



File: 30200-20/MRCO-04-01

Ref: 102233

November 22, 2012

Chief Lynette Tsakoza and Councillors  
Prophet River First Nation  
PO Box 3250  
Fort Nelson BC V0C 1R0

Dear Chief Tsakoza and Councillors:

British Columbia's Environmental Assessment Office (EAO) wrote to Prophet River First Nation (Prophet River) on June 29, 2012, to inform Chief and Council that EAO had recently begun an environmental assessment (EA) for the proposed Murray River Coal Project (proposed Project) proposed by HD Mining International Ltd. (Proponent).

I am now writing to provide more information about the provincial EA process, to further a dialogue with Prophet River with respect to the consultation approach EAO proposes to take in conjunction with the EA of the proposed Project and to provide a draft section 11 Order (Order).

As discussed in EAO's previous letter of June 29, 2012, the proposed Project is an underground coal mine located 12.5 km south of Tumbler Ridge. The proposed Project has an estimated average annual production of six million metric tonnes of metallurgical coal over 31 years.

EAO is responsible for, and coordinates First Nations consultations related to asserted or established aboriginal rights or treaty rights that may be adversely impacted by the proposed Project. As the process of consultation continues, EAO acknowledges that the province is obligated to ensure that it takes appropriate steps to discharge the duty to consult with, and to avoid any unjustifiable infringement of Treaty 8 rights of Prophet River in relation to the potential impacts of the proposed Project.

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Environmental  
Assessment  
Office

Mailing Address:  
PO Box 9426 Stn Prov Govt  
Victoria BC V8W 9V1

Location:  
1<sup>st</sup> Fl - 836 Yates St  
Victoria BC V8W 1L8

In order to facilitate this process, EAO wishes to ensure that it has:

- communicated its preliminary understanding of Treaty 8;
- identified potential impacts to Treaty 8 rights exercised by Prophet River;
- set out its initial review of the scope of the duty to consult through the pre-Application, Application review and post EA certification stages (if a certificate is granted); and,
- provided Prophet River with a copy of the draft Order for the proposed Project.

#### EAO's preliminary understanding of Treaty 8

The provincial Crown is committed to respecting the terms of Treaty 8, which was signed by several First Nations throughout British Columbia, Alberta, Saskatchewan and the Northwest Territories with Canada. Treaty 8 notes the Crown's right to take up such tracts of land as may be required for settlement, mining, lumbering, trading or other purposes. In its preliminary understanding of Treaty 8, EAO takes the position that:

- under Treaty 8, Prophet River and the other signatories have the right to hunt, trap and fish throughout the tract of land included in the Treaty;
- there are no extant claims to aboriginal title as a result of Treaty 8, as the release provisions of the Treaty make clear;
- Treaty 8 rights can be exercised with "reasonably incidental" activities (activities integrally related to the manner of the exercise of Treaty 8 rights); and,
- Treaty 8 rights are considered by the court to be "proven" rights for the purposes of section 35(1) of the Constitution Act, 1982, and therefore a strength-of-claim assessment as described in the Supreme Court of Canada's *Haida* judgment is not necessary for treaty rights exercised in Prophet River traditional territory.

The EA process examines potential impacts to environmental, economic, social, health and heritage-valued components, as well as impacts to the exercise of asserted or established aboriginal rights or treaty rights.

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### Consultation Approach

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s.16 EAO proposes a consultation approach with Prophet River that includes the following types of activities:

- Prophet River has been notified of the formation of the Working Group, and invited to participate;
- EAO has notified Prophet River of the initiation of the EA process and is sharing, through this letter, its initial review of its assessment of potential impacts to Prophet River treaty rights and EAO's consultation approach;

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- Prophet River is invited to comment on EAO's initial review identified in this letter, is requested to identify locations where treaty rights are exercised in relation to the proposed Project that may be potentially affected by the proposed Project and continue to engage with EAO in relation to any potential adverse impacts of the proposed Project on those rights;
- Prophet River be provided with an opportunity to review the procedures and methods for conducting this EA, as described in the draft Order attached to this letter and provide comments before it is finalized;
- Prophet River be provided a copy of the finalized Order;
- Prophet River be provided with notifications of the EA process milestones including when the Application for an environmental assessment certificate (EAC) is accepted by EAO and when a Ministers' decision on the Application is made; and,
- Prophet River is encouraged to regularly monitor EAO's website (<http://www.eao.gov.bc.ca/>) for information updates on the EA of the proposed Project.

#### The Section 11 Order

Enclosed please find a draft section 11 Order for the proposed Project, which I intend to issue pursuant to section 11 of the BC *Environmental Assessment Act*.

The draft Order provides specific instructions to the Proponent on procedural aspects of the EA process to be used for the proposed Project. The Order includes provisions to ensure that the Proponent provides potentially affected Treaty 8 First Nations with project-specific information and consults with those First Nations so as to assist them in understanding whether or how the proposed Project may potentially affect their interests and their ability to exercise their Treaty 8 rights. The draft Order defines First Nations in the context of the proposed Project as the West Moberly First Nations, McLeod Lake Indian Band and Saulteau First Nations

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The Order is not intended to define or exhaust the Crown's duty to consult with and, if appropriate, to accommodate the interests and concerns of all Treaty 8 First Nations. EAO will fulfill the Crown's duty to consult with all Treaty 8 First Nations. EAO has notified all Treaty 8 First Nations about the proposed Project, is providing its initial review of how the proposed Project may affect treaty rights and EAO proposed consultation approach and is providing this draft Order to all Treaty 8 First Nations for their review.

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I intend to issue the Order to the Proponent approximately four weeks from the date of this letter. Please provide any comments you have on the definition of First Nations, the scope of the proposed Project or the sections of the draft Order regarding First Nation consultation. If Prophet River is unable to comment by December 6, 2012, but would still like to provide comments, please advise me or Felice Griffiths as soon as possible. If we have not heard from you by December 6, 2012, we will assume you have no comment.

This letter outlines EAO's initial review and a proposed consultation approach. We invite your input to assist us in refining the information that we have reviewed and gathered to date. If you have additional and/or more precise information with regard to your treaty rights or on any potential impact of the proposed Project on these rights that you wish to share, please provide this information to EAO to assist us in establishing an appropriate consultation approach with Prophet River by December 6, 2012. If we have not heard from you by this date, EAO will assume that Prophet River agrees with our initial review and consultation approach.

If Prophet River has any questions or requires further information, please contact me by telephone at 250-561-5622 or by email at [Mike.Peterson@gov.bc.ca](mailto:Mike.Peterson@gov.bc.ca). You can also reach Felice Griffiths, Project Assessment Officer, by telephone at 250-387-0273 or by email at [Felice.Griffiths@gov.bc.ca](mailto:Felice.Griffiths@gov.bc.ca).

Yours truly,



P. Michael Peterson  
Project Assessment Manager

cc: Brian Wolf  
Prophet River First Nation

Diane Abel, Land and Resources Director  
Treaty 8 Tribal Association

Vivian Au, Project Manager  
Canadian Environmental Assessment Agency



File: 30200-20/MRCO-04-01

Ref: 102233

November 22, 2012

Chief Norman Davis and Councillors  
Doig River First Nation  
PO Box 56  
IR 206 – Doig River Rd  
Rose Prairie BC V0C 2H0

Dear Chief Davis and Councillors:

British Columbia's Environmental Assessment Office (EAO) wrote to the Doig River First Nation (Doig River) on June 29, 2012, to inform Chief and Council that EAO had recently begun an environmental assessment (EA) for the proposed Murray River Coal Project (proposed Project) proposed by HD Mining International Ltd. (Proponent).

I am now writing to provide more information about the provincial EA process, to further a dialogue with Doig River with respect to the consultation approach EAO proposes to take in conjunction with the EA of the proposed Project and to provide a draft section 11 Order.

As discussed in EAO's previous letter of June 29, 2012, the proposed Project is an underground coal mine located 12.5 km south of Tumbler Ridge. The proposed Project has an estimated average annual production of six million metric tonnes of metallurgical coal over 31 years.

EAO is responsible for, and coordinates First Nations consultations related to asserted or established aboriginal rights or treaty rights that may be adversely impacted by the proposed Project. As the process of consultation continues, EAO acknowledges that the province is obligated to ensure that it takes appropriate steps to discharge the duty to consult with, and to avoid any unjustifiable infringement of Treaty 8 rights of, Doig River, in relation to the potential impacts of the proposed Project.

