

NORTH SLAVE MÉTIS ALLIANCE

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September 14, 2016

Rebecca Chouinard

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Via Email

Dear Ms. Chouinard:

Re: MV2016X0013 MV2016L8-0004 -- Inadequate Consultation by Indigenous and Northern Affairs Canada (INAC) Regarding the Bullmoose-Ruth Remediation Project (the Project)

We write to bring to your attention a fundamental flaw in the consultation to date undertaken by INAC with the North Slave Métis Alliance (NSMA) regarding the Project.

The Proponent's Responses, posted on the MacKenzie Valley Land and Water Board's (MVLWB) registry on August 10, 2016, and comments made by INAC representatives at a Technical Workshop in Yellowknife, Northwest Territories (NWT), on September 9, 2016, indicate that INAC's consultation with the NSMA, has been based on an incorrect assessment of the content and strength of NSMA members' Aboriginal rights as Métis. We respectfully submit that this error must be corrected before there can be adequate and meaningful consultation with NSMA regarding the Project.

We understand that the MVLWB's primary purpose is to review license applications such as those submitted for the Project; however, we are also aware that the MVLWB has a statutory responsibility to ensure adequate consultation is undertaken during the review process.¹ We wish to be clear that - at this time - NSMA is not formally filing a motion requesting the MVLWB assess the adequacy of consultation and undertake its own strength of claim analysis.² It is our hope that the MVLWB will ensure INAC undertakes meaningful "Crown" consultation and appropriate accommodation

¹ Per Part 5 of the *Mackenzie Valley Resource Management Act* (MVRMA)

² Per Appendix F – Procedures for Ruling on Adequacy of Crown Consultation, *MVLWB Engagement and Consultation Policy* (June 1, 2013)

measures with NSMA during the regulatory process, with a view to avoiding the need for the NSMA to file a motion with the MVLWB to ensure the "Crown" meets its common law consultation and accommodation obligations.

INAC's Erroneous Assessment

NSMA submitted comments regarding the Project in July 2016 and INAC's "Proponent Responses", dated August 10, 2016, are posted on the MVLWB online review system.³ NSMA expressed concern that "Crown" consultation had not been adequate and INAC responded that NSMA received the same project update email that was sent to other Aboriginal groups, and that:

"In addition to the project updates, the NWTMN was involved in three (3) Waste Site Management Committee Meetings with INAC-CARD in Jan, May and Nov of 2015 where the Bullmoose Ruth Project was discussed."
(emphasis added)

Then, at a Technical Workshop held on September 9, 2016, in Yellowknife, NWT, regarding the Project, INAC representatives stated that NSMA members' interests are addressed when INAC engages with the Akaitcho, the Yellowknife Dene First Nation (YKDFN) and the Northwest Territory Métis Nation (NWTMN).

NSMA members have Aboriginal rights as Métis in the affected area

The above statements are factually and legally wrong: none of the above three named Aboriginal organizations represent our members. It cannot, therefore, be said that INAC's meetings with any of these three Aboriginal organizations: discharges INAC's duty to consult with NSMA.

NSMA members are Métis people of the Great Slave Lake area of the NWT with asserted Aboriginal harvesting rights recognized and affirmed under section 35(1) of the *Constitution Act*, 1982.

NSMA is the only Métis organization in the NWT that has had its membership's s.35 Metis status affirmed in a court ruling. In that respect, the Supreme Court of the NWT and the Minister of Aboriginal Affairs and Northern Development Canada (Minister) have both acknowledged that NSMA members have a good *prima facie* claim to the Aboriginal right to hunt on their traditional territories in the area north of Great Slave Lake, NWT (North Slave Region), and are entitled to be consulted when those asserted rights may potentially be adversely impacted by a "Crown" decision.⁴

³ MVLWB's Review Comment Table for "INAC-CARD - Bullmoose Remediation Project - New LUP and WL Applications (MV2016X0013 MV2016L8-0004) (MVLWB)" Online at http://lwbors.yk.com/LWB_IMS/ReviewComment.aspx?appid=10930.

⁴ See: *Enge v. Mandeville*, 2013 NWTSC 33, paras 230 and 236 and Letter from the Minister to NSMA dated August 16, 2013 (enclosed)

INAC has copies of the evidence before the Minister and the Supreme Court of the NWT that support this acknowledgement as well as further material that was supplied during consultations in 2013 and 2014.

The Project is being undertaken in the region where both the Minister and the Supreme Court of the NWT found NSMA members exercise their Aboriginal rights as Métis.

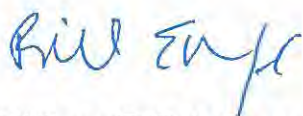
The 'Crown' must undertake meaningful consultation and appropriate accommodation measures (if need be) with NSMA before the Project can go any further. Canada's Federal Court of Appeal recently confirmed that this includes engagement based on a correct assessment of the content and strength of NSMA members' Aboriginal rights as Métis.⁵

NSMA's Request

We respectfully request that the MVLWB ensure that INAC addresses the errors in its assessment of NSMA members' Aboriginal rights - as Métis - prior to the MVLWB making its final decision regarding INAC's applications for a Type A Land Use Permit and Type B Water License for the Project.

If the MVLWB declines to request further information from the Proponent - INAC regarding the strength of claim of NSMA members' Aboriginal rights as Métis, then NSMA will consider whether it must file a motion requesting the MVLWB to assess the adequacy of the Crown's consultation, and to undertake its own strength of claim analysis of NSMA members' Aboriginal rights as Métis, pursuant to the MVLWB *Engagement and Consultation Policy*.

Sincerely,



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President
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⁵ *Gitxaala Nation et al. v. Her Majesty the Queen et al.*, 2016 FCA 187 paras. 307-309