

SPECIAL BRIEF

TO

THE BAPE COMMISSION
(BUREAU D'AUDIENCES PUBLIQUES SUR L'ENVIRONNEMENT)

PRESENTED ON BEHALF

OF

THE MI'GMAWEI MAWIOMI
MIGMAGI, GESPEGEWAGI

OCTOBER, 2008

My name is Chief Claude Jeannotte. I am the Chairman of the steering committee of the Migmawei Mawiom Assembly and the Chief of La Nation Micmac de Gespeg.

The Mi'gmawei Mawiom is a formal political Alliance of the Chiefs and Councils of the three (3) Mi'gmaq communities of Gespeg, Gesgapegiaq, and Listuguj, all located on the Gaspé Peninsula.

The Alliance was established in August, 2000 and its purpose is to pursue, protect and address the broader interests of the three (3) constituent communities on all matters pertaining to our Aboriginal Title, our inherent Mi'gmaq rights, and our Treaty rights.

Among other things, we work together to foster community and economic development. We have adopted the traditional principle of

“One People, One Vision”. In these matters, we speak with One Voice.

The actions taken by Mi'gmawei Mawiomi fulfill the wishes of our members and our goals are focused on the interests of a Mi'gmaq Nation wanting to be united and self-sufficient. In 2000, the elected councils of Gespeg, Gesgapegiag and Listuguj gave the Mi'gmawei Mawiomi the mandate to represent and protect the Mi'gmaq Nation on Gespe'gewa'gi on the issue of inherent aboriginal rights and those stemming from treaties.

In that perspective, our primary goal is to have our inalienable ancestral rights respected as well as our right to self-government and self-determination on Gespe'gewa'gi land, out of respect of our status as a nation and, for the well-being of our families, our youth and our elders for the next seven generations.

As we stated in 2005 before the Energy Commission of the National Assembly of Québec and during the BAPE hearings on the establishment of a windmill park development project in the City of Murdochville, we would now like to reiterate that the Mi'gmaq Nation

never ceded its title or rights on the Gespe'gewa'gi traditional land, which includes the entire Gaspé peninsula, its lands, and waters and resources such as the air and the adjacent waters and islands. The Gespe'gewa'gi also extends over a large part of New Brunswick.

With that in mind, I have come to talk to you today out of respect because we were invited here through a public notice. However, I want to be very clear about something. With all due respect, this BAPE process is a mere public process and does not constitute consultation and accommodation at law. Our attendance here is completely without prejudice to our rights to proper consultation and accommodation.

The Government of Quebec has a clear legal obligation in accordance with its legal duty of honour to consult and accommodate Mi'gmaq Rights, Title and Treaties, including in relation to these two projects. It has not done so, even though the Québec Government has developed an interim guide for consulting aboriginal communities.

In its political and legal relationship with the Mi'gmawei Mawiomi, the government of Québec should follow the following guiding principles, clearly defined by the Supreme Court of Canada in the Haida and Taku River cases of 2004.

Firstly, the duty to consult and accommodate the Native Peoples exists from the moment a representative of the Crown has knowledge, concrete or attributed, of the possible existence of a title or ancestral rights and is considering taking steps that could have prejudicial effect on these rights or this title. On that basis, consultations of aboriginal communities must start as early as possible.

Secondly, the extent of the duty to consult depends on the preliminary evaluation of the strength of the evidence supporting the existence of the claim of right or title and of the seriousness of the potential prejudicial effects on the right or the title.

Thirdly, the duty requires the Crown to truly and in good faith consult the Aboriginal peoples involved and that it be willing to modify its plans in light of the data collected during the process.

In any case, when the claim rests on a piece of evidence which, at first sight is solid, and that the decision that the government intends

to make could significantly prejudice the rights of that claim, the duty to accommodate could require adopting measures to avoid irreparable prejudice or reduce the impact of prejudice until a definite decision has been rendered on the underlying claim.

I am sure you can understand our frustration, when we read the statement from the Ministère des Ressources Naturelle et de la Faune du Québec, in his commentaries concerning the validity of the impact study of the windmill farm of Montagne sèche, to the effect that the totality of the future site will be located on crown land.