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In order to facilitate this process, EAO wishes to ensure that it has:

- communicated its preliminary understanding of Treaty 8;
- identified potential impacts to Treaty 8 rights exercised by Doig River;
- set out its initial review of the scope of the duty to consult through the pre-Application, Application review and post EA certification stages (if a certificate is granted); and,
- provided Doig River with a copy of the draft section 11 Order (Order) for the proposed Project.

#### EAO's preliminary understanding of Treaty 8

The provincial Crown is committed to respecting the terms of Treaty 8, which was signed by several First Nations throughout British Columbia, Alberta, Saskatchewan and the Northwest Territories with Canada. Treaty 8 notes the Crown's right to take up such tracts of land as may be required for settlement, mining, lumbering, trading or other purposes. In its preliminary understanding of Treaty 8, EAO takes the position that:

- under Treaty 8, Doig River and the other signatories have the right to hunt, trap and fish throughout the tract of land included in the Treaty;
- there are no extant claims to aboriginal title as a result of Treaty 8, as the release provisions of the Treaty make clear;
- Treaty 8 rights can be exercised with "reasonably incidental" activities (activities integrally related to the manner of the exercise of Treaty 8 rights); and,
- Treaty 8 rights are considered by the court to be "proven" rights for the purposes of section 35(1) of the Constitution Act, 1982, and therefore a strength-of-claim assessment as described in the Supreme Court of Canada's *Haida* judgment is not necessary for treaty rights exercised in Doig River traditional territory.

The EA process examines potential impacts to environmental, economic, social, health and heritage-valued components, as well as impacts to the exercise of asserted or established aboriginal rights or treaty rights.

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### Consultation Approach

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s.16 EAO proposes a consultation approach with Doig River that includes the following types of activities:

- Doig River has been notified of the formation of the Working Group, and invited to participate;
- EAO has notified Doig River of the initiation of the EA process and is sharing, through this letter, its initial review of its assessment of potential impacts to Doig River treaty rights and EAO's consultation approach;

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- Doig River is invited to comment on EAO's initial review identified in this letter, is requested to identify locations where treaty rights are exercised in relation to the proposed Project that may be potentially affected by the proposed Project and continue to engage with EAO in relation to any potential adverse impacts of the proposed Project on those rights;
- Doig River be provided with an opportunity to review the procedures and methods for conducting this EA, as described in the draft Order attached to this letter and provide comments before it is finalized;
- Doig River be provided a copy of the finalized Order;
- Doig River be provided with notifications of the EA process milestones including when the Application for an environmental assessment certificate (EAC) is accepted by EAO and when a Ministers' decision on the Application is made; and,
- Doig River is encouraged to regularly monitor EAO's website (<http://www.eao.gov.bc.ca/>) for information updates on the EA of the proposed Project.

#### The Section 11 Order

Enclosed please find a draft section 11 Order for the proposed Project, which I intend to issue pursuant to section 11 of the BC *Environmental Assessment Act*.

The draft Order provides specific instructions to the Proponent on procedural aspects of the EA process to be used for the proposed Project. The Order includes provisions to ensure that the Proponent provides potentially affected Treaty 8 First Nations with project-specific information and consults with those First Nations so as to assist them in understanding whether or how the proposed Project may potentially affect their interests and their ability to exercise their Treaty 8 rights. The draft Order defines First Nations in the context of the proposed Project as the West Moberly First Nations, McLeod Lake Indian Band and Saulteau First Nations.

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The Order is not intended to define or exhaust the Crown's duty to consult with and, if appropriate, to accommodate the interests and concerns of all Treaty 8 First Nations. EAO will fulfill the Crown's duty to consult with all Treaty 8 First Nations. EAO has notified all Treaty 8 First Nations about the proposed Project, is providing its initial review of how the proposed Project may affect treaty rights and EAO proposed consultation approach and is providing this draft Order to all Treaty 8 First Nations for their review.

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I intend to issue the Order to the Proponent approximately four weeks from the date of this letter. Please provide any comments you have on the definition of First Nations, the scope of the proposed Project or the sections of the draft Order regarding First Nation consultation. If Doig River is unable to comment by December 6, 2012, but would still like to provide comments, please advise me or Felice Griffiths as soon as possible. If we have not heard from you by December 6, 2012, we will assume you have no comment.

This letter outlines EAO's initial review and a proposed consultation approach. We invite your input to assist us in refining the information that we have reviewed and gathered to date. If you have additional and/or more precise information with regard to your treaty rights or on any potential impact of the proposed Project on these rights that you wish to share, please provide this information to EAO to assist us in establishing an appropriate consultation approach with Doig River by December 6, 2012. If we have not heard from you by this date, EAO will assume that Doig River agrees with our initial review and consultation approach.

If Doig River has any questions or requires further information, please contact me by telephone at 250-561-5622 or by email at [Mike.Peterson@gov.bc.ca](mailto:Mike.Peterson@gov.bc.ca). You can also reach Felice Griffiths, Project Assessment Officer, by telephone at 250-387-0273 or by email at [Felice.Griffiths@gov.bc.ca](mailto:Felice.Griffiths@gov.bc.ca).

Yours truly,



P. Michael Peterson  
Project Assessment Manager

cc: Jane Calvert  
Doig River First Nation

Diane Abel, Land and Resources Director  
Treaty 8 Tribal Association

Vivian Au, Project Manager  
Canadian Environmental Assessment Agency





File: 30200-20/MRCO-04-01

Ref: 102233

November 22, 2012

Lana Lowe  
Lands Director  
Fort Nelson First Nation  
Mile 295 Alaska Hwy  
Fort Nelson BC V0C 1R0

Dear Ms. Lowe:

British Columbia's Environmental Assessment Office (EAO) wrote to Fort Nelson First Nation (Fort Nelson) on June 29, 2012, to inform Chief and Council that EAO had recently begun an environmental assessment (EA) for the proposed Murray River Coal Project (proposed Project) proposed by HD Mining International Ltd. (Proponent).

I am now writing to provide more information about the provincial EA process, to further a dialogue with Fort Nelson with respect to the consultation approach EAO proposes to take in conjunction with the EA of the proposed Project and to provide a draft section 11 Order (Order).

As discussed in EAO's previous letter of June 29, 2012, the proposed Project is an underground coal mine located 12.5 km south of Tumbler Ridge. The proposed Project has an estimated average annual production of six million metric tonnes of metallurgical coal over 31 years.

EAO is responsible for, and coordinates First Nations consultations related to asserted or established aboriginal rights or treaty rights that may be adversely impacted by the proposed Project. As the process of consultation continues, EAO acknowledges that the province is obligated to ensure that it takes appropriate steps to discharge the duty to consult with, and to avoid any unjustifiable infringement of Treaty 8 rights of Fort Nelson, in relation to the potential impacts of the proposed Project.

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Environmental  
Assessment  
Office

Mailing Address:  
PO Box 9426 Stn Prov Govt  
Victoria BC V8W 9V1

Location:  
1<sup>st</sup> Fl - 836 Yates St  
Victoria BC V8W 1L8

In order to facilitate this process, EAO wishes to ensure that it has:

- communicated its preliminary understanding of Treaty 8;
- identified potential impacts to Treaty 8 rights exercised by Fort Nelson;
- set out its initial review of the scope of the duty to consult through the pre-Application, Application review and post EA certification stages (if a certificate is granted); and,
- provided Fort Nelson with a copy of the draft Order for the proposed Project.

#### EAO's preliminary understanding of Treaty 8

The provincial Crown is committed to respecting the terms of Treaty 8, which was signed by several First Nations throughout British Columbia, Alberta, Saskatchewan and the Northwest Territories with Canada. Treaty 8 notes the Crown's right to take up such tracts of land as may be required for settlement, mining, lumbering, trading or other purposes. In its preliminary understanding of Treaty 8, EAO takes the position that:

- under Treaty 8, Fort Nelson and the other signatories have the right to hunt, trap and fish throughout the tract of land included in the Treaty;
- there are no extant claims to aboriginal title as a result of Treaty 8, as the release provisions of the Treaty make clear;
- Treaty 8 rights can be exercised with "reasonably incidental" activities (activities integrally related to the manner of the exercise of Treaty 8 rights); and,
- Treaty 8 rights are considered by the court to be "proven" rights for the purposes of section 35(1) of the Constitution Act, 1982, and therefore a strength-of-claim assessment as described in the Supreme Court of Canada's *Haida* judgment is not necessary for treaty rights exercised in Fort Nelson traditional territory.

