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# TATSHENSHINI • ALSEK

North America's Wildest River

BRIEFING DOCUMENT • SPRING 1993





*EURICAN*  
United States Department of State

Washington, D.C. 20520

March 18, 1993

Dear Brian,

Thank you for your letter of January 22 responding to my concerns about the development of the proposed Windy Craggy copper mine in the Alsek Tatshenshini Rivers area.

Since my letter to you, and your response, a U.S. delegation has visited Ottawa to share with Canadian federal officials our thoughts, concerns and information on the subject. At their March 5 meeting, the U.S. delegation explained in general terms what the review process in the United States would entail if the Government of British Columbia decides in favor of mining.

The delegation also notified the Government of Canada of our intention to draw up a detailed report on the regulatory and political hurdles the project would face on our side of the border. As recommended by your officials, we intend to provide this information to the Government of British Columbia through our Consul General in Vancouver. Our concerns remain, but I am confident that the channels of communication we have established will be very helpful.

On a personal note, I was sorry to hear of your decision to step down as Prime Minister. Over the years, our dealings have always been pleasant and rewarding. I very much appreciate all you have done for U.S.-Canadian relations and wish you well in the future.

With best wishes,

Sincerely yours,

Timothy E. Wirth  
Counselor Designate

*Brian - hope we catch up soon.*  
The Honorable Brian Mulroney,  
Prime Minister of Canada,  
Ottawa, Ontario.

*Good luck & best wishes as ever*

04-12-93 01:38PM

FROM EUR/CAN

TO 94562710

P001/008

United States Department of State

Washington, D.C. 20520



Date: 4/12/93

BUREAU OF EUROPEAN AND CANADIAN AFFAIRS  
OFFICE OF CANADIAN AFFAIRS

TO: Trey Lindseth

FROM: John Banman

SUBJECT: Windy Craggy

MESSAGE: See Wirth - Maloney letter

PHONE: 202/647-2170

FAX: 202/647-4088

7 PAGES FOLLOW

**GOVERNMENT-TO-GOVERNMENT  
CONSULTATIONS ON WINDY CRAGGY**

Ottawa, March 5, 1993

**Introductions**

In her opening remarks, ExtAff Director of the Transboundary Division Karen Mosher emphasized the primacy of Canada's provinces in all issues related to land use. The British Columbia Government alone has the authority to decide whether mining is an appropriate activity in the Tatshenshini-Alsek wilderness area. The Canadian federal government is, nevertheless, willing to discuss in hypothetical terms its role in the event the BC Government decides in favor of the mining option and allows the mine permitting process for Windy Craggy to proceed.

Director of Canadian Affairs Jim Hooper pointed to a number of recent developments which led us to request a government-to-government meeting:

- the release of the Interim Report on Tatshenshini/Alsek Land Use by the British Columbia Commission on Resources and Environment (the CORE report)
- the release of The Windy Craggy Report by Geddes Resources, Ltd. and
- the inauguration of a new administration in Washington.

Hooper acknowledged that the BC Government faces a tough choice between developing a rich mineral deposit and preserving a unique wilderness area. Its decision, he noted, should take into account all of the regulatory and political constraints the project would face in the United States. The reason he and eight other members of the Windy Craggy Interagency Group came to Canada was to outline these constraints for the GOC and to signal our intention to pass a full report on the USG role in the Windy Craggy process to the BC Government. Hooper added that we intend to do this through our Consul General in Vancouver.

**The GOC Role**

The Canadian side then provided three informative reports on the roles of the Federal Environmental Assessment and Review Office (FEARO), Energy Mines and Resources Canada (EMR) and Environment Canada/Canadian Parks Service.

Robert G. Connelly, Director General for Public Review and Assessment at FEARO, began his presentation with a discription of the Convention on Environmental Impacts in a Transboundary Context (the Espoo Convention). Canada and the

-2-

U.S. are signatories of this agreement which should go into effect later in 1993. Connelly thought that its focus on transboundary pollution and its provisions for consultations and dispute resolution made it an ideal vehicle for addressing U.S. concerns about Windy Craggy. Perhaps intentionally, he made no mention of the traditional mechanism for managing U.S.-Canada transboundary pollution problems -- the Boundary Waters Treaty of 1909 and its implementing organization, the International Joint Commission (IJC).

Connelly then described the Canadian Environmental Assessment Act which is slated to go into effect later this year. A recent Supreme Court decision gives the Canadian federal government a role in assessing projects like Windy Craggy only if it has an "affirmative regulatory duty" to do so. There are only three aspects of the Windy Craggy project which could trigger a federal Environmental Assessment and Review Process (EARP):

- the proposed bridge over the Tatshenshini River
- the slurry pipeline which would cross into Alaska and
- the fact that the project could have a significant transboundary environmental impact.

Once triggered, however, an EARP may examine any aspect of the project; not just those which prompted the EARP. The process calls for the appointment of an independent panel of experts which passes judgment on the environmental impact statement prepared by the project proponent. Following a public hearing, the panel submits a recommendation to the minister of the GOC's lead agency. In the case of Windy Craggy, Transport Canada would probably be the lead agency. FEARO intends to coordinate its federal environmental assessment review of Windy Craggy with British Columbia's provincial environmental review. FEARO is also willing to coordinate with the USG on the Canadian assessment process.

Sally Hamilton, