

Appendix 2-H

*Aboriginal Groups' Comments on the Pre-Application / Pre-EIS
Aboriginal Consultation Report*

MURRAY RIVER COAL PROJECT

Application for an Environmental Assessment Certificate / Environmental Impact Statement

Justin Page

From: Carmen Marshall <CMarshall@saulteau.com>
Sent: Friday, May 02, 2014 12:12 PM
To: Justin Page
Cc: swilkins@pggroup.com
Subject: Edits to the summary of communications with SFN

Hi Justin

In reviewing Table B.1 of the Communications with Aboriginal Groups during the Pre-Application Phase, the following edits are required;

- Clarification on the ownership of “Jaco Ventures”
- Request original copy of the January 8th 2013 email on Field opportunities and January 23rd email on Funding for Training
- Addition on a meeting between SFN legal counsel with Jody Shimkus in Oct/Nov 2013 outlining resolution of issues on PGLs role in the 3rd party review
- Nov 4/2013 email pertains to the scope of work in the 3rd party review
- Submission and meeting request regarding the Land use study May 1-2 2014

Thank you,
Carmen Marshall, B.Sc., BIT
SFN Lands Biologist
Saulteau First Nations
250-788-7258



Please Think about the environment before printing.



PGL

Pottinger Gaherty
Environmental Consultants Ltd.
1200 - 1185 West Georgia Street
T 604.682.3707
F 604.682.3497
Vancouver, BC Canada V6E 4E6
www.pgggroup.com

Memo

PGL File #: 835 01 01
DATE: May 20/14
TO: Carmen Marshall, SFN
FROM: Susan Wilkins, PGL

Re: Comments on “Aboriginal Engagement Prior to the Application for an Environmental Assessment Certificate / Environmental Impact Statement”

As requested by you, we have reviewed the document “Aboriginal Engagement Prior to the Application for an Environmental Assessment Certificate / Environmental Impact Statement”, prepared for HD Mining International by ERM Rescan, dated March 2014.

Page# Para# Line# Comment

iii			PGL is the abbreviation for Pottinger Gaherty Environmental Consultants Ltd
5-3	1	last	Comments from the three First Nations were submitted to the Ministry of Environment, dated August 14, 2013
5-4	3	last	The third party review scope of work did not include providing comments on baseline reports – please delete the last sentence.
5-5	2	last	The third party review scope of work did not include providing comments on baseline reports – please delete the last sentence.
5.5	3	title	The title of the third party review scope of work was “Third Party Review Services: Murray River Coal Project” – please amend this title to reflect.
5.5	3	first	The title of the third party review scope of work was “Third Party Review Services: Murray River Coal Project” – please amend this first sentence to reflect.
5.5	3	last	please delete 5), as it was not part of the scope of work.
5.5	3	-	please add a point, acknowledging that comments were provided on the EIS Guidelines (March 3, 2014)
5-6	2	5	delete words Application/EIS reviewer
6-1	-	-	The three First Nations sent two letters (August 2013; November, 2013) regarding the third party review process, including a three page outline of how the process was expected to be conducted. HDMining International responded with a letter, dated December 5, 2013, agreeing to meet to discuss the process. A conference call was held December 18, 2013 with First Nations, HDMining International, Rescan ERM and PGL participating.

HDMining

International indicated that they expect the EAO Working Group process to resolve any technical issues, rather than the process as outlined by the First Nations, dated November 1, 2013.

7-2 1 bullets 4&5 please delete "PGL" from before the word comments

Appendix C

there are numerous references to issues being raised by PGL, and correspondence being from PGL. All points raised (for example at the Scoping meeting in April 2013) were raised by community members, not PGL. Another example is the letter to CEA Agency dated March 4, 2014, which was on First Nations letterhead, not PGL's. The phrase third party Application/EIS reviewer is used repeatedly, and Application/EIS should be deleted throughout.



30691 Simpson Road
Abbotsford, BC, V2T 6C7
Tel: 604.557.5851
Fax: 604.557.2024
TF: 1.800.940.1150
www.mnbc.ca



Jody Shimkus
VP, Environmental and Regulatory Affairs
HD Mining International Ltd.
2288-1177 West Hastings St,
Vancouver BC,
V6E 2K3
604-689-8669

Dear Jody Shimkus,

RE: Métis Nation of BC comments on Murray River Coal Potential Project Effects on Métis Aboriginal Rights and Related Interests

Thank you for the opportunity to review the Potential Project Effects on Métis' Aboriginal Rights and Related Interests report for the proposed Maury River Coal Project (The Project). The Métis Nation British Columbia (MNBC) would like to comment on HD Mining's understanding of Métis rights, interests, and potential effects in relation to its understanding of 'community'. The proponent is suggesting that Kelly Lake is the only Métis community and all other Métis people reside in non-aboriginal communities in its understanding of the potential project effects on Métis Aboriginal rights and related interests.