The EA process examines potential impacts to environmental, economic, social, health and heritage-valued components, as well as impacts to the exercise of asserted or established aboriginal rights or treaty rights.

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Consultation Approach

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s.16 EAO proposes a consultation approach with Fort Nelson that includes the following types of activities:

- Fort Nelson has been notified of the formation of the Working Group, and invited to participate;
- EAO has notified Fort Nelson of the initiation of the EA process and is sharing, through this letter, its initial review of its assessment of potential impacts to Fort Nelson treaty rights and EAO's consultation approach;

.../4



- Fort Nelson is invited to comment on EAO's initial review identified in this letter; is requested to identify locations where treaty rights are exercised in relation to the proposed Project that may be potentially affected by the proposed Project; and continue to engage with EAO in relation to any potential adverse impacts of the proposed Project on those rights;
- Fort Nelson be provided with an opportunity to review the procedures and methods for conducting this EA, as described in the draft Order attached to this letter and provide comments before it is finalized;
- Fort Nelson be provided a copy of the finalized Order;
- Fort Nelson be provided with notifications of the EA process milestones including when the Application for an environmental assessment certificate (EAC) is accepted by EAO and when a Ministers' decision on the Application is made; and,
- Fort Nelson is encouraged to regularly monitor EAO's website (<http://www.eao.gov.bc.ca/>) for information updates on the EA of the proposed Project.

#### The Section 11 Order

Enclosed please find a draft section 11 Order for the proposed Project, which I intend to issue pursuant to section 11 of the BC *Environmental Assessment Act*.

The draft Order provides specific instructions to the Proponent on procedural aspects of the EA process to be used for the proposed Project. The Order includes provisions to ensure that the Proponent provides potentially affected Treaty 8 First Nations with project-specific information and consults with those First Nations so as to assist them in understanding whether or how the proposed Project may potentially affect their interests and their ability to exercise their Treaty 8 rights. The draft Order defines First Nations in the context of the proposed Project as the West Moberly First Nations, McLeod Lake Indian Band and Saulteau First Nations.

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The Order is not intended to define or exhaust the Crown's duty to consult with and, if appropriate, to accommodate the interests and concerns of all Treaty 8 First Nations. EAO will fulfill the Crown's duty to consult with all Treaty 8 First Nations. EAO has notified all Treaty 8 First Nations about the proposed Project, is providing its initial review of how the proposed Project may affect treaty rights and EAO proposed consultation approach and is providing this draft Order to all Treaty 8 First Nations for their review.

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I intend to issue the Order to the Proponent approximately four weeks from the date of this letter. Please provide any comments you have on the definition of First Nations, the scope of the proposed Project or the sections of the draft Order regarding First Nation consultation. If Fort Nelson is unable to comment by December 6, 2012, but would still like to provide comments, please advise me or Felice Griffiths as soon as possible. If we have not heard from you by December 6, 2012, we will assume you have no comment.

This letter outlines EAO's initial review and a proposed consultation approach. We invite your input to assist us in refining the information that we have reviewed and gathered to date. If you have additional and/or more precise information with regard to your treaty rights or on any potential impact of the proposed Project on these rights that you wish to share, please provide this information to EAO to assist us in establishing an appropriate consultation approach with Fort Nelson by December 6, 2012. If we have not heard from you by this date, EAO will assume that Fort Nelson agrees with our initial review and consultation approach.

If Fort Nelson has any questions or requires further information, please contact me by telephone at 250-561-5622 or by email at [Mike.Peterson@gov.bc.ca](mailto:Mike.Peterson@gov.bc.ca). You can also reach Felice Griffiths, Project Assessment Officer, by telephone at 250-387-0273 or by email at [Felice.Griffiths@gov.bc.ca](mailto:Felice.Griffiths@gov.bc.ca).

Yours truly,

  
P. Michael Peterson  
Project Assessment Manager

cc: Chief Sharleen Wildeman and Councillors  
Fort Nelson First Nation

Vivian Au, Project Manager  
Canadian Environmental Assessment Agency



File: 30200-20/MRCO-04-01

Ref: 102233

November 22, 2012

Chief Russell Lilly and Councillors  
Halfway River First Nation  
PO Box 59  
Wonowon BC V0C 2N0

Dear Chief Lilly and Councillors:

British Columbia's Environmental Assessment Office (EAO) wrote to Halfway River First Nation (Halfway River) on June 29, 2012, to inform Chief and Council that EAO had recently begun an environmental assessment (EA) for the proposed Murray River Coal Project (proposed Project) proposed by HD Mining International Ltd. (Proponent).

I am now writing to provide more information about the provincial EA process, to further a dialogue with Halfway River with respect to the consultation approach EAO proposes to take in conjunction with the EA of the proposed Project and to provide a draft section 11 Order (Order).

As discussed in EAO's previous letter of June 29, 2012, the proposed Project is an underground coal mine located 12.5 km south of Tumbler Ridge. The proposed Project has an estimated average annual production of six million metric tonnes of metallurgical coal over 31 years.

EAO is responsible for, and coordinates First Nations consultations related to asserted or established aboriginal rights or treaty rights that may be adversely impacted by the proposed Project. As the process of consultation continues, EAO acknowledges that the province is obligated to ensure that it takes appropriate steps to discharge the duty to consult with, and to avoid any unjustifiable infringement of Treaty 8 rights of Halfway River, in relation to the potential impacts of the proposed Project.

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In order to facilitate this process, EAO wishes to ensure that it has:

- communicated its preliminary understanding of Treaty 8;
- identified potential impacts to Treaty 8 rights exercised by Halfway River;
- set out its initial review of the scope of the duty to consult through the pre-Application, Application review and post EA certification stages (if a certificate is granted); and,
- provided Halfway River with a copy of the draft section 11 Order for the proposed Project.

#### EAO's preliminary understanding of Treaty 8

The provincial Crown is committed to respecting the terms of Treaty 8, which was signed by several First Nations throughout British Columbia, Alberta, Saskatchewan and the Northwest Territories with Canada. Treaty 8 notes the Crown's right to take up such tracts of land as may be required for settlement, mining, lumbering, trading or other purposes. In its preliminary understanding of Treaty 8, EAO takes the position that:

- under Treaty 8, Halfway River and the other signatories have the right to hunt, trap and fish throughout the tract of land included in the Treaty;
- there are no extant claims to aboriginal title as a result of Treaty 8, as the release provisions of the Treaty make clear;
- Treaty 8 rights can be exercised with "reasonably incidental" activities (activities integrally related to the manner of the exercise of Treaty 8 rights); and,
- Treaty 8 rights are considered by the court to be "proven" rights for the purposes of section 35(1) of the Constitution Act, 1982, and therefore a strength-of-claim assessment as described in the Supreme Court of Canada's *Haida* judgment is not necessary for treaty rights exercised in Halfway River traditional territory.

The EA process examines potential impacts to environmental, economic, social, health and heritage-valued components, as well as impacts to the exercise of asserted or established aboriginal rights or treaty rights. s.16

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### Consultation Approach

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s.16 EAO proposes a consultation approach with Halfway River that includes the following types of activities:

- Halfway River has been notified of the formation of the Working Group, and invited to participate;
- EAO has notified Halfway River of the initiation of the EA process and is sharing, through this letter, its initial review of its assessment of potential impacts to Halfway River treaty rights and EAO's consultation approach;

.../4

- Halfway River is invited to comment on EAO's initial review identified in this letter; is requested to identify locations where treaty rights are exercised in relation to the proposed Project that may be potentially affected by the proposed Project; and continue to engage with EAO in relation to any potential adverse impacts of the proposed Project on those rights;
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- Halfway River be provided with notifications of the EA process milestones including when the Application for an environmental assessment certificate (EAC) is accepted by EAO and when a Ministers' decision on the Application is made; and,
- Halfway River is encouraged to regularly monitor EAO's website (<http://www.eao.gov.bc.ca/>) for information updates on the EA of the proposed Project.

#### The Section 11 Order

Enclosed please find a draft section 11 Order for the proposed Project, which I intend to issue pursuant to section 11 of the *BC Environmental Assessment Act*.

