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The Nisga'a Nation Files Lawsuit Challenging British Columbia's Compliance with the Nisga'a Treaty in Issuing an Environmental Assessment Certificate for the Kitsault Mine

Gitlaxt'aamiks, B.C.; August 1, 2013 –The Nisga'a Nation yesterday commenced legal proceedings against British Columbia, alleging that British Columbia breached its obligations under the Nisga'a Final Agreement by issuing an environmental assessment certificate for the proposed Kitsault Mine project in northern B.C. before the assessment was complete.

The proposed project is a redevelopment of an open-pit molybdenum mine at the historic Kitsault Mine site, approximately 140 kilometers northeast of Prince Rupert. The historic Kitsault Mine garnered international attention in the 1980's, when Canadian regulations permitted the previous mine operators to dump tailings from the mine directly into Lime Creek and Alice Arm, resulting in elevated levels of metals contaminants which persist even today. The mine is situated in an area over which the Nisga'a Nation has rights under the Nisga'a Final Agreement, a treaty entered into by the Nisga'a Nation, British Columbia and Canada in 2000.

The Nisga'a Nation raised concerns related to the environmental assessment of the project over a year before the certificate was issued, and attempted to address these concerns through the dispute resolution process provided for under the Treaty. However, only five days after the dispute resolution process was initiated, and before any meaningful discussions could take place, British Columbia issued the environmental assessment certificate. Under provincial assessment legislation, once the certificate is issued by British Columbia, the province cannot revoke it in these circumstances. Only the court has this power.

Mitchell Stevens, President of Nisga'a Lisims Government, stated the lawsuit is therefore necessary to give effect to the Treaty dispute resolution process. "We are asking for the court to set aside the environmental assessment certificate, so that British Columbia will be able to engage in a meaningful dispute resolution process with the Nisga'a Nation. This can only be accomplished if British Columbia has the power to actually remedy its breaches of the Treaty".

The lawsuit alleges that British Columbia failed to properly assess, among other things, the effects of the proposed project on the freshwater aquatic receiving environment, on the marine water aquatic receiving environment and on human health. Further, it alleges British Columbia failed to assess the impacts of the proposed project on residents of Nisga'a Lands, Nisga'a Lands or Nisga'a interests under the Nisga'a Final Agreement, and on the economic, social or cultural well-being of Nisga'a citizens. These are all assessments which British Columbia is required to perform under the terms of the Environmental Assessment and Protection Chapter of the Nisga'a Final Agreement.

The Nisga'a Nation alleges that British Columbia issued the certificate for the Kitsault Mine despite the fact the Treaty dispute resolution process is mandatory, and despite the fact the deficiencies with respect to the assessment of the project had still not been addressed.

President Stevens said British Columbia's actions regarding the Kitsault Mine have damaged its relationship with the Nisga'a Nation, and the Nisga'a Nation hopes this lawsuit can clarify British Columbia's obligations under the Treaty and repair the damage. "There is, at this time, a great opportunity to take advantage of the resources in northern B.C. The Nisga'a Nation is ready to work with proponents looking to seize this opportunity, and to work with British Columbia in respect of facilitating the development of the lands and resources on and adjacent to our lands. It is essential, however, that British Columbia commit to complying with the Nisga'a Treaty in respect of this project and all future projects that could adversely affect Nisga'a Nation Treaty interests, our citizens and their health."

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