Kelly Lake Métis Settlement has many MNBC citizens and Kelly Lake Métis Settlement Society does not represent all the Métis people in the area. MNBC has chartered Métis communities in Chetwynd and Dawson Creek of which smaller communities such as Hudson Hope and Pouce Coupe belong. There are historical Métis Communities in Moccasin Flats, Hessler Flats, Taylor and Fellers Heights that are not considered. MNBC has provided the following comments to clarify Métis rights, traditional knowledge, MNBC structure, geography, mobility, and community to assist the proponent in developing methods.

MNBC feels the Plain Language Summary fails to include Métis as a distinct Aboriginal people or group. Only First Nations were invited by the BC Government to participate in a working group, not MNBC. HD Mining has not engaged with MNBC only First Nations groups. Métis Traditional Knowledge has not been taken into account. The effects on Treaty 8 rights only apply to First Nations not the Métis. The term Aboriginal applies to First Nations, Métis and Inuit. The Aboriginal Engagement section of the Plain Language Summary only applies to First Nations.

The Métis Provincial Council of British Columbia was first incorporated under the Society's Act on October 23, 1996. In 2003 the Métis leadership ratified the Métis Nation British Columbia (MNBC) Constitution thereby establishing a Métis Nation governance structure. MPCBC/MNBC is recognized by the provincial and federal governments and the Métis National Council as the official governing organization in the province of British Columbia, representing over 9,500 provincially registered Métis citizens and a population of nearly 70,000 self-identified Métis people.



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Legal Clarification: Métis and Aboriginal Rights

Regina v. Powley notes with regard to Aboriginal rights that: “The inclusion of the Métis in s. 35 is based on a commitment to recognizing the Métis and enhancing their survival as distinctive communities.” (*R v. Powley* quoted in Teillet, 139). A key part of this decision articulates who the Métis are under s. 35. As Jean Teillet notes: “The Court said that the term “Métis” in s. 35 refers to distinctive Métis peoples who, in addition to their mixed ancestry, developed their own customs, way of life, and group identity – separate from their Indian, Inuit or European forebears [. . .]. The Court said that the term “Métis” does not include all individuals with mixed Indian and European heritage”. (139)

In order for an individual to exercise s. 35 rights as a Métis person, they and their activity must pass what is now known as the Powley Test. This test is based on ten criteria, these being: Characterization of the right; Identification of the historic rights bearing community; Identification of the contemporary rights bearing community; Verification of membership in the contemporary Métis community; Identification of the relevant time; Was the practice integral to the claimant’s distinctive culture; Continuity between the historic practice and the contemporary right; Extinguishment; Infringement; and, Justification.

Métis Rights are Collective Rights

For the purposes of these comments “Verification of membership in the contemporary Métis community” is particularly important. This criterion depends on the understanding that “Aboriginal rights are collective rights. They belong to the collective but are exercised by individual members of that collective,” (Teillet, 82). For a Métis person to claim and effectively exercise “aboriginal rights” under s. 35 they must belong to and be accepted by a Métis community which embodies those rights. Since *R v Powley*, the Métis National Council and its Governing Members have adopted the following objectively verifiable criteria for citizenship: “‘Métis’ means a person who self-identifies as Métis, is distinct from other Aboriginal peoples, is of historic Métis Nation Ancestry and who is accepted by the Métis Nation” (*Métis Registration Guide*).

Métis Nation British Columbia

The governing body for Métis in this province is Métis Nation British Columbia (MNBC). MNBC was formally incorporated in 1996 under the Métis Provincial Council of British Columbia (MPCBC). In 2003 the Métis leadership ratified the Métis Nation British Columbia *Constitution* and, in so doing, established the new Métis Nation governance structure which persists today. MNBC represents over 9500 citizens in 35 Métis Chartered Communities from seven regions in the Province. Since ratifying the *Constitution* in 2003, MNBC has developed laws, regulations and policies for maintaining, protecting and furthering the aboriginal rights of its citizens in this province.

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Under MNBC's *Natural Resource Act*, in accordance with the *Métis Nation British Columbia Consultation Guidebook (Consultation Guidebook)*, MNBC's Ministry of Natural Resources and the British Columbia Métis Assembly of Natural Resources (BCMANR) "has a duty to advocate for consultation with government and industry where legislation, regulations or other actions may infringe Métis rights and traditional land-use." Furthermore, the *Consultation Guidebook* states that, "The MNBC Ministry of Natural Resources will advocate and manage, where applicable, the consultation process and, where necessary consult directly with the Métis Chartered Communities where land management and resource development on provincial or federal crown land may infringe Métis rights and traditional land-use".

Métis Geography

MNBC has already commented on the need to consider geography in its comments on the EIS guidelines where MNBC pointed out that the Department of Aboriginal Affairs and Northern Development Canada, 2011, *Aboriginal Consultation and Accommodation Guidelines* speaks of geographical considerations. "[d]ifferences in history, geography, demographics, governance, relationships and other circumstances of Aboriginal communities and organizations in Canada are relevant when considering how to address any consultation obligations that may arise (AANDC, *Aboriginal Consultation and Accommodation*, 2011, p. 8). Geography needs to be considered in regards to the MNBC. Métis in BC do not share the same geographic concerns as First Nations groups. The geographic situation for MNBC operating in a Province that does not recognize Métis rights when a fiduciary Federal responsibility exists needs to be acknowledged.

