutting on level ground should be even safer than doing it on steeply sloping ground as Paramount is proposing.

In responding to IR 18, Paramount constructed an impact ranking methodology that in our view has no scientific or logical credibility. In all of the various research on the impact of cutlines on wildlife, particularly caribou, the dominant factor in determining the extent of impacts is line widths and habitat fragmentation. However, the ranking methodology created by Paramount for IR 18 relies almost exclusively on the short-term impact due to the length of time to conduct various aspects of the seismic project. Paramount's impact ranking methodology completely ignores the long-term benefits of using 1.5 m wide lines instead of 5-6 m wide lines.

There are clearly various techniques (hand-cutting, heli-portable, mulchers, mini-vibrators) that can viably be used to reduce impacts but will not be used because it will cost Paramount more money and take more time. It is the Ka'a'Gee Tu's view that in making its decision on this EA, the MVEIRB's dominant consideration should be the application of viable methods to lessen the impacts upon the environment. The relatively minor cost or time differences between the various seismic techniques should not be a factor considered by the MVEIRB is making its decisions.

The Ka'a'Gee Tu are of the view that restricting seismic line width to 1.5 m using an exclusively hand-cut, winter heli-portable seismic project is a necessary and effective manner to reduce to greatly reduce the impacts upon the environment through lower timber harvest, less ground disturbance, lower impacts upon caribou, etc. These reduced environmental impacts should be the overriding factor in the MVEIRB's decision.

**Recommendations**

The Ka'a'Gee Tu are recommending that the following measures be applied by the MVEIRB:

- 1) Paramount is restricted to an exclusively hand-cut, winter heli-portable seismic project with maximum line widths of 1.5 m.

#### **4.7 Timber Harvesting, Reseeding and Replanting**

The Ka'a'Gee Tu can accept the use of a seed mixture to try to quickly revegetate the cutlines to alleviate immediate erosion concerns but we remain concerned about the introduction of non-native invasive species. The Ka'a'Gee Tu believe that Paramount must obtain the GNWT's approval for any proposed seed mix prior to its use.

While the use of fast growing seed mixtures will deal with short-term erosion issues, the Ka'a'Gee Tu are concerned about the long-term regrowth of vegetation on the seismic lines. While grass species might provide some small level of short term protection, the long-term mitigation of project impacts will not be complete until these cutlines have once again been returned to their natural forested state. Given northern growing conditions, allowing this regrowth to take place completely naturally will ensure that the impacts of this project will linger for decades.

Unfortunately, despite being asked in an IR to do so, Paramount refused to bring into this EA the results of the seismic line regrowth study being conducted on the main Cameron Hills area.

As for the effect of this project on timber volumes, the GNWT explained in its response to IR 7(1), that this project will cut approximately 24% of the current harvest allocation and combined with other forest harvesting, this project will push the timber harvest above the timber harvest ceiling of 4000 m<sup>3</sup>. Short of rejecting the project (which we have already recommended), the next best option is to ensure that this timber is used in a productive manner and not wasted.

As the GNWT acknowledged in IR 30, the GNWT has no regulatory authority over either timber harvesting or replanting for this type of project. In the Ka'a'Gee Tu's view, these regulatory gaps are a pressing need that must be filled to try to ensure that the NWT landscape does not become an extension of the fragmented and damaged landscape in Alberta.

While the GNWT's lack of regulatory authority is unfortunate, this in no way impedes the MVEIRB's ability to impose recommendations on these matters and in fact, the existence of this regulatory gap should provide more impetus to the MVEIRB to ensure that these issues are addressed in your recommendations.

#### **Recommendations**

The Ka'a'Gee Tu are recommending that the following measures be applied by the MVEIRB:

- 1) Paramount must obtain the GNWT's approval for any proposed seed mix prior to its use.
- 2) Paramount must remove from the project area all merchantable timber that is cut down during this project. The merchantable timber is to be delivered to local communities for their use.

