



Gitksan Treaty Office

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VIA FACSIMILE

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Attention: Mr. Crook and Ms. Therrien

Re: Gitksan House of Nii Kyap - Kemess Mine Expansion Project (the "Project")

Further to your email of September 22, 2006 enclosing the "Kemess North Copper-Gold Mine Project - Joint Review Panel : General Procedures for the Conduct of Hearings", I am writing to object to the procedures on the basis that they are unfair and will deny the Gitksan a meaningful opportunity to participate in this review.

1. Importance of the Project Review Decision to Gitksan

The decision regarding whether or not to approve the Project is of great importance to the Gitksan. The use of Amazay Lake as a tailings disposal facility will have a catastrophic and irrevocable impact on Amazay Lake and the downstream watersheds. The resulting harmful environmental and social effects will be widespread throughout the region, which will adversely affect our aboriginal interests.

The viability of the environment starts with the viability of the watersheds and the water resources. Protecting the water resources is a fundamental concern for us.

2. Providing information on Gitksan Aboriginal Interests

As we explained in our letter dated 22 January 2006, the EIA guidelines require the Panel to collect detailed information on First Nation interests. The best source of this information is the First Nations themselves. This EA process will simply not be credible without proper input from First Nations.

Although we want to respond to give the Gitksan perspective, we cannot do so effectively without adequate resources. We have not been provided with adequate resources to undertake the research required to do provide the panel with comprehensive traditional knowledge and use information that will assist the Panel in assessing the impact of the Project.

We also do not have proper funding to engage the expert resources we need to review and challenge Northgate's application.

Nonetheless, we are expected to participate in the upcoming hearings and summarize our views in 60 minutes. This expectation is unrealistic and unfair.

3. Problems with the Hearing Procedures

(a) Representation by legal counsel discouraged

We are troubled by the statement in the Hearing Procedures that "representation by legal counsel at the hearings is discouraged". Given what is at stake, and the technical nature of the application and the hearing process, we should have the right to have legal expertise to assist us at the hearing without fear that it will frowned upon by the Panel. Our experience with this proceeding so far has been that we must vigorously fight to defend our rights at every step of the review. Discouraging participants from seeking legal representation can only be interpreted as a sign that the Panel is attempting to deny a fair opportunity to be heard and this review will be superficial at best.

(b) No opportunity for information requests in advance of the Hearing

The Hearing Procedures offer no opportunity for participants to ask information requests to Northgate in advance of the hearing. This approach is unfair given the complex issues under consideration.

To respond to Northgate's application, we need to understand it before the hearing. A round of pre-hearing written information requests is standard practice in most environmental reviews of complex projects to allow reasonable discovery of the applicant's evidence in advance of the hearing. Without such a process, many of the hearing questions will be technical and will likely require Northgate to gather significant information. We should have a right to question that subsequent information.

(c) Lack of information on Northgate witness panels

We do not know who Northgate will present as witnesses and what parts of the application they will speak to. It is difficult to prepare for the hearing without knowing the structure and order of Northgate's witness panels.

(d) Insufficient opportunity for questioning during the Hearing

We will not be provided with adequate opportunity to test Northgate's evidence during the hearing. While the hearing procedures allow participants to ask questions, the process is unduly limited and vague.

The Hearing Procedures do not set out any principle to guide the Panel's exercise of discretion to limit questioning. Participants must be given adequate time and opportunity to ask relevant questions to test Northgate's evidence.

(e) Insufficient time allowed for participant presentations

The Panel has allowed inadequate opportunity to present our evidence during the hearing. Each First Nations group has been allotted 60 minutes to present their evidence. While "[a] longer period may be granted at the discretion of the Panel Chairperson if ten days advance notice is provided to the Panel Secretariat," the Panel Chairman is given a broad discretion as to whether or not to grant a longer period. The Hearing Procedures do not set out any principle to guide the Panel's exercise of this discretion.

Each participant should be given adequate time and opportunity to present all relevant evidence, having regard to the importance and gravity of the Project approval to the participant and the complexities of the issues under consideration. Given the nature of Gixtsan's interest at stake and the complexity of the issues, 60 minutes is insufficient for us to adequately and properly present our evidence.

4. Conclusion

We request that the Panel re-design the Hearing Procedures with our comments in mind to ensure that all parties, including the Gitxsan, will be provided a meaningful opportunity to participate.

Sincerely yours,



Chief Rena Benson
Gitxsan House of Nii Kyap

cc: Carol Jones, Panel Chair
The Honourable Rosa Ambrose, Minister of Environment
The Honourable Barry Penner, BC Minister of Environment
Northgate Minerals Corporation