The draft Order provides specific instructions to the Proponent on procedural aspects of the EA process to be used for the proposed Project. The Order includes provisions to ensure that the Proponent provides potentially affected Treaty 8 First Nations with project-specific information and consults with those First Nations so as to assist them in understanding whether or how the proposed Project may potentially affect their interests and their ability to exercise their Treaty 8 rights. The draft Order defines First Nations in the context of the proposed Project as the West Moberly First Nations, McLeod Lake Indian Band and Saltee First Nations.

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The Order is not intended to define or exhaust the Crown's duty to consult with and, if appropriate, to accommodate the interests and concerns of all Treaty 8 First Nations. EAO will fulfill the Crown's duty to consult with all Treaty 8 First Nations. EAO has notified all Treaty 8 First Nations about the proposed Project, is providing its initial review of how the proposed Project may affect treaty rights and EAO proposed consultation approach and is providing this draft Order to all Treaty 8 First Nations for their review.

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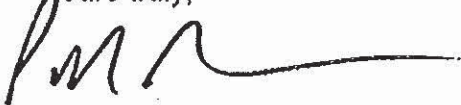
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I intend to issue the Order to the Proponent approximately four weeks from the date of this letter. Please provide any comments you have on the definition of First Nations, the scope of the proposed Project or the sections of the draft Order regarding First Nation consultation. If Halfway River is unable to comment by December 6, 2012, but would still like to provide comments, please advise me or Felice Griffiths as soon as possible. If we have not heard from you by December 6, 2012, we will assume you have no comment.

This letter outlines EAO's initial review and a proposed consultation approach. We invite your input to assist us in refining the information that we have reviewed and gathered to date. If you have additional and/or more precise information with regard to your treaty rights or on any potential impact of the proposed Project on these rights that you wish to share, please provide this information to EAO to assist us in establishing an appropriate consultation approach with Halfway River by December 6, 2012. If we have not heard from you by this date, EAO will assume that Halfway River agrees with our initial review and consultation approach.

If Halfway River has any questions or requires further information, please contact me by telephone at 250-561-5622 or by email at [Mike.Peterson@gov.bc.ca](mailto:Mike.Peterson@gov.bc.ca). You can also reach Felice Griffiths, Project Assessment Officer, by telephone at 250-387-0273 or by email at [Felice.Griffiths@gov.bc.ca](mailto:Felice.Griffiths@gov.bc.ca).

Yours truly,



P. Michael Peterson  
Project Assessment Manager

cc: Roslyn Pokiak  
Halfway River First Nation

Diane Abel, Land and Resources Director  
Treaty 8 Tribal Association

Vivian Au, Project Manager  
Canadian Environmental Assessment Agency



File: 30200-20/MRCO-04-01.

Ref: 102233

November 22, 2012

Chief Joe Apsassin and Councillors  
Blueberry River First Nations  
PO Box 3009  
Buick Creek BC V0C 2R0

Dear Chief Apsassin and Councillors:

British Columbia's Environmental Assessment Office (EAO) wrote to Blueberry River First Nations (Blueberry River) on June 29, 2012, to inform Chief and Council that EAO had recently begun an environmental assessment (EA) for the proposed Murray River Coal Project (proposed Project) proposed by HD Mining International Ltd. (Proponent).

I am now writing to provide more information about the provincial EA process, to further a dialogue with Blueberry River with respect to the consultation approach EAO proposes to take in conjunction with the EA of the proposed Project and to provide a draft section 11 Order (Order).

As discussed in EAO's previous letter of June 29, 2012, the proposed Project is an underground coal mine located 12.5 km south of Tumbler Ridge. The proposed Project has an estimated average annual production of six million metric tonnes of metallurgical coal over 31 years.

EAO is responsible for, and coordinates First Nations consultations related to asserted or established aboriginal rights or treaty rights that may be adversely impacted by the proposed Project. As the process of consultation continues, EAO acknowledges that the province is obligated to ensure that it takes appropriate steps to discharge the duty to consult with, and to avoid any unjustifiable infringement of Treaty 8 rights of Blueberry River, in relation to the potential impacts of the proposed Project.

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In order to facilitate this process, EAO wishes to ensure that it has:

- communicated its preliminary understanding of Treaty 8;
- identified potential impacts to Treaty 8 rights exercised by Blueberry River;
- set out its initial review of the scope of the duty to consult through the pre-Application, Application review and post EA certification stages (if a certificate is granted); and,
- provided Blueberry River with a copy of the draft Order for the proposed Project.

#### EAO's preliminary understanding of Treaty 8

The provincial Crown is committed to respecting the terms of Treaty 8, which was signed by several First Nations throughout British Columbia, Alberta, Saskatchewan and the Northwest Territories with Canada. Treaty 8 notes the Crown's right to take up such tracts of land as may be required for settlement, mining, lumbering, trading or other purposes. In its preliminary understanding of Treaty 8, EAO takes the position that:

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- there are no extant claims to aboriginal title as a result of Treaty 8, as the release provisions of the Treaty make clear;
- Treaty 8 rights can be exercised with "reasonably incidental" activities (activities integrally related to the manner of the exercise of Treaty 8 rights); and,
- Treaty 8 rights are considered by the court to be "proven" rights for the purposes of section 35(1) of the Constitution Act, 1982, and therefore a strength-of-claim assessment as described in the Supreme Court of Canada's *Haida* judgment is not necessary for treaty rights exercised in Blueberry River traditional territory.

The EA process examines potential impacts to environmental, economic, social, health and heritage-valued components, as well as impacts to the exercise of asserted or established aboriginal rights or treaty rights.

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### Consultation Approach

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s.16 EAO proposes a consultation approach with Blueberry River that includes the following types of activities:

- Blueberry River has been notified of the formation of the Working Group, and invited to participate;
- EAO has notified Blueberry River of the initiation of the EA process and is sharing, through this letter, its initial review of its assessment of potential impacts to Blueberry River treaty rights and EAO's consultation approach;

.../4

- Blueberry River is invited to comment on EAO's initial review identified in this letter, is requested to identify locations where treaty rights are exercised in relation to the proposed Project that may be potentially affected by the proposed Project and continue to engage with EAO in relation to any potential adverse impacts of the proposed Project on those rights;
- Blueberry River be provided with an opportunity to review the procedures and methods for conducting this EA, as described in the draft Order attached to this letter and provide comments before it is finalized;
- Blueberry River be provided a copy of the finalized Order;
- Blueberry River be provided with notifications of the EA process milestones including when the Application for an environmental assessment certificate (EAC) is accepted by EAO and when a Ministers' decision on the Application is made; and,
- Blueberry River is encouraged to regularly monitor EAO's website (<http://www.eao.gov.bc.ca/>) for information updates on the EA of the proposed Project.

#### The Section 11 Order

Enclosed please find a draft section 11 Order for the proposed Project, which I intend to issue pursuant to section 11 of the *BC Environmental Assessment Act*.

The draft Order provides specific instructions to the Proponent on procedural aspects of the EA process to be used for the proposed Project. The Order includes provisions to ensure that the Proponent provides potentially affected Treaty 8 First Nations with project-specific information and consults with those First Nations so as to assist them in understanding whether or how the proposed Project may potentially affect their interests and their ability to exercise their Treaty 8 rights. The draft Order defines First Nations in the context of the proposed Project as the West Moberly First Nations, McLeod Lake Indian Band and Saulteau First Nations.

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The Order is not intended to define or exhaust the Crown's duty to consult with and, if appropriate, to accommodate the interests and concerns of all Treaty 8 First Nations. EAO will fulfill the Crown's duty to consult with all Treaty 8 First Nations. EAO has notified all Treaty 8 First Nations about the proposed Project, is providing its initial review of how the proposed Project may affect treaty rights and EAO proposed consultation approach and is providing this draft Order to all Treaty 8 First Nations for their review.

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s.16

I intend to issue the Order to the Proponent approximately four weeks from the date of this letter. Please provide any comments you have on the definition of First Nations, the scope of the proposed Project or the sections of the draft Order regarding First Nation consultation. If Blueberry River is unable to comment by December 6, 2012, but would still like to provide comments, please advise me or Felice Griffiths as soon as possible. If we have not heard from you by December 6, 2012, we will assume you have no comment.