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- 3) In consultation with, and with the approval of, the GNWT and the Ka'a'Gee Tu, Paramount must develop and implement, at Paramount's sole expense, a replanting program for all disturbed areas. All areas disturbed by this project must be replanted with native tree species seedlings within one year of the end date of the seismic program.

#### **4.8 Windrowing**

Paramount is proposing that slash and unused timber will be cut into lengths 2 m long or less and then windrowed along the rights-of-way with windrow breaks of at least 10 m every 400 m. In its Oct. 13, 2005 letter to the MVLWB, Paramount tried to justify its proposed windrow spacing by stating: “... *there has been no evidence that this approach has not been effective and appropriate...*”.

This statement reveals a consistent flaw in Paramount’s thinking not just on this windrow issue but on all environmental issues. It is not up to the Ka’a’Gee Tu, the GNWT or any other party to provide evidence that what Paramount proposes is not effective. Rather the onus and burden of proof is on Paramount to prove that what they are proposing is effective. To date, they have not done that on this windrow issue or on most other issues, particularly on impacts of this project upon caribou.

In its Oct. 5, 2005 submission to the MVLWB, INAC recommended windrow breaks of 7 meters every 330 meters.

This differs from the GNWT which, in its Oct. 11, 2005 letter to the MVLWB, recommended windrow breaks of 10 m every 60 m.

Given that the purpose of the windrow breaks is to reduce impacts upon wildlife and lessen the forest fire risk, both matters which fall within the jurisdiction and expertise of the GNWT, not INAC, the Ka’a’Gee Tu urge the MVEIRB to accept and implement the GNWT recommendations on windrow break length and frequency.

#### **Recommendations**

The Ka’a’Gee Tu is recommending that the following measure be applied by the MVEIRB:

- 1) Paramount must have windrow breaks of 10 m not less than every 60 m.

#### **4.9 Environmental Problems and Inspections**

Paramount has a track record of not informing the Ka'a'Gee Tu when environmental problems arise in its projects, including major spills. The Ka'a'Gee Tu note that Paramount, the NEB, the MVLWB and INAC have all denied that they have any responsibility to inform and consult with the Ka'a'Gee Tu about environmental problems. INAC has also said that it has no requirement to provide the community with its inspection reports.

With regards to Paramount, the Ka'a'Gee Tu would point out that the company's refusal to inform the Ka'a'Gee Tu is a choice that it is making and not a requirement that is being placed on Paramount. As stated by the NEB in IR 26: *"However, a company regulated by the NEB, may decide to keep local community members informed."*

The Ka'a'Gee Tu would also point out that Paramount's spill contingency plan (Appendix 4 to the LUP application) makes no mention of informing or consulting with the Ka'a'Gee Tu on spills.

In its response to IR 26, INAC indicated that this project would likely be subject to 2 inspections during the operations and another inspection during the snow-free season.

The Ka'a'Gee Tu believes that the community should be involved in the monitoring and enforcement process, given that this project is occurring on the Ka'a'Gee Tu's traditional lands. However, INAC, in its response to IR 26(2), says that it will not be consulting with the Ka'a'Gee Tu on the results of its inspections or any orders that are given to Paramount.

INAC's suggestion that the Ka'a'Gee Tu can get the reports from the MVLWB is insufficient. If any problems are encountered, INAC will not give copies of the reports to the MVLWB. By the time the MVLWB gets the report and then the Ka'a'Gee Tu, any problem will already have been negotiated away by INAC and Paramount with no role for the community, or even the MVLWB. This is not appropriate.

Another reason INAC cites for refusing to consult with the Ka'a'Gee Tu is the need for the inspector to act quickly in the field.

It seems to the Ka'a'Gee Tu that both of these problems could be resolved by a single step: a representative of the Ka'a'Gee Tu should accompany the INAC, and the NEB, inspectors during the field inspections.

In defending the split in roles and lack of communication between itself and the MVLWB over inspections, INAC writes in its response to IR 12(3) that it would be inappropriate for the inspector and Board to be in communication.

