

## **Submission to COMEX for the Environmental Review Process**

The process undertaken by the Chief and Council of Nemaska First Nation relating to the Whabouchi Mine is that they did not seek or receive a “mandate from the members of Nemaska First Nation” prior to entering discussions with the Nemaska Lithium which led to the signing of the Agreement known here as Chinuchi Agreement.

Furthermore, the Chief and Council did not seek a “mandate” to sign the Chinuchi Agreement from the members of Nemaska First Nation. The Agreement signed with Nemaska Lithium between the Chief and Council and the Grand Council of the Crees (Eeyou Istchee) and the Cree Nation Government relating to the Whabouchi Mine. It is a grave concern to the members of the community and I, as reflected through the recent Chief and Council elections. The members of the previous Council all have been replaced with the exception of one.

The following concerns are mine and I believe the most of the members of the community will agree to some of them, especially the process taken by the Council without the mandate and consent from the community. The way the whole project was initiated and the steps that followed to the signing of the Chinuchi Agreement.

Now before I get into my concerns, I want to elaborate on what I did which raised these concerns.

I did some research on how we ended up with the signing of the Chinuchi Agreement and when, how and who gave the “mandate” to enter into discussions with the mining company.

### **Mandate**

With my research, one of my first questions was on the process. I asked as to where the “mandate” came from. To my understanding of our local political government, Chief and Council of Nemaska First Nation, their “Mandate” comes from the members of Nemaska First Nation members.

I asked for information from the Administration of the Nemaska First Nation from the Corporate Secretary's office, a members resolution giving the “mandate” to the Chief and Council to enter into discussions with the mining company Nemaska Lithium Inc. The response given to me from that office was that there was no resolution “mandate” to that effect. Then I asked if there was any other mechanism in place anywhere, where it could give the Chief and Council a “mandate” to enter into discussion with Nemaska Lithium, the response I got from the Corporate Secretary's

office is the email which I have “copied and pasted “to show the transparency of our exchanges of emails.

The second question I asked was on the “mandate” of the approval of the Chinuchi Agreement by its members. We know, as members of Nemaska First Nation, we were not given the opportunity review the Final Text of the agreement and we didn’t give a “mandate” to the Chief and Council to sign the Chinuchi Agreement.

So, in the absence of the two resolutions from the members, this raises a lot of questions to the process and its legalities of the entering into discussions/ negotiations between Chief and Council and Nemaska Lithium and the signing of the Chinuchi Agreement without being reviewed with the members of Nemaska First Nation.

Furthermore, this raises the question of Morals and Ethics, to the signing of the Chinuchi Agreement.

### **Memorandum of Understanding**

In the absence of resolutions giving “mandate” from the people, the MOU was still signed with the Golden Goose Resources which owned the claims before the Nemaska Exploration now Nemaska Lithium, I am still waiting for information as to who gave the “mandate” to this effect. I have contacted the Corporate Secretary’s office to forward a “Members Resolution” as to when they might have given the” mandate” to sign this MOU.

The following information which I received through email from the office of the Corporate Secretary in relation to the “mandate” to enter into discussions with the mining company

*“Community Discussions/Consultation on the Whouchi Mine Minutes of a Council meeting held on 18 and 19 February 2008*

#### *a) Meeting with Golden Goose Resources*

*Robert Kitchen briefed the Council on a meeting with representatives of Golden Goose Resources. He mentioned that a presentation would be made to the Council and the members of the Community concerning this matter. He also suggested assigning an agent to represent the interests of Nemaska. The Chief stated that he would also be involved in this matter. The Council agreed to appoint Robert Kitchen and Bertie Wapachee to act as liaison for projects concerning Golden Goose Resources.”*

In this meeting on the discussions of Whabouchi Mine, in the Council Minutes, it clearly states that Mr. Robert Kitchen mentioned to the group that a presentation “would”, a key word in these minutes, be made to Council and the members of the Community.

My question is, what was he was talking about where he says, ...concerning this matter..?

1. Was this presentation ...concerning this matter... done with the Council? Where are these minutes?
2. Was the presentation ...concerning this matter.. done with the Community Members? Where are these minutes?