This letter outlines EAO's initial review and a proposed consultation approach. We invite your input to assist us in refining the information that we have reviewed and gathered to date. If you have additional and/or more precise information with regard to your treaty rights or on any potential impact of the proposed Project on these rights that you wish to share, please provide this information to EAO to assist us in establishing an appropriate consultation approach with Blueberry River by December 6, 2012. If we have not heard from you by this date, EAO will assume that Blueberry River agrees with our initial review and consultation approach.

If Blueberry River has any questions or requires further information, please contact me by telephone at 250-561-5622 or by email at [Mike.Peterson@gov.bc.ca](mailto:Mike.Peterson@gov.bc.ca). You can also reach Felice Griffiths, Project Assessment Officer, by telephone at 250-387-0273 or by email at [Felice.Griffiths@gov.bc.ca](mailto:Felice.Griffiths@gov.bc.ca).

Yours truly,

  
P. Michael Peterson  
Project Assessment Manager

cc: Joe Davis  
Blueberry River First Nation

Vivian Au, Project Manager  
Canadian Environmental Assessment Agency





File: 30200-20/MRCO-04-01

Ref: 102233

November 22, 2012

Chief Roland Willson and Councillors  
West Moberly First Nations  
PO Box 90  
Moberly Lake BC V0C 1X0

Dear Chief Willson and Councillors:

British Columbia's Environmental Assessment Office (EAO) wrote to the West Moberly First Nations (West Moberly) on June 29, 2012, to inform Chief and Council that EAO had recently begun an environmental assessment (EA) for the proposed Murray River Coal Project (proposed Project) proposed by HD Mining International Ltd. (Proponent).

I am now writing to provide more information about the provincial EA process, to further a dialogue with West Moberly with respect to the consultation approach EAO proposes to take in conjunction with the EA of the proposed Project and to provide a draft section 11 Order (Order).

EAO proposes that West Moberly consultation be integrated into this EA process through a variety of opportunities, including:

1. participating in a working group (WG) process to identify potential impacts to treaty rights and related interests through the development of the Application Information Requirements (AIR);
2. participating in direct discussions with the provincial government about potential impacts from the proposed Project on treaty rights, including review of a draft Order; and,
3. engaging in specific consultation that will be delegated to the Proponent, including reviewing and commenting on Proponent drafts of its First Nation Consultation Plan.

.../2

As discussed in EAO's previous letter of June 29, 2012, the proposed Project is an underground coal mine located 12.5 km south of Tumbler Ridge. The proposed Project has an estimated average annual production of six million metric tonnes of metallurgical coal over 31 years.

EAO is responsible for, and coordinates First Nations consultations related to asserted or established aboriginal rights or treaty rights that may be adversely impacted by the proposed Project. As the process of consultation continues, EAO acknowledges that the province is obligated to ensure that it takes appropriate steps to discharge the duty to consult with, and to avoid any unjustifiable infringement of Treaty 8 rights of West Moberly, in relation to the potential impacts of the proposed Project.

In order to facilitate this process, EAO wishes to ensure that it has:

- communicated its preliminary understanding of Treaty 8;
- identified potential impacts to Treaty 8 rights exercised by West Moberly;
- set out its initial review of the scope of the duty to consult through the pre-Application, Application review and post EA certification stages (if a certificate is granted); and,
- provided West Moberly with a copy of the draft Order for the proposed Project.

#### EAO's Preliminary Understanding of Treaty 8

The provincial Crown is committed to respecting the terms of Treaty 8, which was signed by several First Nations throughout British Columbia, Alberta, Saskatchewan and the Northwest Territories with Canada. Treaty 8 notes the Crown's right to take up such tracts of land as may be required for settlement, mining, lumbering, trading or other purposes. In its preliminary understanding of Treaty 8, EAO takes the position that:

- under Treaty 8, West Moberly and the other signatories have the right to hunt, trap and fish throughout the tract of land included in the Treaty;
- there are no extant claims to aboriginal title as a result of Treaty 8, as the release provisions of the Treaty make clear;
- Treaty 8 rights can be exercised with "reasonably incidental" activities (activities integrally related to the manner of the exercise of Treaty 8 rights); and,
- Treaty 8 rights are considered by the court to be "proven" rights for the purposes of section 35(1) of the Constitution Act, 1982, and therefore a strength-of-claim assessment as described in the Supreme Court of Canada's *Haida* judgment is not necessary for treaty rights exercised in West Moberly traditional territory.

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The EA process examines potential impacts to environmental, economic, social, health and heritage-valued components, as well as impacts to the exercise of asserted or established aboriginal rights or treaty rights.

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### The EA Process

The EA process consists of two stages:

- Pre-Application Stage – This stage focuses on identifying project-related issues requiring assessment, based on consultations with interested and potentially affected parties – federal, provincial, local governments, First Nations and the public. It leads to the development and finalization of information requirements which the Proponent needs to include in its application for an EA certificate (Application).

.../4



- Application Review Stage – This stage is devoted to a review of the Proponent's Application, and concludes with a decision by the Minister of Environment and the Minister responsible for the project sector on whether to certify a proposed Project, decline to certify a proposed Project, or require further study. First Nations, government agencies and the public participating in the EA process have an opportunity to review and comment on the Application. First Nations and government agencies also provide input to EAO's assessment report that summarizes the conclusions and findings of the review of the Application.

The proposed Project is currently at the start of the pre-Application stage.

#### Duty to Consult and Opportunities to Participate in the EA, Assessing Scope of Duty to Consult

EAO uses a preliminary assessment of treaty rights in the proposed Project area to determine the scope of the Crown's consultation. Over the coming months, I intend to initiate a dialogue with Chief and Council in order to better understand West Moberly's treaty rights over the proposed Project area. I would appreciate it if West Moberly could provide me with any information which would be useful to increasing EAO's understanding.

#### Opportunities for Participation During the Pre-Application Stage

Irrespective of EAO's determination of the scope of the duty to consult, EAO will provide the following opportunities for West Moberly to participate in the EA. For the pre-Application stage:

- EAO will seek West Moberly's understanding of treaty rights exercised in the proposed Project area;
- West Moberly has been invited to join the WG, comprised of First Nations and local, provincial and federal government agencies;
- West Moberly will be provided with an opportunity to review the procedures and methods for conducting this EA, as described in the draft Order attached to this letter, and provide comments before it is finalized;
- EAO will direct the Proponent to engage with West Moberly to discuss West Moberly's treaty rights and report the results of those conversations back to EAO, consistent with the Order;
- West Moberly will have an opportunity to be involved in the development of the draft Application Information Requirements (AIR); and,
- the Proponent will be required to submit to EAO, a First Nation Consultation Plan and report on consultation efforts and results in the Application. West Moberly will have an opportunity to review and comment on drafts of these plans and reports.

.../5

### Opportunities for Participation During the Application Review Stage

For the review of the Proponent's Application:

- EAO will ensure that West Moberly receives a copy of the Application and will solicit comments from West Moberly during the 30 day evaluation period to determine if the information specified in the AIR is in the Application. EAO will also invite West Moberly to assist EAO in its evaluation of the Proponent's past and proposed consultation with West Moberly;
- During the Application Review stage, both the Proponent and EAO will continue to consult with West Moberly on how the proposed Project may impact the West Moberly's treaty rights;
- EAO will ensure that West Moberly has the opportunity to provide comments to the Proponent and EAO will determine the adequacy of the Proponent's responses;
- EAO will provide West Moberly with an opportunity to review EAO's Assessment Report, which outlines the details of what we have heard from West Moberly and what we have learned about West Moberly's treaty rights over the course of the EA, the measures aimed at ensuring that any impacts are minimized to the extent possible that have been used or that are contemplated, EAO's conclusion as to the reasonableness of the process in the circumstances and EAO's conclusion as to whether the Crown's duties in respect of established section 35 treaty rights have been discharged; and,
- EAO will provide West Moberly with an opportunity to have their views on the Assessment Report included in the package of material sent to Ministers for a decision on the Application.

### Working Group

EAO has established a WG to help assess the proposed Project. West Moberly and other First Nations with an interest in the proposed Project, and federal, provincial and local government agencies, have been invited to participate on the WG. Specific activities of the WG may include:

- Reviewing and commenting on drafts of the AIR;
- Evaluating, reviewing and commenting on the Application;
- Providing advice on issues raised during the course of the EA of the proposed Project; and,
- Providing advice on the assessment findings to be reported to Ministers at the conclusion of the EA.