The Ka'a'Gee Tu does not accept this argument. This split in the *MVRMA* of having the MVLWB issue the permits but INAC inspect for compliance is one of the major flaws of the *MVRMA* and simply seems designed to try to keep some control over this process in

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the hands of the federal government instead of with the MVLWB, which is where the inspection authority should reside. The Ka'a'Gee Tu notes that the NEB both issues permits and does its own inspections.

Even with the split in responsibilities, there is no reason why there should not be a protocol in place between INAC and the MVLWB regarding how these two organizations will interact in the inspection process in general and more particular how they will react to environmental problems.

**Recommendations**

The Ka'a'Gee Tu is recommending that the following measures be applied by the MVEIRB:

- 1) Paramount must directly inform and consult with the Ka'a'Gee Tu on any erosion problems, spills, accidents, malfunctions or any other environmental problems. Community notification must occur within a similar timeframe as notification is provided to the NEB, the GNWT, INAC and/or the MVLWB.
- 2) The NEB and INAC will invite the Ka'a'Gee Tu to send a community representative to participate in field inspections.
- 3) INAC and the NEB must provide the Ka'a'Gee Tu with copies of inspection reports within 1 week of the inspection occurring. INAC and the NEB must also provide the Ka'a'Gee Tu with copies of any orders or instructions that are issued to Paramount within 1 week of the order or instruction being issued.
- 4) INAC and the MVLWB will prepare a protocol for how these two organizations will interact with each other during the inspection process for this project in general. More specifically, this protocol will explain how they will coordinate their activities and responsibilities in the event that environmental problems are encountered to ensure swift, coordinated action occurs to remedy the situation. This protocol shall be a public document posted to the MVLWB's public registry for this project.

#### **4.10 Access**

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

In response to IR 28, INAC confirmed that Paramount has no authority to prohibit public access to project access roads. Given that, the other option then is to require Paramount to ensure that public use of their access roads is not desirable through the use of obstacles and blocking such that any attempt to use these access roads would be more trouble than it is worth.

When requested to describe what could be done on this matter, INAC, unfortunately, just ducked the question and the MVEIRB, once again, chose not to enforce its IR process by requiring a meaningful answer from INAC.

#### **Recommendations**

The Ka'a'Gee Tu is recommending that the following measure be applied by the MVEIRB:

- 1) Paramount must install, and keep locked, a gate across the main winter access road to the project area. The gate is to be unlocked only to allow Paramount vehicles to pass.
- 2) At appropriate locations, Paramount is to incorporate obstacles such as snow piles, windrows, gates, ditches, etc. to try to minimize the public use of project routes for access both to and within the project area.

#### **4.11 Wildlife**

During the previous Paramount EA, the Ka'a'Gee Tu raised concerns about the potential impacts upon wolves and wolverines. However, Paramount refused to provide an assessment of the impacts upon these species. As the MVEIRB did not require Paramount to provide an assessment, the Ka'a'Gee Tu's concerns about the impacts of oil and gas development upon wolves and wolverines remained unanswered.

For this current EA, Paramount has again completed no work with respect to the impacts of their project on these two species. This is particularly troubling given that wolverines will soon be listed as Special Concern under the *Species at Risk Act*.

The Ka'a'Gee Tu would remind the MVEIRB of its responsibilities under the *SARA*. Section 79 of *SARA* requires that adverse effects on listed species must be identified, mitigated and monitored, *regardless of the significance of the impacts*. In requiring mitigation and monitoring regardless of significance, the requirements of *SARA*, and the burdens placed upon the MVEIRB and the MVLWB, surpass those found in the *MVRMA*. The MVEIRB is no longer bound by having to making a finding of significance to permit it to impose recommendations for mitigating impacts upon *SARA* species, which currently include caribou and will soon include wolverines.

In addition to the two predator species, the Ka'a'Gee have also consistently expressed concerns about two primary prey species, woodland caribou and moose. Both species are present in the proposed project area and will be impacted.

