



Acho Dene Koe First Nation

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VIA MVLWB Online Review System
Via Email: angela.love@mvlwb.com

Sent Electronically Only

Re: Paramount Resources Ltd. RECLAIM Estimate (MV2013A0013, MV2013L1-0003)

We are writing in response to the referral received via the Mackenzie Valley Land and Water Board's Online Review System [March 5, 2019].

Acho Dene Koe First Nation's (ADKFN) traditional territory and waters span three jurisdictions: British Columbia (BC), the Yukon Territory and the Northwest Territories (NWT). Our main community is currently settled in Fort Liard, north of the BC-NWT border, but our members continue to use and occupy our Traditional Territory as a whole. Our members, for example, have cabins throughout our territory, and continue to maintain a small settlement at François Lake in northern BC. As our ancestors did, we hunt, trap, fish and gather for food, social, cultural and trading purposes throughout our Traditional Territory.

We adhered to Treaty 11, and as such, we have treaty protected hunting rights. Additionally, we assert Aboriginal rights, including title, throughout our Traditional Territory.

Our rights, and our Traditional Territory, are affected by the proposed decision.

ADKFN's Treaty and Aboriginal Rights

In 1922, our ancestors adhered to Treaty 11, and these rights are constitutionally protected pursuant to s. 35(1) of the *Constitution Act, 1982*. Among other things, Treaty 11 protects our right to pursue our usual vocations of hunting, trapping and fishing. When signing Treaty 11, our ancestors were assured that this liberty would not be taken away or curtailed. Any erosion of our ability to hunt, trap and fish would be a serious infringement of our Treaty rights.

The courts have cast serious doubt on whether Treaty 11 extinguished Aboriginal title to the land. In *Re: Paulette's Application*, the trial judge found that “notwithstanding the language of the two treaties there is sufficient doubt on the facts that aboriginal title was extinguished.”¹

More recently, the Federal Court recognized that the Federal Government’s failure to set aside reserves for Smbaa K’e First Nation was a fundamental breach of Treaty 11, and Smbaa K’e continued to have a strong *prima facie* case for Aboriginal title, which elevated the Crown’s duty to consult with them.² Accordingly, in our view, our Aboriginal rights, including Aboriginal title, have never been ceded, abandoned or extinguished in any part of our Territory.

Aboriginal rights, which include title, are constitutionally protected legal rights, pursuant to s. 35(1) of the *Constitution Act, 1982*. Aboriginal rights include a priority use rights to resources (e.g. fish, wildlife, trees, traditional medicines and foods). Aboriginal title confers on the rights-holding group the exclusive right to decide how the land is used and the right to benefit from those uses, subject to the restriction that the uses must be consistent with the group nature of the interest and the enjoyment of the land by future generations.³

We hold constitutionally protected Treaty rights, and assert strong Aboriginal rights within our Traditional Territory, and take seriously any infringement of our rights.

Crown’s Duty to Consult

Where the Crown has “knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it”, the Crown has a duty to consult with the First Nation (*Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511 at para. 35).

ADKFN currently uses, and has traditionally used, our Territory for fishing, hunting, trapping, and gathering. Development and resource exploitation have already significantly impacted and infringed our Treaty and Aboriginal rights and title past, and any new developments will infringe our rights in a compounding manner. An infringement cannot not justify, without meaningful consulted and accommodation, which may include compensation.

ADKFN expects and intends to enter into full meaningful consultation with government prior to any decision that has the potential to infringe our Treaty or Aboriginal rights. The importance of protection our Treaty and Aboriginal rights, and of preserving natural resources, cannot be overstated.

Referral Response

Background:

Paramount Resources Ltd. (Paramount) has submitted a Reclaim estimate for the Liard East site, at the request of the MVLWB. ADKFN recognizes that the Liard East site is currently in the abandonment/reclamation stage of the project. The Paramount Liard East site is located within ADKFN Traditional Territory and all activities relating to this project have the potential to impact ADKFN.

¹ *Re: Paulette's Application*, [1973] 6 W.W.R. 97 (N.W.T.) [*Re: Paulette's Application*].

² *Smbaa K’e Dene First Nation v. Duncan*, 2012 FC 204.

³ *R. v. Sparrow*, [1990] 1 S.C.R. 1075 and *Delgamuukw v. B.C.*, [1997] 3 S.C.R. 1010; *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44.

ADKFN Comments:

ADKFN expects the MVLWB to refrain from making any decisions on the Reclaim estimate until it has meaningfully consulted with ADKFN with respect to the potential impacts of the proposed decision. In addition, we require action on the following points:


- Employment opportunities: ADKFN notes that there are several sections within the Reclaim estimate submitted by Paramount that may offer business and employment opportunities for ADKFN. Specifically, the following sections from the Reclaim estimate will likely pertain to the employment of ADKFN businesses and community members for this project:
 - *Post-Closure Monitoring & Maintenance*: ADKFN is to be included in site monitoring and seeks employment opportunities, where possible, for monitoring and sampling activities.
 - *Mobilization/Demobilization*: First priority should be given to ADKFN-owned business, Beaver Enterprises, for equipment rentals and services, when available and applicable. ADKFN community members should be considered for employment opportunities relating to the reclamation activities necessary for the site.
 - *Worker accommodations*: Fort Liard should be utilized for local accommodations during site activities. If camps and catering services are required, ADK Corporate should be utilized.

ADKFN requests that Paramount be in contacts with ADKFN Corporate to determine employment opportunities for Beaver Enterprises.

- Consultation, community updates, and meetings: ADKFN notes that the estimate does not include any allotted funds for community consultation, updates, and/or meetings with ADKFN leadership and Lands Department personnel. ADKFN expects that consultation and community updates will occur throughout the reclamation process and anticipates that Paramount will allocate time and funds to ensure the consultation continues to occur until the site is reclaimed.
- Vegetation: When vegetation and seeding occurs at the site, as listed in the reclaim estimate, ADKFN should be consulted for traditional ecological knowledge and expertise on seed/vegetation selection, propagation, etc. ADKFN requires Paramount to use native species and/or desirable species (for local wildlife) for site revegetation.
- Post-Closure Monitoring & Maintenance: In the Reclaim estimate, Paramount lists that the number of years of post-closure activity is one. ADKFN does not believe that this timeframe is adequate to ensure that the land has returned to its pre-activity state. ADKFN requests a longer monitoring and maintenance stage to ensure that the land and soil is safe and has returned to its pre-activity state. The ecological integrity of the land is important for the wildlife and various species that live and feed off the area, as well as for the community members that subsist off the land within the traditional territory.

Thank you.

Yours truly,
ACHO DENE KOE FIRST NATION


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Chief

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