I can only speculate at this time, Mr. Kitchen was talking about the MOU and a resolution to enter into discussions with mining company but then I could be wrong. And with this there is still not a resolution giving that effect either Council Resolution or the Members Resolution giving into that effect.

### Minutes of meeting held on 5 and 6 December 2011

#### 5.1 Nemaska Representatives

Bertie Wapachee and Robert Kitchen were appointed by Nemaska to negotiate a natural resource development agreement with Nemaska Lithium (Nemaska Exploration before).

On motion duly made by Jeremy Diamond, seconded by Clarence Jolly, and unanimously carried, the following Resolution no. 2011-12-103 was passed:

Resolved:

That the appointment by past Chief Josie Jimiken of Bertie Wapachee and Robert Kitchen for the negotiations with Nemaska Lithium be confirmed, in a letter clearly setting out the terms and conditions of the mandate.”

In this meeting, as can read, there were appointments to certain individuals by resolution from the Chief and Council.

Moreover, with regards to your question: “Is there any other mechanism within Council, Mining policy or within the powers of Cree Government that would enable the Council to enter into discussions with the mining company without the consent of the community”, I think that the answer that I have provided in a previous email is clear. The legal authority of the Council to enter in discussions with any entity for any services or agreements (unless it is clearly stated in the Cree Naskapi Act that the members’ approval is required) is provided in the Cree Naskapi (of Quebec) Act. This is what I wrote:

“As per your second question, I can only answer from a legal point of view based on the provisions of the Cree Naskapi (of Quebec) Act which empowers the Cree bands. The right of the Council to decide on entering into agreements derives from the Cree Naskapi (of Quebec)

Act which states that a band shall act through its council in exercising its powers and carrying out its duties (section 26). A Council shall act by resolution, except where required to act by by-law (Section 27), there are no by-laws that exist regarding the approval of such an agreement. There are some matters that require the approval of the members such as approval of the Election By-law, Borrowing By-laws, change of name, etc. Signing such an agreement is not one of those matters. Therefore, the Council had the right to initiate discussions with Nemaska Lithium and to sign the agreement without the members' consent given at a referendum or special meeting. Nowhere is it mentioned in the Cree Naskapi (of Quebec) Act what the procedure is (referendum or Special meeting, quorum required, etc.) to negotiate such an agreement and to approve it. The procedure for the negotiation of a mining project on Eeyou Istchee is also outlined in the Cree Mining Policy which was adopted by the Cree Nation Government. I encourage you to review it. You can find it on the Cree Mineral Board website."

So after reading the suggested reading from the office of the Corporate Secretary on the Cree Mineral Board website and Cree Mining Policy, I am still left with the absence of a "members resolution" from the Cree Nation of Nemaska authorising the Council to enter into discussions with the mining company. But what I found in the readings was that there is a mention of IBAs in the Cree Mining Policy.

And I quote:

"The Cree Government seeks to improve the economic, social, environmental, cultural and sustainable development mining activities on the territory(Impact Benefit Agreements, respect protected areas, hiring and training of local manpower, Sharing of infrastructures, etc) and to insure that mining projects contribute not only current benefits but also to the development of long-term alternative employment and business opportunities in a non-mining related sector and to the productive use of the land beyond the life time of a mine."

I did more research in a report titled:

### **IMPACTS BENEFIT AGREEMENT BETWEEN ABORIGINAL AND MINING COMPANIES: THEIR USE IN CANADA**

According to this report by Irene Sosa and Karyn Keenan October 2001

*"This report was a collaborative between the Environmental Mining Council of British Columbia, the Canadian Environmental Law Association and Cooper accion: Sloadera para el Desarrollo. The purpose of this collaboration, which has been supported with the funding from the Canadian International development Agency (CIDA) and the Weedon Foundation, is to build capacity among communities affected by mining in Peru and Canada, based on the belief that,*

*by exchanging information and experiences between communities, they will be better equipped to defend their rights and interests vis-à-vis mineral environmental, social, cultural, and economic effects.”*

And in section 3.1 as it states as quoted:

