

Sarah E. Sharp - Vancouver, British Columbia



JANES FREEDMAN KYLE  
LAW CORPORATION

Suite 340 - 1122 Mainland Street  
Vancouver, BC V6B 5L1  
Phone: 604.687.0549 Fax:  
604.687.2696  
www.jfklaw.ca  
Sarah E. Sharp  
Direct Line: 604.687.0549, ext. 103  
E-mail: [ssharp@jfklaw.ca](mailto:ssharp@jfklaw.ca)

June 27, 2011

Delivered by Email [raven@ceaa-acee.gc.ca](mailto:raven@ceaa-acee.gc.ca)  
[Rachel.Shaw@gov.bc.ca](mailto:Rachel.Shaw@gov.bc.ca)

File No. 1000-001

Andrew Rollo, Project Manager  
Canadian Environmental Assessment Agency  
320 - 757 West Hastings Street  
Vancouver, BC V6C 1A1

Rachel Shaw, Project Assessment Manager  
Environmental Assessment Office  
PO Box 9426 Stn Prov Govt  
Victoria, BC V8W 9V1

**Attention: Andrew Rollo, Project Manager, CEAA  
Rachel Shaw, Project Assessment Manager**

Dear Mr. Rollo and Ms. Shaw:

**Re: Proposed Raven Underground Coal Mine Project (the "Proposed Coal Mine")**

We are counsel for the Te'mexw Treaty Association ("TTA") and write to you on their behalf. The TTA is comprised of five nations situated on southern Vancouver Island: the Snaw-naw-as First Nation, the Songhees Nation, the T'Sou-ke Nation, the Beecher Bay First Nation, and the Malahat First Nation (collectively, the "Te'mexw Nations").

The Te'mexw Nations, each of which is the beneficiary of one or more of the Douglas Treaties, share a common history and culture and also have a shared experience with the federal and provincial governments. The Douglas Treaties were agreed upon between 1850 and 1854, making them the only pre-Confederation Treaties in British Columbia. The Douglas Treaties

represent promises by the Crown that Aboriginal rights to fish and hunt would be protected and that the Aboriginal peoples' distinct cultural identities could be maintained. In exchange, the member nations agreed to share their lands and live peacefully with the newcomers.

The TTA was formed for the purposes of negotiating a modern treaty through the British Columbia Treaty Process (the "BC Treaty Process") involving both the provincial and federal governments. As part of the BC Treaty Process, TTA filed a Statement of Intent on July 15, 1994. The BC Treaty Commission produced a map showing the approximate territorial boundary described in TTA's Statement of Intent. This map, which is currently under review, is attached. The Snaw-naw-as First Nation's Statement of Intent territorial boundary map is also attached.

#### *The Proposed Project*

We understand that the Compliance Coal Corporation ("CCC", doing business as Comox Joint Venture) is proposing to develop the Proposed Coal Mine approximately 20 kilometers south of Courtenay in Fanny Bay, British Columbia. As can be seen from the maps in CCS's Draft Application Information Requirements / Environmental Impact Statement Guidelines document, the Proposed Coal Mine transportation corridor is within Snaw-naw-as territory. The TTA and, in particular, the Snaw-naw-as, are deeply concerned about potential water contamination and increased traffic on the roads in the Snaw-naw-as territory as a result of the Proposed Coal Mine and the impacts that mining activities will have on the exercise of their Douglas Treaty rights. The Proposed Coal Mine will inevitably lead to future development of coal mining on the Island. Indeed, CCC holds rights to, and expresses intentions to develop, additional coal mines on the Island. Accordingly, the TTA and Snaw-naw-as' are also concerned about the scope, scale and timing of the environmental assessment and consultation regarding the Proposed Coal Mine.

#### *Douglas Treaty Rights*

As you are aware, the Snaw-naw-as assert Douglas Treaty rights in their traditional territory. More specifically, the Snaw-naw-as assert Douglas Treaty rights to the area that is the subject of the Proposed Coal Mine. The Proposed Coal Mine raises significant concerns for our clients as an approval would risk infringing their Douglas Treaty rights and their ability to exercise these rights in their traditional territory.

The Snaw-naw-as Douglas Treaty rights have been generally threatened and limited by numerous activities in their traditional territory. The settlement of Lantzville and the surrounding areas, as well as associated road development, has polluted waterways, fragmented habitat and compromised the naturally productive beaches. The Snaw-naw-as' territory has also been negatively impacted by erosion from extensive agriculture and forestry which have resulted in deleterious sedimentation in the rivers and tributaries of the area. Other negative effects of these activities include increased water temperatures, and the introduction of chemicals and

pesticides, which further compromise the riparian areas and degrade the habitat for aquatic species, including shellfish. These developments and activities have had a cumulative negative effect on the Snaw-naw-as' territory and the Snaw-naw-as' ability to exercise their Douglas Treaty rights. The Snaw-naw-as are concerned that there has been no cumulative effects assessment for these structures and the effects of the overall development.

The Snaw-naw-as' Douglas Treaty rights include the right to fish as formerly and this includes the right to harvest shellfish for food and for sale on all of the beaches in Snaw-naw-as' traditional territory. Historically, the beaches along the entire Snaw-naw-as shoreline were potential harvesting areas and the Snaw-naw-as utilized many of these for year-round shellfish harvest. It is because of pollution of the waters, contamination of the shellfish, and private developments of the shoreline that the Snaw-naw-as are unable to exercise their Treaty rights within their traditional territory.

*The Environmental Assessment*

The current environmental assessment process has failed to provide direct notice to our clients about the Proposed Coal Mine. To fully understand the potential impacts of the Proposed Coal Mine on our clients' Douglas Treaty rights requires that consultation begin immediately. Development projects that have the potential scale of the current Proposed Coal Mine and the corresponding expansion of coal mining on the Island require comprehensive environmental assessments, and in many cases require full review panels to properly assess their impacts. Construction of this project, as well as future projects, must not commence until the Crown's duty to consult has been met. The potential cumulative impacts of the Proposed Coal Mine must be properly assessed and, if necessary, properly accommodated in a timely manner.

Further, it is essential that the consultation for any future coal projects on the Island must be directly with the potentially affected First Nations and it must occur early in the process.

I invite you to contact me at your earliest convenience to discuss.

Sincerely,

Janes Freedman Kyle Law Corporation

Per:

Sarah E. Sharp  
SES/jnl

Enclosures

