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April 29, 2013

The Honourable Peter Kent,  
Minister of Environment  
House of Commons  
Ottawa, Ontario. K1A 0A6

By Registered Mail

By Fax: (819) 953-0279

Email: [kentp@parl.gc.ca](mailto:kentp@parl.gc.ca)

**Re: Call for Joint Review Panel – Kipawa Rare Earths Project**

Dear Minister Kent:

Our two Algonquin First Nations are aware that the federal government has initiated an environmental assessment of the proposed Kipawa Rare Earths Project (the "Project"). The Project is located within, and has the potential to significantly affect, the shared traditional territories of our two First Nations.

As you may know, along with the Timiskaming First Nation, our two Algonquin First Nations recently filed preliminary evidence with the governments of Canada, Quebec and Ontario supporting our assertion of Aboriginal Rights and Title to our traditional territories.

Our Summary of Evidence confirms within the Algonquin Nation, Aboriginal Title is held at the level of the Band.

As Algonquin First Nation Governments who represent the Algonquin rights & title holders to the area of the Project and to areas that may be affected by the Project, our duty is to protect our lands, waters and environment for our present and future generations.

Therefore, we are encouraged by the federal decision of April 2, 2013, to undertake an environmental assessment of the Project.

However, we are concerned that the standard EA process will not adequately address our concerns about the potential for adverse environmental impacts from the Project. As we understand it, this Project involves mining Rare Earth Elements, which are not minerals that are usually mined and processed in Canada and may have unique health and environmental impacts associated with the processing and waste from mining Rare Earth Elements. It is also our understanding that if this Project is approved it will be the first REEs mine in Canada so obviously there is no government regulatory experience with this kind of mining and processing.

As it stands now, the mine does not trigger an environmental assessment under Quebec legislation so the federal Environmental Assessment will be the only one done for this Project.

We have determined that a Joint Review Panel pursuant to section 38 (C) of the CEAA with our Algonquin First Nation Governments would provide a much more appropriate means of evaluating this Project.

We have attached a list of our concerns to this letter (Annex 1) for your consideration in support of our reasonable request to refer this Project to a Joint Panel with our Algonquin First Nation Governments instead of the less thorough EA process.

For your information, in addition to being within the shared territory over which our two Algonquin First Nations assert Aboriginal Rights & Title, the area of the Project and areas that may be affected by the Project, are all within "Indian Territory" as set out in the **Royal Proclamation of 1763**, which has been previously acknowledged by the Government of Canada as documented in our Statement of Asserted Rights and Title.

As far as we are concerned through the Statement of Asserted Rights & Title we have established a strong prima facie case for a deep consultation regarding this Project. Moreover, we rely on the Articles of the **United Nations Declaration on the Rights of Indigenous Peoples**, including Article 31 regarding our Free, Prior Informed Consent to development activities on our traditional lands.

We note that according to Section 38 of the Canadian Environmental Assessment Act 2012 (CEAA 2012) you, as Minister, may designate a project for review by a panel if it is deemed to be in the public interest based on:

- whether the project may cause significant adverse environmental effects;
- public concerns related to the significant adverse environmental effects that the project may cause; and
- opportunities for cooperation with any jurisdiction that has powers, duties or functions in relation to an assessment of the environmental effects of the designated project or any part of it.

Given these considerations, there are substantive arguments that the public interest will be best served by a review panel assessment for the Project.



It is our position that a review panel is necessary for the Project, for the reasons outlined below and in Annex 1.

### **Significant Adverse Environmental Effects**

Mining has the potential to significantly affect the environment through releases of toxic substances to the air, land and water and the creation of long-term environmental liabilities. Direct disturbance to fish and wildlife is also a significant risk, as are the displacement of other uses of the area and the disruption of uses in areas adjacent to the project, including transportation corridors due to noise, visual pollution and dust.