*“ 3.0 PRE-NEGOTIATIONS*

*An IBA usually is, and should be, the result of a process of a community consultation and capacity-building. The mine at issue maybe the community’s first experience with the mining industry, people may not be aware of the positive and negative impacts of mining activities and, therefore, may have difficult time deciding what to include in an IBA. The community may be also divided regarding whether mining should proceed in their territory and if so, under what conditions.as a result, before entering into negotiations with the company, band councils or leaders usually discuss the impacts of the mining at the community level and obtain a “Mandate” from the community. The problem however, is that very often IBA negotiations occur within short time frames that do not allow communities to digest all the information about the project, seek advice from consultants with appropriate expertise to make an informed decision.”*

According to this research, and in particular to section above, The Chief and Council should have met with the community to discuss this issue of mining before any discussions with the mining company.

This meeting was supposed to be at community level basis, to inform the community of the possibility to enter into the mining industry. Furthermore, at this meeting they should have asked for a “mandate” from the community members. I am not aware of a meeting of this sort happening in our community, where the people were asked for their consent. I have exhausted all avenues in searched for this “Mandate” from the community members.

I can only speculate that this is the meeting Mr. Kitchen, as mentioned in Community Discussions/Consultation on the Whouchi Mine Minutes of a Council meeting held on 18 and 19 February 2008 in which we don’t know whether they happened or not.

Since I had been searching for answers from the Corporate Secretary’s office, if there were such resolutions or minutes of these meetings actually took place, I have confidence she would have forward them as requested but her office does not have this information.

In the absence of these Resolutions, this gives me the notion that the Chief and Council went and exercised their right through a section in the Cree Naskapi (of Quebec Act) as suggested in the email from the Corporate Secretary.

As suggested with the email from the Corporate Secretary's office, in her legal opinion, in the absence of a by-law, she refers the Cree Naskapi (of Quebec Act),

"I can only answer from a legal point of view based on the provisions of the Cree Naskapi (of Quebec) Act which empowers the Cree bands. The right of the Council to decide on entering into agreements derives from the Cree Naskapi (of Quebec) Act which states that a band shall act through its council in exercising its powers and carrying out its duties (section 26). A Council shall act by resolution, except where required to act by by-law (Section 27), there are no by-laws that exist regarding the approval of such an agreement."

### **Intellectual Property**

Now in the absence of "Members Resolution", raises the question of rights of Intellectual Property or private information used without consent. This is another issue to the question of the obtaining a "mandate" and how it was obtained or not. We don't know if the company or the Chief and Council asked the members that whatever they say in the discussions, information meetings, consultations and any other means used in obtaining information from the members was to be used by the mining company in their design of the project so that it would be more acceptable. We do not know if the participating members understood what Intellectual Property or Private information is. We do know that the members didn't give their consent to enter into discussions and we do know they never gave their consent to approve the Chinuchi Agreement. We do not know if the members of the community approve or disapprove this mine. These serious legal questions that we need to answer before giving the green light to this project.

When we go back to the Agreement In Principal of Paix des Braves, we had asked to where the Grand Council got their Mandate to sign the AIP, they had a resolution from the Annual General Assembly of the Cree Nation which was held in Nemaska that year. Furthermore, there was a Referendum following the consultations with AIP all the nine Cree Communities to decide if they agree to it or not.

Notwithstanding with fact that there was a resolution from its members from the Annual General Assembly of the Cree Nation, they still had a so-called referendum to whether the Cree nation supported the Agreement or not.

## **Conclusion**

In the absence of the support of the community members with this mining project, and as the mining issue was one of the hot topics for the community at large leading into the election, this was the turning point for the results of the election for Chief and Council. The community did not re-elect the past Chief and Council, with the exception of two members.

Granted the powers of the First Nation Councils derive and are clearly define within the Cree Naskapi Act to sign such Agreements, however the magnitude of potential impacts or any defacing of traditional hunting territories of the respective Communities, should be enough for moral and ethical conscience of any leader to go back to the people to secure a mandate to proceed in all stages of the project.

Furthermore, COMEX should take this into account as it will set a president as to how we as community members will lose the power to control and define their destiny to a handful of people and undermine their rights as members of a community.