



Hay River Métis Government Council
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Re: Proposed Tamerlane Ventures

We write in response to thank you for the last meeting that was basically for an introduction. We would like to meet with you and discuss social economic measures and environmental issues.

We are requesting that Tamerlane Ventures will enter into a good faith negotiation process with the Northwest Territory Metis Nation (the Hay River Metis Government Council) for the negotiation of a participation agreement to accommodate the interests of Hay River Metis Government Council.

In order to establish the terms of a participation agreement for the Project, the Hay River Metis Government Council would like to enter into Confidentiality and Negotiation Agreements with Tamerlane Ventures as a basis for negotiations. These agreements would ensure a level playing field and ensure that negotiations are without prejudice to the interests of the parties and provide for funding adequate to enable to Hay River Metis Government Council to prepare for and properly engage in those negotiations.

We would like to stress that the Hay River Metis Government Council in position to undertake appropriate due diligence. The Hay River Metis Government Council requires funding from INAC to fully appreciate the nature, scope, and potential impacts of the Project and to communicate its concerns and interests in a comprehensive manner to Tamerlane Ventures and in the environment impact assessment process of the Mackenzie Valley Environmental Impact Review Board.

Specifically, the Hay River Metis Government Council is requesting funds for the collection of traditional use and archaeological information concerning the Tamerlane Project. In addition, the Hay River Metis Government Council has requested funds for a special assembly to receive the input of community members and elders on the Project. Funding for the conduct of such due diligence must be made available, and is usually provided by the proponent as part of the consultation process. Without funding, we cannot be expected to be able to fully understand, or comprehensively comment on, the cumulative impacts of the project on the Northwest Territory Metis title, rights or interest, the extent to which the project would interfere with Hay River Metis Government Council heritage in the area, or the social and economic impacts the project would have on Northwest Territory Metis Communities.

Once due diligence has been completed in the consultation process, it is the usual proactive of the Hay River Metis Government Council through a series of discussion, to determine when and how accommodation can be reached with a goal of entering a participation agreement, accommodation may take various forms including, but not limited to, and assured revenue stream from the project, and equity position in the project, cash payments, employment and training opportunities, project modification to

concerns, bursaries and educational grants and an on-going communication mechanism.

The Hay River Metis Government Council has a strong prima facie case for Aboriginal title and rights in its traditional territory as evidenced by, among other things, an Interim Measures Agreement, date June 22 200, between Canada, The GNWT and the Hay River Metis Government Council, and the negotiation of lands and resources agreement with Canada and GNWT. Aboriginal rights and title are constitutionally protected legal rights pursuant to section 35(1) of the Constitutional Act, 1982. Aboriginal rights include constitutionally protected priority use rights to resources (e.g. fish, wildlife, tree, traditional medicines and foods) and Aboriginal rights and title are held communally by the Aboriginal Nation as a whole (R.V. Sparrow, {1990} 1 S.C.R. 1075 and Delgamuukw V. B.C., {1997} 3 S.C.R. 1010).

The Hay River Metis Government Council claim to Aboriginal rights and title to the Northwest Territories' is strong and well-documented. Accordingly, any commercial activities carried out in this area will likely constitute *Prima Facie* infringements of the Hay River Metis Government Council Aboriginal rights and title.

Any potential infringement of Aboriginal rights and title raises obligations on the part of government to consult with the Hay River Metis Government Council, and to find workable and adequate means to accommodate the proposed infringement. If the proposed infringement cannot be justified, then government is obliged not to proceed with the proposed permitting decision. These obligations have been confirmed by case law (Haida Nation v. British Columbia (minister of Forests), {2004} 3 S.C.R. 511, and Taku River Tlingit First Nation v. British Columbia Project Assessment Director, {2004} 3 S.C.R. 550, and government policy. In addition, the Aboriginal rights of the Metis have been affirmed, and recognized in the, R v. Powley {2003} 2 S.C.R. 207 decision. Courts have indicated that the accommodation of Aboriginal rights and title can be achieved by government imposing conditions on proponents and through the negotiation of participation agreements.

Beyond this, the Hay River Metis Government Council have neither the time nor the resources to do a proper analysis of whether your proposal would be a good deal or what a good deal would consist of in these circumstances. This consideration, however, is at best secondary to the accommodation of our prior historical and legally recognized Aboriginal rights and underlying ownership in the lands that are the subject of the contemplated Project.

From the limited review we have been able conduct to do to date, it is clear to us this Project would have very significant impacts in our traditional territory, and it is our view that our support and consent would be required for the Project to proceed. If you do not agree to engage in *bona fide* and sincere negotiations and to enter into a negotiation agreement that would provide a sound basis and funding for such negotiations, and continue to treat us not differently than you would a potential investor with deep pockets, we will have no choice but to oppose the proposed Project.

We trust that you will address the Important Issues raised in this letter, and look forward to your meaningful response to our concerns.

Vern Jones, President
Hay River Metis Government Council

cc/: Cec Heron
Mackenzie Valley Environment Impact Review Board