Given the proximity of the Project to historic and current areas of use by our peoples, and given our communities' financial interest in developments such as ecotourism, which includes tourist lodges and canoes routes that may not be compatible with mining, the potential impacts of the Project are that much more significant.

The Project is an open pit operation to extract and process heavy rare earth elements. Our concern is heightened by the fact that there are currently no operating rare earth mines in Canada and the only operating facility in North America is the newly re-opened Molycorp mine in the western USA. We understand that this project has had serious environmental effects related to water management even though it operates in a relatively arid area. In comparison, the Project is in a temperate climate with significant rainfall and surface waters that will have to be managed and protected.

Rare earth mines can be the source of significant toxics that risk being released to the environment including radioactive elements (uranium and thorium) and the poorly understood rare earth elements themselves. Existing regulatory regimes in Quebec and Canada have not been designed with rare earth elements in mind, pointing to the need for additional, closer scrutiny of the Project.

Even after completing the review process for another proposed rare earth project in the NWT, we understand that Environment Canada remains concerned about the proponent's assurances that impacts on water would be mitigated.<sup>1</sup>

### **Public Concern**

From meetings that have been held in our two Algonquin First Nation communities we know that there is a high degree of public concern among our Algonquin Peoples and also within the non-Algonquin population. Over the next few weeks we will be encouraging our respective memberships and others to express these concerns to you if they have not already done so.

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<sup>1</sup> Environment Canada, Final Comments on Thor Lake Rare Earth Elements Project. March 19, 2013. Submitted to Mackenzie Valley Environmental Review Board. [http://reviewboard.ca/upload/project\\_document/EA1011-001\\_Environment\\_Canada\\_Closing\\_Comments\\_.PDF](http://reviewboard.ca/upload/project_document/EA1011-001_Environment_Canada_Closing_Comments_.PDF)

## Opportunities for Cooperation with Algonquin Jurisdiction

While the environmental impacts and public concern are reason enough to refer the Project to a review panel, we feel the real opportunity with a Joint Federal-Algonquin Panel is in the potential for inter-jurisdictional cooperation with our two Algonquin First Nation Governments (Eagle Village & Wolf Lake).

We have begun our own environmental review process of the Project, and we shall continue to examine the Project in a manner that is consistent with our knowledge, customs, traditions and rights and which gives our Algonquin Peoples the utmost confidence in the process and its outcome. In our view the Government of Canada's less thorough EA process will not meet these requirements.

We are insisting that as part of the federal government's duty to consult and accommodate, and pursuant to section 38-2(c) of CEAA 2012, the Minister initiate a process to establish a Joint Review Panel with the Algonquin jurisdiction represented by our Chiefs and Councils.

We invite you as Minister to establish a negotiation process in which we can cooperate in the naming of a panel, establishing terms of reference for the panel and adding to the guidelines for the environmental impact statement. We would also like to know more details about the participant funding guidelines associated with a Joint Review Panel so that we can have the capacity to participate in the Environmental Assessment process.

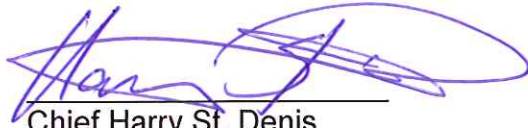
In conclusion, we trust that you, as Minister, will respect our Algonquin First Nation Governments as a jurisdiction to be part of a Joint Panel process, particularly since our Algonquin Peoples have occupied our traditional territories for thousands of years and continue to do so today, which includes the **Royal Proclamation 1763** "Indian Territory" lands at and around the site of the proposed Project.

We will await your response to determine our course of action regarding the conduct of a proper and thorough Environmental Assessment of what may become one of the first Rare Earth Elements mines in Canada if approved.

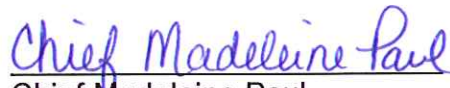


We anticipate that this letter will be posted on the electronic public CEAA registry.

