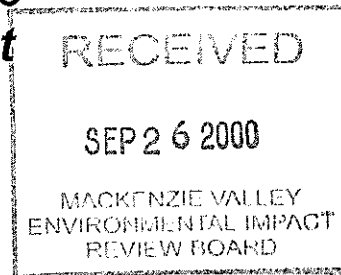


*dropped off by Clem Paul
at 7:40.*

**Presentation by the *North Slave Metis Alliance*
to the *Mackenzie Valley Environmental Impact
Review Board***

September 26, 2000



I would like to thank the MVEIRB for the opportunity to speak here today on the issue of BHP's proposed expansion. There are several matters that concern the North Slave Metis Alliance about this proposed expansion and the way it has been handled to date.

The Duty to Consult

The first is that we have not been "meaningfully consulted", a term that has definite meaning in the eyes of the courts. We have not been provided sufficient resources to assess the impacts that BHP's expansion will have on our community and the exercise of our rights on our traditional lands, despite federal promises that IRMA funding will be made available to us. Nor have we had sufficient time to assess the impacts. This is all coming at us too fast.

Duty to consult should not be too difficult a concept for the MVEIRB to grasp. But to date this seems to have been case. The courts, in numerous decisions over the last decade, have been fairly clear about who must consult and how consultation should take place.

- *First, it is government, not industry, that has the fiduciary responsibility to consult. Government*

can delegate such duties to industry, but it is government that is “on the hook” if consultation does not uphold the Crown’s constitutional obligation.

- Second, there is *always a duty to consult*, which, depending on the nature of the proposed development, *may require the full consent of Aboriginal people*. At the very least, duty to consult in the North must meaningfully involve the participation of Aboriginal people in resource development decisions taken in respect of the exercise of their rights on their traditional lands.

- Third, consultation must always be “*in good faith, with the intention of substantially addressing the concerns of Aboriginal peoples whose lands are at issue.*” As yet, we have not had the opportunity or resources to educate our community, or survey our members concerns, about the BHP expansion and how these should be addressed.

- Fourth, Aboriginal groups whose rights could be infringed by a proposed development *must have sufficient information to assess the project’s impacts*. This means that the information supplied must be understood and useable to the affected Aboriginal group to the extent that it assists, not confounds, their assessment of the project’s impacts.

- Fifth, consultation must be governed by rules of “procedural fairness” whereby the affected Aboriginal party must have sufficient time to meet, to determine the impacts and to respond accordingly.

- Finally, government must fully inform itself of the Aboriginal and Treaty rights and the effect of laws and regulations in connection with the proposed development. Ignorance of our rights no longer works as an excuse.

In all the above respects, the MVEIRB’s effort to consult with the NSMA regarding BHP’s proposed expansion falls woefully short. We have written letters about our concerns, but our questions have gone unanswered. We derive no comfort from the agency’s consultation process to date. In fact, we view its process as a step backwards from the Panel and Comprehensive Review processes completed in connection with the BHP and Diavik projects.

Despite our ongoing attempts to engage this agency in a dialogue that recognizes and upholds our constitutionally protected Aboriginal and Treaty rights, the mischief continues. With the acceptance of authority comes responsibility and accountability. Our recommendation to the MVEIRB is to “get with times”, and use this opportunity to bring their consultation processes in line with recent case law. Alternatively,

the courts will do it for you. This may be in the interests of no one.

Other Concerns

Given that we have not been properly consulted, it is difficult to offer comment on BHP's assessment of its proposed expansion. However, we share some of the concerns raised by the Independent Environmental Monitoring Agency.

We remain concerned that BHP has yet to develop an acceptable process to incorporate the knowledge of our elders into their plans in any meaningful way. We look forward to developing a process with BHP and other Aboriginal groups that truly values and uses the knowledge and wisdom of our elders. Our elders may not know everything BHP needs to know. However, we need to talk about the specific contributions our knowledge can make and then develop ways and means to access and implement this knowledge through the use of our people.

Finally, I am not sure about the status of the existing Environmental Agreement that government has with BHP, to which the NSMA is a signatory. Does this agreement need to be amended? Or should an entirely new agreement be negotiated? BHP's proposed expansion is a major change to the nature and size of its footprint. While it is apparently within its rights under the terms of the Environmental Agreement to develop its leases, "procedural fairness"

should dictate some accommodation of our rights and interests. Anything else, would not be acceptable.

In closing, I would like to take the opportunity to thank BHP for its contribution to the North, particularly to the North Slave Metis. They have done more for the indigenous Metis of this region in the past three years than government has in the last 30 years.

That's a long way from the days when Aboriginal people were not even allowed on mine property. I commend BHP for their safe and practical way of doing business. Aboriginal people have a right and a place in the development of the North, and I'm glad that a company like BHP is leading the way, instead of following past practices.

BHP's assessment of its proposed expansion may be sufficient, but how do we know that? We have not had the time in house or the resources to hire outside people to determine that. That is not BHP's fault. Clearly, it is the federal government that holds the keys to these problems and Aboriginal peoples should not be blamed any more for these hold-ups.

Thank you for the opportunity to address you. But I don't think you've heard anything different today than what we've told you in our last two meetings. Mahsi.

Clem Paul, President
North Slave Metis Alliance