



**Media Release (For Immediate Release)**

**ALTERNATIVES NORTH SAYS SCRAP THE MACKENZIE  
GAS PROJECT SOCIO-ECONOMIC AGREEMENT**

Yellowknife (August 15, 2007) – Alternatives North is calling on the regular Members of the Legislative Assembly to scrap the Mackenzie Gas Project Socio-Economic Agreement following two critical independent reviews. Professor Nigel Bankes (Faculty of Law, University of Calgary, expert in resources and Aboriginal law) and Dr. Ciaran O’Faircheallaigh (Griffith University, Brisbane, Australia, an international expert on such agreements) reviewed the agreement for Alternatives North, a Yellowknife-based social justice coalition.

“The Agreement is effectively unenforceable and may also be largely incapable of implementation,” said Dr. O’Faircheallaigh. “Of all the negotiated agreements I have studied, this one ranks very low. In large part the Agreement simply constitutes a broad, non-binding statement of principles and goals by the Parties. In addition, it consists to a significant extent of measures the Parties would undertake in any case as part of their normal course of business.”

His analysis draws on writings on such agreements in Canada and Australia. Professor O’Faircheallaigh says there are positive goals and commitments in the agreement but they are unlikely to be met. Many commitments for both government and industry are not mandatory. As well, the agreement monitoring will be ineffective because it is under funded and the board responsible will only meet once a year.

The review by Professor Bankes reveals further limitations in the negotiated agreement.

“The Agreement is weak, especially when compared to SEAs previously negotiated for the diamond mines,” stated Professor Bankes. “The GNWT and the project proponents are the only signatories therefore no other parties, such as Aboriginal governments, have standing to enforce the terms of the Agreement.”

The Mackenzie Gas Project socio-economic agreement was signed by the Government of the Northwest Territories and the three main oil companies behind the project – Imperial Oil, ConocoPhillips and Shell Canada in January 2007. The agreement sets out ways the companies can provide training, employment and business opportunities for northerners during the project.

“These two reviews by independent experts confirm for us that this was a hastily reached agreement that does little to promote or even protect the rights and interest of the residents of the NWT. We are calling on the regular MLAs to scrap this sweetheart deal. If the current MLAs can’t do it then it should be a top priority for the next Assembly,” said Shelagh Montgomery for Alternatives North.

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18h00 MT on Wednesday August 15

**Note:** Arrangements for contacting Mr. Nigel Bankes may be made through Shelagh Montgomery

## **Backgrounder**

### **Mackenzie Gas Project (MGP)**

The MGP is a 1,220 km project to link northern natural gas with southern markets, including the Athabasca Tar Sands, by connecting to existing pipeline networks in Alberta.

The pipeline is a joint project of Imperial Oil, Shell Canada, Conoco Phillips, ExxonMobil and the Aboriginal Pipeline Group (Collectively: the Proponents).

The proposed pipeline will serve to open at least three natural gas fields in the Mackenzie Delta, the Taglu, Parsons Lake and Niglintgak. Together, these fields have the potential to produce 800 million cubic feet of gas and between 12 and 15,000 barrels of natural gas liquids such as butane and pentane per day.

The MGP is undergoing an environmental assessment by a Joint Review Panel with a parallel review for approvals through the National Energy Board.

The Government of the Northwest Territories (GNWT) has supported the MGP under the condition that it is environmentally and economically sustainable and as a basin-opening initiative.

### **Socio Economic Agreement (SEA)**

A Socio Economic Agreement is a signed agreement between GNWT and the proponents of the MGP. It reflects the social and economic plans, possible impacts and related commitments associated with a company's development plans or projects. The GNWT has existing SEAs with the three diamond mines currently operating in the NWT.

The GNWT has worked with the Proponents of the MGP directly to develop and sign a socio-economic agreement (SEA) that formalizes commitments made by the Proponents of the Mackenzie Gas Project with respect to employment, training, business opportunities and other related benefits for NWT residents.

The SEA signed by the GNWT and the Proponents will hold the Operators of the MGP accountable to commitments they have made in the regulatory review process and provide a follow-up program for the monitoring and ongoing assessment of socio-economic impacts and economic opportunities.

Negotiations on the SEA with the Proponents in June 2004. It was signed on January 19, 2007.