As noted above, the rights bearing Métis community is different from rights bearing First Nations and Inuit communities. This difference is not only exhibited in the governance structures for distinct Aboriginal communities (First Nations generally have Chief and Council, Métis have Nations), but in the way individuals within those rights-bearing communities use and occupy the land. For the Métis, these distinctive characteristics can be summarized by the Métis people's mobility and community. A third characteristic, the continuity of Traditional Knowledge, is common to Aboriginal peoples in general, however, Métis Traditional Knowledge is unique to the Métis. All three of these distinctive characteristics inform the methodology that the proponent proposes. A brief description of these characteristics follows.

Métis Traditional Knowledge

MNBC's *Consultation Guidebook* defines Métis Traditional Knowledge (MTK) as knowledge, values, beliefs, and practices that are derived from aboriginal and non-aboriginal cultures that inform the identity, culture, and heritage of the Métis people and their respect for the land and its resources. MTK represents

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the Métis fundamental connection to the land. The foundation of Métis identity and survival, MTK is passed from generations orally and through land-based experience. MTK continues to have relevance in current times and draws its strength from being used, adapted, and continuously updated to integrate new knowledge. The historically continuous, yet adaptive nature of this knowledge is the life-blood of the Métis peoples and the foundation informing their valuation of ecological and cultural components.

Métis Mobility

One of the distinctive features of the Métis is their mobility. As Jean Teillet notes, “historians and experts all agree that the mobility of the Métis, based on spatially extensive family networks and economies, was the foundation of their culture”. Mobility continues to be important for many Métis peoples today who rely on the kinship networks of their forebears to travel for the purposes of harvesting or cultural and social events. Recent Traditional Use Studies and a Use and Occupation Study report on contemporary Métis land use among the research participants corroborates Jean Teillet’s analysis of the 2006 Census which found that “Métis migration rates tend, with the exception of the Province of Saskatchewan, to be higher than those of the overall aboriginal population in all of the regions, especially in British Columbia, Alberta and the Northwest Territories”. Métis mobility is purposeful, not haphazard. It follows kinship networks which were established during the earliest days of the fur trade and which persist to this day.

Métis Community

Kinship networks are the foundation of the historic and contemporary Métis communities. Métis scholar Mike Evans states, “This history, along with the enduring family ties and distinctive culture of the Métis, lies at the heart of the persistence of Métis communities in spite of attempts to render those communities invisible after 1885”. The Métis were not, collectively, forced onto reserves. As such they were and are dispersed across the Historic Métis Nation Homeland, northern British Columbia inclusive.

Methods to assess the Potential Effects

The proponent suggests “If Métis has any traditional knowledge that would help HD Mining examine possible effects, HD Mining wants to learn about it.” Recent Occupation and Use as well as Traditional Use studies carried out in the local and regional area suggest a Métis use by MNBC citizens. MNBC collects yearly harvesting data from its Métis harvesters. MNBC has also strong Métis historical data. MNBC was given three working days to provide these comments, however would be willing to work with the proponent to increase their understanding of about local and regional Métis interests. The proposed project could negatively affect the health, socio-economic conditions, and current use of lands and resources for traditional purposes. MNBC will work diligently to ensure that effects on its citizens are minimized or mitigated. MNBC’s vision is to build a proud, self-governing, sustainable Nation in

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recognition of the inherent Rights of our Métis Citizens. MNBC's mandate is to develop and enhance opportunities for our Métis communities by implementing culturally relevant social and economic programs and services through Teamwork, Respect, Dedication, Accountability, Integrity and Professionalism.

Kind Regards,

Christopher Gall
Acting Director of Natural Resources
Métis Nation British Columbia
1-604-557-5851
cgall@mnbc.ca

cc: Lucille.Lukey@ceaa-acee.gc.ca

Work Cited

Evans, Mike, Jean Barman, Gabrielle Legault, Erin Dolmage, and Geoff Appleby. "Métis Networks in British Columbia: Examples from the Central Interior." *Contours of a People: Métis Family, Mobility and History*. Ed. Nicole St-Onge, Carolyn Podruchny, and Brenda Macdougall. Oklahoma: U of Oklahoma P., 2012. (331-391).

Métis Nation British Columbia. *Constitution*. Abbotsford: Métis Nation British Columbia, 2008. Web. 23 Aug, 2013. <http://www.mnbc.ca/pdfs/constitution_metis_nation_bc.pdf>.
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Métis National Council. *Métis Registration Guide*. Ottawa: Métis Nation Ontario. Web. 12 Aug, 2013. <<http://www.metisnation.ca/wp-content/uploads/2011/04/M%C3%A9tis-Registration-Guide.pdf>>.

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<<http://www.metisnation.org/harvesting/the-powley-story/establishing-a-metis-right---the-powley-test>>.

Teillet, Jean. *Métis Law in Canada, 2012*. Toronto: Pape, Salter and Teillet LLP, 2012. Web. 29 July, 2013. <<http://www.pstlaw.ca/resources/MLIC-2012.pdf>>.

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