

MEMORANDUM

Subject: **A Case Study Re: Duty to Consult and Opportunity to Negotiate**

GOLD COMPANY

In 2004, Gold Company received an exploratory drilling permit to conduct test drilling on a quarter section of land one mile north of Fish Lake. Accessing the site by a 25 kilometre logging road, they conducted the drilling on a logged out parcel of land. The results indicated that the project was then not viable at current (2004) prices but, in 2008 with prices rising, a gold mine was viable, providing capital and operating costs were kept low. Higher gold prices would make the project very profitable.

Gold Company has applied to the Government of Saskatchewan for a lease to develop a mine and extraction facility, a permit from Saskatchewan to extract water from Fish Lake (1 mile from the proposed site) and authorization to build a private 35 kilometre all season road to the site from the secondary access road. As an option to the road, they would propose to build an airport.

The construction phase would last three years and would create 500 jobs. The mine would operate for a period of 25 years, with a 200 person staff. Presently, the company proposes not to build a Town but rather a modern construction camp on site with a rotational work force.

The Saskatchewan Government's recently announced "Duty to Consult" policy has been explained to the company and to the community of Fish Lake First Nation ("FLFN") as well as the community of Poor Town, approximately 100 kilometres away.

Gold Company's Senior Vice-President of Mining Operations is an Aboriginal person who was voted Aboriginal Businessman of the Year. He will head the consultations with the First Nations and other Aboriginal groups. He was "adopted out" at an early age and has an engineering degree from the University of Saskatchewan.

Gold Company has completed a preliminary environmental impact assessment of the mine plan, road plan and water use plan, all of which they say will result in minimal environmental impact in the area and will not significantly disrupt wildlife habitat or the fishery on Fish Lake. They believe there will be minimal, if any, adverse impact on the exercise of Treaty Rights and significant socioeconomic environmental and fiscal benefits to Fish Lake and Poor Town.

The Government of Saskatchewan has told Gold Company to do all necessary consultations directly with the affected aboriginal people in the region and to call on the Government “as necessary”. Gold Company has met with the FLFN leadership in Big City to outline their project and to set up a consultation program as required by provincial legislation. It also met with Aboriginal representatives from Poor Town.

FISH LAKE FIRST NATION

FLFN has 500 members, 250 of whom live on the south end of Fish Lake, approximately 25 kilometres (by Winter Road) from the proposed mine site. The community is fairly traditional, harvesting a significant portion of their food and livelihood from hunting, fishing, trapping and gathering activities in the area. Fish Lake is well known as a recreational and commercial fishing destination and the area north of the lake is prime wildlife habitat for moose.

There is a small logging occupation and timber mill in the Town, which is 50% owned by the First Nation. The First Nation also runs a small fishing lodge and camp ground, both of which are losing money. As most of the jobs are seasonal, there is a high unemployment and social assistance rate in the community, which has forced many young families to migrate to Poor Town. The community also suffers from substance abuse problems, particularly amongst men and women under 30.

The First Nation Council consists of Chief Driver, who operates a school bus and gravel truck, Councillor Bookman, a school teacher (age 30), and Councillor Hunter (age 45), a fisherman and trapper.

The Chief and Council claim that the mine will seriously and adversely impact the exercise of their Treaty Rights for hunting, fishing, trapping and gathering. They are also concerned about the environmental impacts of the mine site on the lake and the impact of the construction and operating phase on the health and social circumstances of the community.

The Government of Saskatchewan met with the Chief and Council and explained to them their consultation policy. They recommended the Chief and Council work directly with Gold Company to resolve issues of consultation, mitigation, accommodation and compensation. Saskatchewan said they would “observe the consultation process and take any information derived from the consultation process into consideration when issuing the leases, licenses and permits requested by Gold Company”.

POOR TOWN

Poor Town is approximately 80 kilometres from Fish Lake by all season gravel road. It is primarily an aboriginal community (75% of the population are First Nation) who are represented by the Poor Town Aboriginal Association (PAA). Many members of this Association hunt, fish and trap in the Fish Lake area and north of this area on a recreational or seasonal basis. The Executive of the PAA consists of Bill Hunter (former Chief of Fish Lake First Nation), Tom Moneyman, a local trucker, and Linda Healer, a social worker.

The unemployment rate in Poor Town is approximately 55%, although a number of aboriginal people in Poor Town own and operate small businesses such as trucking, heavy equipment. Poor Town is located at the intersection of a major highway heading south to Big Town and is the “jumping off” point for access to the north. As a result it is a minor commercial hub for transportation and supply routes north. It has come on hard times with the decline of the lumber industry and the declining tourism and recreational industry.

REMOTE FIRST NATION

Approximately 50 miles north of Fishing Lake is the Remote First Nation. Although there is no road access between Fish Lake and Remote First Nation, members of this First Nation occasionally access the area north of the projected mine by winter road and waterways on a seasonal basis. A few of their members hunt and trap in the area and the Chief claims this is their “historic Traditional Territories”. Consequently, the Chief and Council of the Remote First Nation claim also that their Treaty Rights in the area will be significantly adversely impacted by the proposed mine.

Remote First Nation consists of 400 people and is only accessible by a lengthy (100 km) winter road that does not come close to Fish Lake or the mine site. Otherwise, it is accessible only by air. Many of the members of the Remote First Nation are employed at another mining operation, 10 miles north of Remote Lake.

Assignments

The Chief and Council of FFLN have scheduled a meeting with Gold Corp. and Saskatchewan in one week.

Each party is having an internal meeting to prepare for the meeting. They are to be identifying their interests in this project and consultation process.

Task

1. Identify and articulate the full range of interests your party has in (a) the project, and (b) the consultation process.