Sincerely,



Chief Harry St. Denis  
Wolf Lake First Nation



Chief Madeleine Paul  
Eagle Village First Nation

CC: Algonquin Chiefs  
Assembly of First Nations of Quebec & Labrador  
Assembly of First Nations  
Canadian Environmental Assessment Agency  
Matamec Explorations Inc.  
Toyota Tsusho Corp.  
MiningWatch Canada  
Coalition for Better Mining In Quebec  
Ottawa Riverkeeper  
Temiscamingue Watershed Organization (OBVT)  
SDT  
CRE Abitibi-Temiscamingue  
MRC Temiscamingue  
Municipality of Kipawa  
Municipality of Temiscamingue  
Municipality of Laniel  
Chamber of Commerce Temis-Accord  
Regional Environment Committee of Abitibi-Temiscamingue  
Boreal Action  
Greenpeace  
Other Indigenous Peoples & Organizations  
Other Environmental Groups

## **ANNEX 1**

### **SUBMITTED BY** **ALGONQUIN FIRST NATIONS OF EAGLE VILLAGE & WOLF LAKE**

#### **Kipawa Rare Earths Project** **Potential for Significant Adverse Environmental Effects**

Wolf Lake and Algonquin First Nations have determined that the Kipawa Project has the potential for significant adverse effects. This conclusion is informed in part by a preliminary review of the limited information available on rare earth extraction projects including two reviews by the US Environmental Protection Agency (EPA). The concerns raised through this research are heightened by the location of the project in and upstream from areas of active hunting, fishing and other harvesting activities by members of our Algonquin Nations of Wolf Lake and Eagle Village, the importance of the area to regional fish stocks which have Aboriginal and recreational importance, the potential conflict the mine could pose with other uses of the area and the impact of the project on the Aboriginal Rights and Title of the Algonquin First Nations of Eagle Village and Wolf Lake.

Our concern is heightened by the fact that Canadian and Quebec regulators have no experience with rare earths mining, that existing regulations have not been created with any consideration of rare earths mining and that we are not aware of any rare earth mining operation that has operated without unacceptable adverse environmental effects.

#### **General Findings of the US EPA**

Two EPA reviews of rare earths extraction and processing indicate the potential for significant adverse effects from rare earth mining and processing. These reports were written in 2011 by EPA Region 8 staff and by the National Risk Management Research Laboratory in 2012.

The reports highlight the risks of concentration and release of radionuclides associated with rare earths that have the potential to generate gamma radiation and radon gas. The EPA states that the risk of radioactive contamination increases with increased environmental mobility of the radioactive particles caused by chemical and thermal treatments (EPA 2012). The Kipawa project proposes both chemical and thermal treatments.

The reports note that the toxicity of rare earths themselves are not well known but there is evidence that rare earths may cause negative effects to the environment and human health. Observed human health effects include impacts to the cardiovascular system, the respiratory system, neurological and cognitive systems and immune system. Many of the toxicity results are from laboratory experiments but several of the reports cited were from occupational exposure to rare earth elements through mining or downstream uses. Studies from China also show uptake of rare earth elements in people living near the mines, especially in children (EPA 2012).



In addition to the rare earths and radio nucleotides there is the potential release of other contaminants of concern at rare earth mines. The 2011 EPA report notes:

*Metals of special concern at rare earth element mines include, but are not limited to, aluminum, arsenic, barium, beryllium, cadmium, copper, lead, manganese, and zinc. Each of these metals have negative impacts on the environment and may be found or present in elevated concentrations within rare earth element bearing minerals.*

While not typically a source of acid mine drainage (AMD), due to the association with buffering carbonate minerals, the dissolution of the carbonates can create negative effects similar to the processes associated with AMD. Rare earth deposits have also been found to contain fluorine and asbestos which have well documented human health impacts. The reports also note the uniqueness of each rare earth deposit, and thus the need for the highest level of environmental scrutiny.

