

# **NORTH SLAVE MÉTIS ALLIANCE**

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September 20, 2016

**Rebecca Chouinard**  
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## **Via Email**

Dear Ms. Chouinard:

**Re: MV2016X0021/MV2016L8-0006 -- Inadequate Consultation by INAC  
Regarding Gordon Lake Remediation (nine sites) Project**

Indigenous and Northern Affairs Canada (INAC) submitted an application for a Type A Land Use Permit (LUP) to the Mackenzie Valley Land and Water Board (MVLWB or the Board) for the Gordon Lake Group (GLG) Remediation Project on August 4, 2016 (collectively, INAC's Application).

The GLG Remediation Project consists of nine mine and advanced exploration sites: Burnt Island, Camlaren, Goodrock, Kidney Pond, Murray Lake, Storm Property, Treacy, Try Me, and West Bay.

We write to provide the Board with NSMA's concern that there has been inadequate consultation with NSMA regarding the Project. We respectfully request that the Board direct INAC to engage in meaningful consultation with NSMA during this regulatory process.

## **Inadequate Consultation**

The nine sites in the GLG Remediation Project are situated around Gordon Lake, Northwest Territories (NWT) located approximately 110 km northeast of Yellowknife, NWT, and well within NSMA's asserted territory.

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INAC's Application provides that INAC considers the Yellowknives Dene First Nation (YKDFN) the primary Aboriginal group for engagement purposes. Consequently, INAC restricted its meaningful engagement to the YKDFN respecting the GLG Remediation Project. INAC's engagement record with YKDFN is telling. INAC began its engagement with the YKDFN in 2013 with a Gordon Lake, NWT, Traditional Knowledge Workshop and production of a Traditional Knowledge Report - that same year - based on what INAC heard at that aforementioned Workshop. INAC then held another Traditional Knowledge Workshop with the YKDFN in 2014. In 2015, INAC provided YKDFN with two public update meetings, a site tour for their representatives, updated the aforementioned Traditional Knowledge Report, and topped it all up with an "Options Analysis" Workshop. In 2016, INAC held a third public update meeting with the YKDFN.

The scope and depth of engagement INAC has provided YKDFN in contrast with the NSMA respecting the GLG Remediation Project is striking. The only material INAC has, thus far, provided NSMA for engagement purposes, vis a vis the GLG Remediation Project, is a letter dated June 10, 2016, in which INAC "notifies" NSMA about the GLG Remediation Project, and that INAC plans to apply to the MVLWB for a Type A Land Use Permit for it. We have reviewed INAC's Application and can confirm pursuant to it, that the only engagement INAC has, thus far, provided the NSMA is the aforementioned "notice" letter.

### **INAC Must Meaningfully Consult with NSMA**

INAC has a duty to consult and accommodate (if need be) the NSMA when it contemplates activity and decisions that may adversely affect NSMA members' Aboriginal rights as Metis in the region to the north of Great Slave Lake, NWT. With that in mind, there is no hierarchy of rights between the Aboriginal peoples of Canada: First Nations rights, for example, those asserted and held by the YKDFN do not supersede the rights of Metis.<sup>1</sup> Furthermore, NSMA is the only Metis organization in the Northwest Territories that has had its members' s.35 Aboriginal rights status affirmed by a court. The Supreme Court of the NWT and the Minister of INAC 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.<sup>2</sup>

The GLG Remediation Project affects key wintering habitat for the Bathurst caribou. For conservation reasons, no hunting is permitted on the Bathurst caribou herd and there is only a limited Aboriginal harvest permitted on the Bluenose East caribou herd – a herd that is located significantly north of the community of Yellowknife, NWT. As a consequence of the above-noted caribou harvesting restrictions, NSMA members now

<sup>1</sup> Tom Isaac, A Matter of National and Constitutional Import: Report of the Minister's Special Representative on Reconciliation with Metis: Section 35 Metis Rights and the *Manitoba Metis Federation* Decision (June 2016) at 12.

<sup>2</sup> See: *Enge v. Mandeville*, 2013 NWTSC 33, paras 230 and 236 and Letter from the Minister to NSMA dated August 16, 2013

rely even more on fish and moose harvesting in and around the Gordon Lake, NWT, area.

For all of the above-noted reasons, NSMA wants to engage in a genuine dialogue with INAC, which the duty to consult is meant to foster. However, in order to do so, NSMA needs to know INAC's information and views concerning the content and strength of NSMA members' Aboriginal rights as Métis. Canada's Federal Court of Appeal recently confirmed that without this information, it's impossible for the parties to engage in meaningful consultation because, without that preliminary assessment, they will not know and be able to discuss what is in play in the consultation.<sup>3</sup> Unfortunately, INAC has failed to provide NSMA with this information and this is a fundamental flaw in the GLG Remediation Project consultation.

### **Conclusion**

In conclusion, NSMA has the following two recommendations for the Board's consideration:

**Recommendation #1:** That the Board agree with the Minister and the Supreme Court of the Northwest Territories that NSMA members have a good *prima facie* claim to Aboriginal rights north of Great Slave Lake, NWT and direct the Proponent to undertake its consultation on that basis.

**Recommendation #2:** That, as provided in NSMA's Comments Worksheet (attached in Excel Format):

- The content of the engagement should include, at minimum: site tour, Elders' reviews, land use study(s), Traditional Knowledge study(s), archaeological assessment, and RAP workout.
- The Proponent should engage NSMA respecting a Remediation Options analysis.
- The Proponent should engage NSMA respecting TK studies, RAP, and a Remedial Risk Management Plan.
- The Proponent should provide NSMA with adequate financial support to conduct TK study(s), land use study(s), technical review(s), and participation of NSMA community members.

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<sup>3</sup> *Gitxaala Nation et al. v. Her Majesty the Queen et al.*, 2016 FCA 187 paras. 307-309

- NSMA should be identified as an Engaged Party": a primary Aboriginal stakeholder.

Sincerely,



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President  
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*Encl:* NSMA's Comments Worksheet