We consider it to be of bad faith to make such a statement when the Québec Government has acknowledged in November 2007 having received our statement of claim the Nm'tginen, which is a global land claim of our traditional territory of Gespe'gewa'gi, the seventh district of the National Territory of the Mi'gmaq Nation.

It is even more frustrating to read, in his commentaries, the minister of Natural Resources asks the following questions: **“During the meetings between the promoter and the Mi'gmawei Mawiomi, going back to 2004, what were the preoccupations concerning the utilisation of the territory or the interests raised by the Mi'gmaq regarding the Montagne sèche Windmill project?”**

Again, it is unacceptable to read such a question from the Québec government, and it is a perfect demonstration of the unwillingness of

this province's government to engage in a proper consultation and accommodation process with the Mi'gmaq.

The truth is that Mi'gmaq have not been provided with proper information, resources or opportunity to meaningfully contribute to the ultimate decision-making on these and other projects in our territory. Rather, the Mi'gmaq are provided information like the rest of Québec stakeholders, when it is common knowledge that we must be consulted differently due to our unique circumstances. In fact, our submissions to the Quebec government on other important topics, such as the Conseil régional des élus (CRÉ) implementation of Natural Resources Commissions, have simply been ignored. Quebec has gone on to do what it wished, as if the Mi'gmaq had never spoken.

Regarding the question raised by the Minister of Natural Resources question, in his commentaries concerning the validity of the environmental impact study of the Windmill project of Montagne Sèche and also in light of this Commission's specific mandate, we respond the following:

The wind power projects of Gros Morne and Montagne Sèche are planned to be built on land which is Mi'gmaq land. Wind energy is part of the holistic world of Gespe'gewa'gi. Our Rights extend to all of the lands, waters, air and other resources of our territory. The disruption of wildlife from the construction and operation of wind farms will also have a negative impact on our Rights and Titles.

Since time immemorial, our people have had and continue to maintain an intimate relationship with the territory. Our social, political, and spiritual processes and protocols allowed for full and plentiful ways-of-living: planting and harvesting foods, hunting and fishing, medicines, gathering materials for household items, travel technologies, clothing and our homes.

To this day, the Mi'gmaq Nation have continued to hunt the Moose, the deer, the bear and migratory birds among other creatures of the Gespe'gewa'gi, for the many purposes described in the precedent paragraph.

In pages 2-36 to 2-41 of the promoters' environmental impact study, it is mentioned that the future location of the Montagne sèche windmill farm is a place where deer, moose, bear and migratory birds were seen in important numbers. We are therefore concerned on the adaptability capacity of these creatures, following the destruction of their natural habitat by the implementation of windmills, road construction and the timbering of forest to install transmission lines. Will these animals, crucial to our well being and our way of life, still be around after the construction of the Windmill Farm and if so, will they be able to survive in good health.

Also, we would like to know what the Government of Québec wildlife protection plan is prior to, during and following the construction of the projected windmill farms.

As Mi'gmaq, we clearly respect and recognize the importance of developing natural resources for socio-economic purposes. We insist however that any development must be consistent with the protection of our Rights and Title and the need to foster a healthy and sustainable environment for all future generations.

We believe that it is by working together that will we be able to attain stability, certainty and mutual benefits for each party. The Mi'gmawei Mawiomi is prepared to do this. Is Quebec prepared to do the same?

It is by working together that the Mi'gmawei Mawiomi will regain its economic self-sufficiency and sovereignty, be able to work responsibly to improve the general socio-economic conditions of its people, and contribute to the larger economy of Quebec and Canada.

We ask you today, to remind the Québec Government that the Mi'gmaq are waiting for them to fulfill their legal obligations. However, please also tell them that the Mi'gmaq are not going to wait for Quebec much longer and we are now implementing plans of our own.

Yours in peace and friendship.

Chief Claude Jeannotte
Vice Chair-Mi'gmawei Mawiomi
Gespe'gewa'gi Migmagi