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Would you please confirm for EAO, the name and contact information for your designated WG member(s). Should West Moberly not wish to participate as a member of the WG, I request that this information be relayed to me in writing.

#### Capacity Funding

EAO provides a limited amount of funding to assist with First Nations participation in the EA process, particularly those aspects where EAO is engaged in direct discussion with First Nations. At this time, we would like to offer West Moberly a grant in the amount of \$5000 for the pre-Application stage. Please confirm if West Moberly wishes to accept this funding. I would appreciate a response by December 6, 2012. Additional funding may be made available to West Moberly at the Application Review stage.

#### The Section 11 Order

Enclosed please find a draft section 11 Order for the proposed Project, which I intend to issue pursuant to section 11 of the *BC Environmental Assessment Act*.

The draft Order provides specific instructions to the Proponent on procedural aspects of the EA process to be used for the proposed Project. The Order includes provisions to ensure that the Proponent provides potentially affected Treaty 8 First Nations with project-specific information and consults with those First Nations so as to assist them in understanding whether or how the proposed Project may potentially affect their interests and their ability to exercise their Treaty 8 rights. The draft Order defines First Nations in the context of the proposed Project as the West Moberly First Nations, McLeod Lake Indian Band and Saulteau First Nations. s.16

s.16

The Order is not intended to define or exhaust the Crown's duty to consult with and, if appropriate, to accommodate the interests and concerns of all Treaty 8 First Nations. EAO will fulfill the Crown's duty to consult with all Treaty 8 First Nations. EAO has notified all Treaty 8 First Nations about the proposed Project, is providing its initial review of how the proposed Project may affect treaty rights and EAO proposed consultation approach and is providing this draft Order to all Treaty 8 First Nations for their review.

s.16

.../7



I intend to issue the Order to the Proponent approximately four weeks from the date of this letter. Please provide any comments you have on the definition of First Nations, the scope of the proposed Project or the sections of the draft Order regarding First Nation consultation. If West Moberly is unable to comment by December 6, 2012, but would still like to provide comments, please advise me or Felice Griffiths as soon as possible. If we have not heard from you by December 6, 2012, we will assume you have no comment.

As described in this letter, EAO requests from West Moberly:

- any information which would be useful to increasing EAO's understanding of West Moberly's established treaty rights or potential impacts of the proposed Project on these rights;
- the name and contact information of a representative of West Moberly to participate on the WG (unless notified of an appropriate contact for West Moberly, EAO will continue to use Chief and Council and West Moberly Lands staff as our contact for the EA of the proposed Project);
- confirmation that West Moberly wishes to accept the capacity funding to participate in the pre-Application stage of the EA by December 6, 2012; and,
- any comments West Moberly wishes to provide on the draft Order by December 6, 2012.

EAO is committed to working constructively with West Moberly to ensure that the Crown fulfills its duty of consultation. If West Moberly has any questions, requires further information or would like to meet to discuss the EA, please contact me by telephone at 250-561-5622 or by email at [Mike.Peterson@gov.bc.ca](mailto:Mike.Peterson@gov.bc.ca). You can also reach Felice Griffiths, Project Assessment Officer, by telephone at 250-387-0273 or by email at [Felice.Griffiths@gov.bc.ca](mailto:Felice.Griffiths@gov.bc.ca).

Yours truly,



P. Michael Peterson  
Project Assessment Manager

Enclosure: Draft section 11 Order for the proposed Murray River Coal Project

cc: Land Use Manager  
West Moberly First Nations

Diane Abel, Land and Resources Director  
Treaty 8 Tribal Association

Vivian Au, Project Manager  
Canadian Environmental Assessment Agency



File: 30200-20/MRCO-04-01

Ref: 102233

November 22, 2012

Chief Harley Davis  
Saulteau First Nations  
PO Box 1020  
Chetwynd BC V0C 1J0

Dear Chief Davis and Councillors:

British Columbia's Environmental Assessment Office (EAO) wrote to the Saulteau First Nations (Saulteau) on June 29, 2012, to inform Chief and Council that EAO had recently begun an environmental assessment (EA) for the proposed Murray River Coal Project (proposed Project) proposed by HD Mining International Ltd. (Proponent).

I am now writing to provide more information about the provincial EA process; to further a dialogue with Saulteau with respect to the consultation approach EAO proposes to take in conjunction with the EA of the proposed Project; and to provide a draft section 11 Order (Order).

EAO proposes that Saulteau consultation be integrated into this EA process through a variety of opportunities, including:

1. participating in a working group (WG) process to identify potential impacts to treaty rights and related interests through the development of the Application Information Requirements (AIR);
2. participating in direct discussions with the provincial government about potential impacts from the proposed Project on treaty rights, including review of a draft Order; and,
3. engaging in specific consultation that will be delegated to the Proponent, including reviewing and commenting on Proponent drafts of its First Nation Consultation Plan.

.../2

As discussed in EAO's previous letter of June 29, 2012, the proposed Project is an underground coal mine located 12.5 km south of Tumbler Ridge. The proposed Project has an estimated average annual production of six million metric tonnes of metallurgical coal over 31 years.

EAO is responsible for, and coordinates First Nations consultations related to asserted or established aboriginal rights or treaty rights that may be adversely impacted by the proposed Project. As the process of consultation continues, EAO acknowledges that the province is obligated to ensure that it takes appropriate steps to discharge the duty to consult with, and to avoid any unjustifiable infringement of Treaty 8 rights of Saulteau, in relation to the potential impacts of the proposed Project.

In order to facilitate this process, EAO wishes to ensure that it has:

- communicated its preliminary understanding of Treaty 8;
- identified potential impacts to Treaty 8 rights exercised by Saulteau;
- set out its initial review of the scope of the duty to consult through the pre-Application, Application review and post EA certification stage (if a certificate is granted); and,
- provided Saulteau with a copy of the draft Order for the proposed Project.

#### EAO's Preliminary Understanding of Treaty 8

The provincial Crown is committed to respecting the terms of Treaty 8, which was signed by several First Nations throughout British Columbia, Alberta, Saskatchewan and the Northwest Territories with Canada. Treaty 8 notes the Crown's right to take up such tracts of land as may be required for settlement, mining, lumbering, trading or other purposes. In its preliminary understanding of Treaty 8, EAO takes the position that:

- under Treaty 8, Saulteau and the other signatories have the right to hunt, trap and fish throughout the tract of land included in the Treaty;
- there are no extant claims to aboriginal title as a result of Treaty 8, as the release provisions of the Treaty make clear;
- Treaty 8 rights can be exercised with "reasonably incidental" activities (activities integrally related to the manner of the exercise of Treaty 8 rights); and,
- Treaty 8 rights are considered by the court to be "proven" rights for the purposes of section 35(1) of the Constitution Act, 1982, and therefore a strength-of-claim assessment as described in the Supreme Court of Canada's *Haida* judgment is not necessary for treaty rights exercised in Saulteau traditional territory.

.../3



The EA process examines potential impacts to environmental, economic, social, health and heritage-valued components, as well as impacts to the exercise of asserted or established aboriginal rights or treaty rights.

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### The EA Process

The EA process consists of two stages:

- Pre-Application Stage – This stage focuses on identifying project-related issues requiring assessment, based on consultations with interested and potentially affected parties – federal, provincial, local governments, First Nations and the public. It leads to the development and finalization of information requirements which the Proponent needs to include in its application for an EA certificate (Application).

.../4

- Application Review Stage – This stage is devoted to a review of the Proponent's Application, and concludes with a decision by the Minister of Environment and the Minister responsible for the project sector on whether to certify a proposed Project, decline to certify a proposed Project, or require further study. First Nations, government agencies and the public participating in the EA process have an opportunity to review and comment on the Application. First Nations and government agencies also provide input to EAO's assessment report that summarizes the conclusions and findings of the review of the Application.

The proposed Project is currently at the start of the pre-Application Stage.

#### Duty to Consult and Opportunities to Participate in the EA, Assessing Scope of Duty to Consult

EAO uses a preliminary assessment of treaty rights in the proposed Project area to determine the scope of the Crown's consultation. Over the coming months, I intend to initiate a dialogue with Chief and Council in order to better understand Saulteau's treaty rights over the proposed Project area. I would appreciate it if Saulteau could provide me with any information which would be useful to increasing EAO's understanding.