The EPA reports note that proper management of mining activities can reduce the risks of adverse effects. Given the various types of contamination that may result from rare earth extraction and processing the EPA urges the utmost care in evaluating, planning and managing rare earth mines and processing facilities.

### **Mountain Pass Mine, California**

For a number of years the Mountain Pass mine in California was a major supplier of rare earth minerals. The mine closed down in 2002 as a result of competition from low-cost production in China and environmental management problems. The EPA notes that:

*Groundwater and soil contamination is known to exist around the facility. Contaminants include barium, gross alpha, gross beta, nitrate, sodium lignin sulfonate, strontium, total dissolved solids, total lanthanides, total petroleum hydrocarbons (kerosene/diesel), total radium, total thorium, and total uranium. (EPA 2011)*

The mine has reopened with new environmental management provisions however, an article in the Sierra Club's Desert Report notes that the updated (2004) Environmental Impact report concluded that the project would "result in significant aesthetic, air quality, biological resource, geology/soils, and hydrology/water quality effects" (Juetten 2011)

### **Avalon's Thor Lake Project, NWT**

The only other rare earths project in Canada that is undergoing environmental assessment at this time is Avalon Rare Metals' Thor Lake Project, in the NWT. This project is being reviewed by the Mackenzie Valley Review board through a more rigorous and inclusive process than we anticipate the Kipawa project would receive under a standard CEAA review.



Despite the completion of the EA process, First Nations and federal regulators continue to have doubts about the ability of Avalon to mitigate the adverse effects of the project, in particular the projects' effects on water quality. In their closing remarks, Aboriginal Affairs and Northern Development Canada (2013) point to several areas where there remains a lack of clarity on predicted effects on water quality, and where predictions exceed proposed water quality objectives. They also note the proposed use of a mixing zone to meet objectives and recommend minimizing the zone. The use of a mixing zone in the context of the Kipawa project is highly problematic for reasons that will be described below.

In their final submission Environment Canada also expressed ongoing concern about impacts of the Thor Lake project on water quality and the site specific water quality objectives. They propose monitoring as a key measure to mitigate against adverse effects. We, however, do not accept monitoring as a valid measure to mitigate significant adverse effects as it is not preventative and is overly-reliant on having feedback loops between the monitoring phase and implementation of additional mitigation.

The Lutsel K'e Dene First Nation, a nation familiar with mining in their territory, reviewed the Thor Lake project and concluded that "LKDFN will be wary of the operations at Thor Lake and Pine Point, for we do feel that this project has the potential for significant and long term adverse environmental impacts". (LKDFN 2013) The Lutsel K'e also note that in looking for examples from around the world they were unable to find any examples of rare earth mines that were operated to an acceptable standard for their people. The principle environmental concerns of the Lutsel K'e related to impacts on caribou and the need for an environmental oversight body.

The Yellowknives Dene First Nation also remains deeply concerned about the project and among other concerns share the Lutsel K'e's concerns about wildlife and oversight. In February the Yellowknives passed a resolution withholding their consent for the project moving forward. (YKDFN 2013)

The fact so many profound concerns persist at this late stage of the review of the Thor Lake project point to the considerable uncertainty associated with rare earth mining. This uncertainty gives even more weight to the identified significant adverse effects that could come from the project.

### **Specific Environmental Concerns with the Kipawa Project**

The Kipawa project is located in an area of the shared territory of Eagle Village and Wolf Lake that is actively used by our members. Anything that changes our peoples' ability to sustain themselves and participate in our traditional activities now and into the future must be considered a significant adverse effect.

### **Water Quality and Aquatic Ecosystems**

For Algonquin Anishinabe Peoples water is a sacred element in Algonquin culture. We consider it as the blood of Mother Earth and the source of all life.



Mining in general and as shown above, especially rare earth mining can have significant impacts on surface and groundwater quality. Because the project is located within the Kipawa River watershed it has the potential for significant adverse effects on an important source of drinking water and a major freshwater fishery that provides Aboriginal fishing opportunities and recreational fishing opportunities.