The Ka'a'Gee Tu has reviewed the GNWT's response to IR 8 regarding impacts to caribou, which is a *SARA* species. It is our view that the GNWT did an excellent and thorough, science-based analysis of the potential impacts of this project upon caribou and of potential mitigation methods, primary among them being the reduction of seismic line widths to 1.5 m. The Ka'a'Gee Tu will not repeat what has already been stated by the GNWT but do want to state that we support the conclusions and recommendations of the GNWT as described in IR 8.

The Ka'a'Gee Tu recommended in Section 4.6 that this project should be restricted to an exclusively hand-cut, winter heli-portable seismic project with a maximum line width of 1.5 m. While the acceptance and implementation of this recommendation would be a significant improvement over the program proposed by Paramount, the Ka'a'Gee Tu are still of the view that there needs to be a detailed impact detection, mitigation and monitoring strategy for caribou developed for this project. This strategy should be a regulatory requirement that is developed in consultation with, and with the approval of, the GNWT and the Ka'a'Gee Tu. Obviously, the strategy must be in place prior to any field operations by Paramount.

As Paramount has not provided an assessment of the potential impacts of this project on moose, which are known to occupy the project area, the Ka'a'Gee Tu also recommend that the mitigation and monitoring strategy be developed not just for caribou but also for moose.



**Recommendations**

The Ka'a'Gee Tu is recommending that the following measures be applied by the MVEIRB:

- 1) Paramount must have a detailed impact detection, mitigation and monitoring strategy for caribou, moose, wolves and wolverines in place prior to any field operations. This strategy must be developed in consultation with, and with the approval of, the GNWT and the Ka'a'Gee Tu.

#### **4.12 Spring Break-Up**

In its Oct. 5, 2005 submission to the MVLWB, INAC recommended that Apr. 1<sup>st</sup> be designated as spring break-up but also that this date be subject to extension by the land use inspector.

In responding to IR 25, INAC was unable to provide a satisfactory response as to why the inspector has the explicit authority to extend the project beyond the designated date for spring break-up but does not have that same explicit authority to end the project prior to the designated date.

INAC seems to suggest that the inspector must explicitly have the power to extend but that the power to shorten should not be granted except through the implicit application of another condition related to rutting.

The Ka'a'Gee Tu does not agree. The LUP inspector should explicitly have the authority to shorten the field season in response to weather conditions without having to justify or get into a debate with the company as to whether or not rutting is occurring.

This Apr. 1<sup>st</sup> designation for spring break-up apparently has been in use in the NWT for a number of years. Given that the effects of climate change have been warmer winters in the NWT, the Ka'a'Gee Tu believe that this Apr. 1<sup>st</sup> date is no longer the preferable default date for spring break-up. The Ka'a'Gee Tu also note that this project is at the most southern point of the NWT and so will likely experience an earlier break-up than more northerly areas of the NWT.

#### **Recommendations**

The Ka'a'Gee Tu is recommending that the following measures be applied by the MVEIRB:

- 1) Spring break-up in the LUP is designated as March 15.
- 2) The LUP inspector will have the explicit authority, through a condition of the LUP, to shorten the field season to a date prior to the designated spring break-up date.

#### **4.13 Ice Bridges**

In its February 2006 presentation to the MVEIRB, Paramount referred to the use of ice bridges in developing access routes. This contradicts the Oct. 11, 2005 e-mail from Paramount's Shirley Maaskant to David Tyson of Fisheries and Oceans Canada in which Ms. Maaskant wrote that: "*No water will be required for ice bridges or other constructions or camp use as there will be none required.*" Ms. Maaskant went on to explain that snow crossings would be used but that timber crossings would be used if there was not enough snow.

The intention not to use ice bridges was also confirmed on page 11 of Appendix 2 to the Land Use Plan application, in which Paramount wrote that: "*Creek crossings as identified on the accompanying map will be by clean snowfall only.*"

Given the inconsistency between the LUP application and the February 2006 presentation, the MVEIRB should be clear in its Report of Environmental Assessment that this EA did not assess the potential impacts of ice bridges, including the effects of the associated water withdrawals from water body sources.