According to the GNWT, the SEA:

- provides for priority hiring for Aboriginal and NWT residents. To encourage priority hiring, the MGP has committed to communicate employment needs to communities;
- includes a commitment to cover the costs of travel to and from their job site;
- creates a training fund providing \$10 million for the first ten years of the project, with \$500,000 for each additional year after for the operating lifetime of the project with the MGP proponents and GNWT both contributing equally to this fund;
- commits the MGP proponents to continue participation in POTC (Pipeline Operations Training Course) and Aboriginal Futures program;

- includes social commitments such as healthy lifestyle maintenance, including money management, zero tolerance for drug and alcohol on site, support for NWT and community wellness issues, and site and public safety;
- encourages the promotion of cultural preservation, through the MGP proponents commitments to fund cross cultural awareness training, Aboriginal language supports including provision of interpreters, support for community cultural activities and, where available, provides access to Aboriginal language media products;
- commits MGP proponents to make reasonable commercial efforts to spend at least 15% of their materials, supplies and equipment and services on NWT Businesses during construction;
- provides for mitigation measures to be developed on GNWT program areas such as transportation infrastructure, health care, housing, and justice system programs;
- provides for economic opportunities and support for the development of human and business capacity including residential and industrial access to gas and construction units for conversion to permanent housing;
- establishes a socio-economic monitoring program including reporting mechanisms and an Advisory Board made up of industry, government and participating Aboriginal representatives to ensure that project-related effects are monitored and that mitigations are adapted to meet changing elements.

### **Independent Reviews of the SEA**

The **review of the SEA conducted by Dr. Ciaran O’Faircheallaigh** found that the Agreement has a number of fundamental weaknesses that suggest it will be of limited utility in pursuing the goals identified by the Parties. Most importantly, key features of the Agreement mean that it is effectively unenforceable and may also be largely incapable of implementation:

- the absence of specific and binding goals;
- the absence of concrete strategies to pursue goals;
- the discretion afforded the Parties in defining their commitments;
- the existence of broad ‘opt out’ clauses that permit Parties to avoid those commitments;
- the absence of any mandatory requirement for specific responses to negative impacts or to the failure of mitigative measures

Specific problems also arise in relation to the role of the Agreement in monitoring and responding to Project impacts. The Board responsible for this function will be of very limited use for the following reasons::

- it is advisory only;
- it will meet only once a year during Operations;
- it will have no permanent staff
- it will not be adequately resourced; and,
- there is no requirement on any Party to take action in response to the Board’s findings or recommendations.

In effect, the Agreement simply constitutes a broad, non-binding statement of principles and goals by the Parties.

The **review of the SEA conducted by Professor Nigel Bankes** found that there are some weaknesses with the current Agreement, especially when compared with the earlier mining SEAs.

- A surprisingly large number of clauses in the operative part of the Agreement are framed as recitals rather than as obligations and some of the key obligations are limited by the amorphous phrase “reasonable commercial efforts”.
- The concept of monitoring articulated by this Agreement is largely concerned with technical matters and is less well integrated with ideas of adaptive management and enforcement than are the earlier SEAs. Given the short timeframes associated with the construction of the main trunkline one might have expected to see tighter rather than looser feedback loops and a greater emphasis on what should happen if targets are not being met or parties are otherwise failing to perform their obligations.
- The socio-economic advisory board to be established under the terms of this agreement has a narrower mandate than the similar agencies established under the Diavik and Snap Lake Agreements, especially in relation to responsibilities for adaptive management and enforcement.
- The drafters have elected to define such critical terms as “MGP” and “MGP Parties” through a clause (s.7.1) which is designed to deal with a specific problem of binding contractors and sub-contractors to the obligations assumed by the proponent parties to the Agreement. This adds an unnecessary layer of complexity but also clouds the interpretation of the basic obligation of the proponent parties to flow-through their obligations to their contractors. This compromises the transparency of the Agreement and will likely make it more difficult to establish accountability for failure to perform.
- The Agreement is not as clear as are some of the earlier SEAs in requiring the parties to the Agreement to make sure that the obligations of the parties are flowed through to contractors and sub-contractors.
- The Agreement is an Agreement between the GNWT and the project proponents. Non-parties to the Agreement lack standing to enforce the terms of the Agreement. The proposal to incorporate the terms of the Agreement as a term or condition of the certificate of public convenience and necessity may serve to provide a public forum within which non-parties to the Agreement may hold the parties to account (i.e. it may improve transparency and accountability) but it is not likely to assist third party beneficiaries or others in the enforcement of the Agreement.