In relatively close proximity to the project site are important spawning grounds for Pickerel at Brennan (Sairs) Lake, Kipawa River and Red Pine Chute. Pickerel are the most important food and recreational species in the area. Any changes to water quality that could restrict the success of spawning Pickerel would have a negative effect throughout the area. We are aware that two national assessments of the "Environmental Effects Monitoring Program" for metal mines has shown consistent adverse effects of mine effluent on fish and fish habitat (Environment Canada 2007 and 2012), thus confirming our concerns about the potential for significant adverse effects of this project.

### **Wildlife**

Our communities continue to depend on hunting as a form of sustenance and as a cultural practice. Direct displacement of habitat, disturbance through noise and light pollution, chronic health impacts from dust or water contamination, and increased access and traffic through our territory area resulting in increased hunting and road kills are all of concern. The fact that our territory is already under heavy pressure from recreational hunters and mining exploration means that added adverse impacts will have a cumulative effect that could be significantly devastating.

### **Proximity to Areas of Cultural Importance**

As part of our review of Matamec's project we are compiling information about use and occupancy of the mine site and vicinity. Our work on this continues but we know from past land use and occupancy work that several settlement and cabin sites are located in the area of the mine. Big Marsh, a wetland complex downstream of the project site is an important area for hunting and berry picking and was identified by many of the participants in a previous land use study.

The Kipawa project has the potential to adversely affect our people's use of and benefit from these areas. This could arise from changes to fish and wildlife and to the negative impacts on spiritual values of spending time in the bush in the Project area due to noise, light, dust and contamination.

Changes to our peoples' use of the area may also come from real or perceived changes in the quality of resources. Other environmental assessments of mining projects have recognised that a significant adverse affect may occur when fears of toxic contamination prevent people from harvesting food from their territory (Prosperity Mine Federal Panel Review Panel 2010). Given our peoples' concern over this project our people may not have confidence in the quality of resources surrounding and downstream of the mine site and may thus avoid the area, especially if there is not a rigorous and participatory review process.



## **Species At Risk**

The proponent's project description notes that there are six bird species which are considered to be at risk that are found in the project area. The description does not acknowledge the presence of Lake Sturgeon which are found in the Kipawa and Temiskaming watershed and could be in the area of the project. The population of Lake Sturgeon is much more localised and threatened than the 6 bird species listed. Any changes to the habitat or long-term viability of the sturgeon population at a local or regional scale would be a significant adverse effect.

## **Transportation**

The industrialisation of this area of our territory will result in much greater use of the existing road system and in particular the main access route to our territory, the Maniwaki Road. The project will also require the construction of new or substantial upgrading of existing roads. The increased traffic may have on wildlife as noted above and it is also a concern for the ease of access for our community to use the roads. There is a considerable risk of accidents and spills along the roads. The operation will require the transport to toxic reagents such as sulphuric acid, the transport of ore to the processing facility and of concentrate to the rail line along the Ottawa River. Were accidents to occur during the transportation of materials there is the potential for significant adverse effects if the accident were to result in a release of toxic substances to the environment.

## **Cumulative Effects**

Matamec is currently proposing a modestly sized project that relates to only one part of the properties they are exploring in our territory. The company has much more extensive holdings and is actively exploring the rare earth element deposits therein. The company recently published a press release indicating positive showings on a second deposit they refer to as the Zeus Deposit (Matamec 2013). Mineral exploration is already having a substantial effect on our members' use of the land.

Installing the transportation and processing infrastructure for the Kipawa Project will greatly facilitate future and expanded mining in the area. Additional mining would add to the magnitude of the adverse effects identified for the Kipawa Project. It is also not clear to what extent expanded mining operations would be reviewable under CEAA or Quebec environmental assessment processes if they did not cross the thresholds for mine expansion to trigger a new assessment. For this reason the present EA must consider additional mining activities contemplated by Matamec.

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