#### Opportunities for Participation During the Pre-Application Stage

Irrespective of EAO's determination of the scope of the duty to consult, EAO will provide the following opportunities for Saulteau to participate in the EA. For the pre-Application Stage:

- EAO will seek Saulteau's understanding of treaty rights exercised in the proposed Project area;
- Saulteau has been invited to join the WG, comprised of First Nations and local, provincial and federal government agencies;
- Saulteau will be provided with an opportunity to review the procedures and methods for conducting this EA, as described in the draft Order attached to this letter, and provide comments before it is finalized;
- EAO will direct the Proponent to engage with Saulteau to discuss Saulteau's treaty rights and report the results of those conversations back to EAO, consistent with the Order;
- Saulteau will have an opportunity to be involved in the development of the draft Application Information Requirements (AIR); and,
- the Proponent will be required to submit to EAO, a First Nation Consultation Plan and report on consultation efforts and results in the Application. Saulteau will have an opportunity to review and comment on drafts of these plans and reports.

.../5



### Opportunities for Participation During the Application Review Stage

For the review of the Proponent's Application:

- EAO will ensure that Sauteau receives a copy of the Application and will solicit comments from Sauteau during the 30 day evaluation period, to determine if the information specified in the AIR is in the Application. EAO will also invite Sauteau to assist EAO in its evaluation of the Proponent's past and proposed consultation with Sauteau;
- During the Application Review Stage, both the Proponent and EAO will continue to consult with Sauteau on how the proposed Project may impact Sauteau's treaty rights;
- EAO will ensure that Sauteau has the opportunity to provide comments to the Proponent and EAO will determine the adequacy of the Proponent's responses;
- EAO will provide Sauteau with an opportunity to review EAO's Assessment Report, which outlines the details of what we have heard from Sauteau and what we have learned about Sauteau's treaty rights over the course of the EA, the measures aimed at ensuring that any impacts are minimized to the extent possible that have been used or that are contemplated, EAO's conclusion as to the reasonableness of the process in the circumstances and EAO's conclusion as to whether the Crown's duties in respect of established section 35 treaty rights have been discharged; and,
- EAO will provide Sauteau with an opportunity to have their views on the Assessment Report included in the package of material sent to Ministers for a decision on the Application.

### Working Group

EAO has established a WG to help assess the proposed Project. Sauteau and other First Nations with an interest in the proposed Project and federal, provincial and local government agencies, have been invited to participate on the WG. Specific activities of the WG may include:

- reviewing and commenting on drafts of the AIR;
- evaluating, reviewing and commenting on the Application;
- providing advice on issues raised during the course of the EA of the proposed Project; and,
- providing advice on the assessment findings to be reported to Ministers at the conclusion of the EA.

Would you please confirm for EAO, the name and contact information for your designated WG member(s). Should Sauteau not wish to participate as a member of the WG, I request that this information be relayed to me in writing.

.../6



### Capacity Funding

EAO provides a limited amount of funding to assist with First Nations participation in the EA process, particularly those aspects where EAO is engaged in direct discussion with First Nations. EAO has issued Sauteau a grant in the amount of \$5000 for the pre-Application Stage. Additional funding may be made available to Sauteau at the Application Review Stage.

### The Section 11 Order

Enclosed please find a draft section 11 Order for the proposed Project, which I intend to issue pursuant to section 11 of the *BC Environmental Assessment Act*.

The draft Order provides specific instructions to the Proponent on procedural aspects of the EA process to be used for the proposed Project. The Order includes provisions to ensure that the Proponent provides potentially affected Treaty 8 First Nations with project-specific information and consults with those First Nations so as to assist them in understanding whether or how the proposed Project may potentially affect their interests and their ability to exercise their Treaty 8 rights. The draft Order defines First Nations in the context of the proposed Project as the West Moberly First Nations, McLeod Lake Indian Band and Sauteau First Nations.

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The Order is not intended to define or exhaust the Crown's duty to consult with and, if appropriate, to accommodate the interests and concerns of all Treaty 8 First Nations. EAO will fulfill the Crown's duty to consult with all Treaty 8 First Nations. EAO has notified all Treaty 8 First Nations about the proposed Project, is providing its initial review of how the proposed Project may affect treaty rights and EAO's proposed consultation approach and is providing this draft Order to all Treaty 8 First Nations for their review.

s.16

I intend to issue the Order to the Proponent approximately four weeks from the date of this letter. Please provide any comments you have on the definition of First Nations, the scope of the proposed Project or the sections of the draft Order regarding First Nation

.../7

consultation. If Saulteau is unable to comment by December 6, 2012, but would still like to provide comments, please advise me or Felice Griffiths as soon as possible. If we have not heard from you by December 6, 2012, we will assume you have no comment.

As described in this letter, EAO requests from Saulteau:

- any information which would be useful to increasing EAO's understanding of Saulteau's established treaty rights or potential impacts of the proposed Project on these rights;
- the name and contact information of a representative of Saulteau to participate on the WG (unless notified of an appropriate contact for Saulteau, EAO will continue to use Chief and Council and Saulteau Lands staff as our contact for the EA of the proposed Project); and,
- any comments Saulteau wishes to provide on the draft Order by December 6, 2012.

EAO is committed to working constructively with Saulteau to ensure that the Crown fulfils its duty of consultation. If Saulteau has any questions, requires further information or would like to meet to discuss the EA, please contact me by telephone at 250-561-5622 or by email at [Mike.Peterson@gov.bc.ca](mailto:Mike.Peterson@gov.bc.ca). You can also reach Felice Griffiths, Project Assessment Officer, by telephone at 250-387-0273 or by email at [Felice.Griffiths@gov.bc.ca](mailto:Felice.Griffiths@gov.bc.ca).

Yours truly,



P. Michael Peterson  
Project Assessment Manager

Enclosure: Draft section 11 Order for the proposed Murray River Coal Project

cc: Rick Publicover, Lands Manager  
Saulteau First Nations

Diane Abel, Director Land and Resources  
Treaty 8 Tribal Association

Vivian Au, Project Manager  
Canadian Environmental Assessment Agency



File: 30200-20/MRCO-04-01

Ref: 102233

November 22, 2012]

Chief Derek Orr and Councillors  
McLeod Lake Indian Band  
General Delivery  
McLeod Lake BC V0J 2G0

Dear Chief Orr and Councillors:

British Columbia's Environmental Assessment Office (EAO) wrote to the McLeod Lake Indian Band (McLeod Lake) on June 29, 2012, to inform Chief and Council that EAO had recently begun an environmental assessment (EA) for the proposed Murray River Coal Project (proposed Project) proposed by HD Mining International Ltd. (Proponent).

I am now writing to provide more information about the provincial EA process, to further a dialogue with McLeod Lake with respect to the consultation approach EAO proposes to take in conjunction with the EA of the proposed Project and to provide a draft section 11 Order (Order).

EAO proposes that McLeod Lake consultation be integrated into this EA process through a variety of opportunities, including:

1. participating in a working group (WG) process to identify potential impacts to treaty rights and related interests through the development of the Application Information Requirements (AIR);
2. participating in direct discussions with the provincial government about potential impacts from the proposed Project on treaty rights, including review of a draft Order; and,
3. engaging in specific consultation that will be delegated to the Proponent, including reviewing and commenting on Proponent drafts of its First Nation Consultation Plan.

.../2



As discussed in EAO's previous letter of June 29, 2012, the proposed Project is an underground coal mine located 12.5 km south of Tumbler Ridge. The proposed Project has an estimated average annual production of six million metric tonnes of metallurgical coal over 31 years.

EAO is responsible for, and coordinates First Nations consultations related to asserted or established aboriginal rights or treaty rights that may be adversely impacted by the proposed Project. As the process of consultation continues, EAO acknowledges that the province is obligated to ensure that it takes appropriate steps to discharge the duty to consult with, and to avoid any unjustifiable infringement of Treaty 8 rights of McLeod Lake, in relation to the potential impacts of the proposed Project.

In order to facilitate this process, EAO wishes to ensure that it has:

- communicated its preliminary understanding of Treaty 8;
- identified potential impacts to Treaty 8 rights exercised by McLeod Lake;
- set out its initial review of the scope of the duty to consult through the pre-Application, Application review and post EA certification stages (if a certificate is granted); and,
- provided McLeod Lake with a copy of the draft Order for the proposed Project.