This inconsistency regarding ice bridges is perpetuated by INAC in that it has proposed LUP conditions dealing with ice bridges despite the fact that the LUP application says that there will be no ice bridges.

#### **Recommendations**

The Ka'a'Gee Tu is recommending that the following measure be applied by the MVEIRB:

- 1) Paramount is not permitted to construct or use ice bridges as the LUP application indicates that such bridges are not part of the project and so the impacts of these bridges, and associated water withdrawals, has not been assessed during the course of this EA.

#### **4.14 Sewage Disposal**

Although the work crews will be staying in Indian Cabins with no camp being constructed in the project area, it is likely that work crews will be on 8-12 hour shifts in the project area. Unless there is a project requirement for employees to “hold it”, there will be a requirement for the storage and removal of sewage from the project area. Paramount makes no mention of these storage, removal and disposal methods in its material provided to the MVLWB or the MVEIRB.

#### **Recommendations**

The Ka’a’Gee Tu is recommending that the following measure be applied by the MVEIRB:

- 1) Paramount is to provide the MVLWB with a procedure for the storage, removal and disposal of sewage generated in the project area.

#### **4.15 Cumulative Effects**

The Ka'a'Gee Tu have reviewed the cumulative effects assessment provided by Paramount and have found it to be of such poor quality that we do not consider this to have been a proper CEA. The most obvious and striking example is that despite the fact that this project area is right above the Alberta border, there is no recognition that caribou do not respect borders and quite likely spend a large part of their time in Alberta where they are no doubt significantly impacted by the Alberta oil and gas and forestry industries. These same caribou are also quite likely impacted by Paramount's own activities on the plateau of the Cameron Hills.

Paramount excluded obvious and significant existing cumulative impacts on the lifecycle of these caribou and failed to acknowledge that this project will be adding to those existing impacts. Paramount excluded these existing impacts by limiting its cumulative effects assessment to only considering projects that spatially and temporally overlapped with the seismic project.

The fact that Paramount was allowed to proceed this far into the environmental assessment process with such an obviously deficient and flawed cumulative effects assessment reflects very poorly upon the quality of EA being conducted by the MVEIRB.

#### **Recommendations**

The Ka'a'Gee Tu is recommending that the MVEIRB reject this project on the basis that a proper and legally-required cumulative effects assessment was not completed by Paramount. In the absence of a proper and thorough cumulative effects assessment, it is not possible with any amount of certainty to reasonably predict the impacts of this project, particularly upon caribou occupying and migrating through the project area. Employing the precautionary principle in this case leaves no alternative but to reject the project.

## **5 Conclusion**

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

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

The Ka'a'Gee Tu want to point out that Significant Discovery License 8 was issued, prior to the Dehcho Process, with no aboriginal involvement or consent. It is primarily for that reason that we are in the situation that we are in today. However, there have been numerous opportunities for both Paramount and the federal government to rectify past mistakes through the building of close working relationships with the community. So far neither Paramount nor the federal government has taken those opportunities.

The corporate attitude of Paramount must change. Paramount needs to realize that the Ka'a'Gee Tu are the caretakers of the land where Paramount seeks to have their project. Paramount operates on the traditional lands of the Ka'a'Gee Tu. Paramount's dealings with the community need to reflect that fact with the proper respect given to the community through adequate consultation and accommodation. Thus far, that respect has not been shown.

This project, situated as it is right above the Alberta border, is on the front line of the struggle to ensure that the environmental degradation caused by the oil and gas industry in Alberta does not spill over into the Northwest Territories. If Paramount receives permission to conduct this project as proposed, then the next step will be much more intensive 3-D seismic with many more 6 m wide seismic lines. That will be followed with well drilling, pipeline construction, permanent roads, etc.

The Ka'a'Gee Tu urge the MVEIRB with your decision on this project to send a strong message to Paramount and the rest of the oil and gas industry that operating in the NWT will not simply be business as usual that places corporate profits above all else.

Unlike Prime Minister Harper and Minister Prentice, the Ka'a'Gee Tu have no desire to see the NWT become "the next Alberta".