#### EAO's Preliminary Understanding of Treaty 8

The provincial Crown is committed to respecting the terms of Treaty 8, which was signed by several First Nations throughout British Columbia, Alberta, Saskatchewan and the Northwest Territories with Canada. Treaty 8 notes the Crown's right to take up such tracts of land as may be required for settlement, mining, lumbering, trading or other purposes. In its preliminary understanding of Treaty 8, EAO takes the position that:

- under Treaty 8, McLeod Lake and the other signatories have the right to hunt, trap and fish throughout the tract of land included in the Treaty;
- there are no extant claims to aboriginal title as a result of Treaty 8, as the release provisions of the Treaty make clear;
- Treaty 8 rights can be exercised with "reasonably incidental" activities (activities integrally related to the manner of the exercise of Treaty 8 rights); and,
- Treaty 8 rights are considered by the court to be "proven" rights for the purposes of section 35(1) of the Constitution Act, 1982, and therefore a strength-of-claim assessment as described in the Supreme Court of Canada's *Haida* judgment is not necessary for treaty rights exercised in McLeod Lake traditional territory.

.../3

The EA process examines potential impacts to environmental, economic, social, health and heritage-valued components, as well as impacts to the exercise of asserted or established aboriginal rights or treaty rights.

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### The EA Process

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.../4

- Application Review Stage – This stage is devoted to a review of the Proponent's Application, and concludes with a decision by the Minister of Environment and the Minister responsible for the project sector on whether to certify a project, decline to certify a project or require further study. First Nations, government agencies and the public participating in the EA process have an opportunity to review and comment on the Application. First Nations and government agencies also provide input to EAO's assessment report that summarizes the conclusions and findings of the review of the Application.

The proposed Project is currently at the start of the pre-Application stage.

#### Duty to Consult and Opportunities to Participate in the EA, Assessing Scope of Duty to Consult

EAO uses a preliminary assessment of treaty rights in the proposed Project area to determine the scope of the Crown's consultation. Over the coming months, I intend to initiate a dialogue with Chief and Council in order to better understand McLeod Lake's treaty rights over the proposed Project area. I would appreciate it if McLeod Lake could provide me with any information which would be useful to increasing EAO's understanding.

#### Opportunities for Participation During the Pre-Application Stage

Irrespective of EAO's determination of the scope of the duty to consult, EAO will provide the following opportunities for McLeod Lake to participate in the EA. For the pre-Application stage:

- EAO will seek McLeod Lake's understanding of treaty rights exercised in the proposed Project area;
- McLeod Lake has been invited to join the WG, comprised of First Nations and local, provincial and federal government agencies;
- McLeod Lake will be provided with an opportunity to review the procedures and methods for conducting this EA, as described in the draft Order attached to this letter, and provide comments before it is finalized;
- EAO will direct the Proponent to engage with McLeod Lake to discuss McLeod Lake's treaty rights and report the results of those conversations back to EAO, consistent with the Order;
- McLeod Lake will have an opportunity to be involved in the development of the draft Application Information Requirements (AIR); and,
- the Proponent will be required to submit to EAO, a First Nation Consultation Plan and report on consultation efforts and results in the Application. McLeod Lake will have an opportunity to review and comment on drafts of these plans and reports.

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### Opportunities for Participation During the Application Review Stage

For the review of the Proponent's Application:

- EAO will ensure that McLeod Lake receives a copy of the Application and will solicit comments from McLeod Lake during the 30 day evaluation period to determine if the information specified in the AIR is in the Application. EAO will also invite McLeod Lake to assist EAO in its evaluation of the Proponent's past and proposed consultation with McLeod Lake;
- During the Application Review stage, both the Proponent and EAO will continue to consult with McLeod Lake on how the proposed Project may impact the McLeod Lake's treaty rights;
- EAO will ensure that McLeod Lake has the opportunity to provide comments to the Proponent and EAO will determine the adequacy of the Proponent's responses;
- EAO will provide McLeod Lake with an opportunity to review EAO's Assessment Report, which outlines the details of what we have heard from McLeod Lake and what we have learned about McLeod Lake's treaty rights over the course of the EA, the measures aimed at ensuring that any impacts are minimized to the extent possible that have been used or that are contemplated, EAO's conclusion as to the reasonableness of the process in the circumstances and EAO's conclusion as to whether the Crown's duties in respect of established section 35 treaty rights have been discharged; and,
- EAO will provide McLeod Lake with an opportunity to have their views on the Assessment Report included in the package of material sent to Ministers for a decision on the Application.

### Working Group

EAO has established a WG to help assess the proposed Project. McLeod Lake and other First Nations with an interest in the proposed Project, and federal, provincial and local government agencies, have been invited to participate on the WG. Specific activities of the WG may include:

- reviewing and commenting on drafts of the AIR;
- evaluating, reviewing and commenting on the Application;
- providing advice on issues raised during the course of the EA of the proposed Project; and,
- providing advice on the assessment findings to be reported to Ministers at the conclusion of the EA.

Would you please confirm for EAO, the name and contact information for your designated WG member(s). Should McLeod Lake not wish to participate as a member of the WG, I request that this information be relayed to me in writing.

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### Capacity Funding

EAO provides a limited amount of funding to assist with First Nations participation in the EA process, particularly those aspects where EAO is engaged in direct discussion with First Nations. At this time, we would like to offer McLeod Lake a grant in the amount of \$5000 for the pre-Application stage. Please confirm if McLeod Lake wishes to accept this funding. I would appreciate a response by December 6, 2012. Additional funding may be made available to McLeod Lake at the Application Review stage.

### The Section 11 Order

Enclosed please find a draft section 11 Order for the proposed Project, which I intend to issue pursuant to section 11 of the BC *Environmental Assessment Act*.

The draft Order provides specific instructions to the Proponent on procedural aspects of the EA process to be used for the proposed Project. The Order includes provisions to ensure that the Proponent provides potentially affected Treaty 8 First Nations with project-specific information and consults with those First Nations so as to assist them in understanding whether or how the proposed Project may potentially affect their interests and their ability to exercise their Treaty 8 rights. The draft Order defines First Nations in the context of the proposed Project as the West Moberly First Nations, McLeod Lake Indian Band and Saulteau First Nations, s.16

s.16

The Order is not intended to define or exhaust the Crown's duty to consult with and, if appropriate, to accommodate the interests and concerns of all Treaty 8 First Nations. EAO will fulfill the Crown's duty to consult with all Treaty 8 First Nations. EAO has notified all Treaty 8 First Nations about the proposed Project, is providing its initial review of how the proposed Project may affect treaty rights and EAO proposed consultation approach and is providing this draft Order to all Treaty 8 First Nations for their review.

s.16

I intend to issue the Order to the Proponent approximately four weeks from the date of this letter. Please provide any comments you have on the definition of First Nations, the scope of the proposed Project or the sections of the draft Order regarding First Nation

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consultation. If McLeod Lake is unable to comment by December 6, 2012, but would still like to provide comments, please advise me or Felice Griffiths as soon as possible. If we have not heard from you by December 6, 2012, we will assume you have no comment.

As described in this letter, EAO requests from McLeod Lake:

- any information which would be useful to increasing EAO's understanding of McLeod Lake's established treaty rights or potential impacts of the proposed Project on these rights;
- the name and contact information of a representative of McLeod Lake to participate on the WG (unless notified of an appropriate contact for McLeod Lake, EAO will continue to use Chief and Council and McLeod Lake Lands staff as our contact for the EA of the proposed Project);
- confirmation that McLeod Lake wishes to accept the capacity funding to participate in the pre-Application stage of the EA by December 6, 2012; and,
- any comments McLeod Lake wishes to provide on the draft Order by December 6, 2012.

EAO is committed to working constructively with McLeod Lake to ensure that the Crown fulfils its duty of consultation. If McLeod Lake has any questions, requires further information or would like to meet to discuss the EA, please contact me by telephone at 250-561-5622 or by email at [Mike.Peterson@gov.bc.ca](mailto:Mike.Peterson@gov.bc.ca). You can also reach Felice Griffiths, Project Assessment Officer, by telephone at 250-387-0273 or by email at [Felice.Griffiths@gov.bc.ca](mailto:Felice.Griffiths@gov.bc.ca).

Yours truly,



P. Michael Peterson  
Project Assessment Manager

Enclosure: Draft section 11 Order for the proposed Murray River Coal Project

cc: Eran Spence  
McLeod Lake Indian Band

Vivian Au, Project Manager  
Canadian Environmental Assessment Agency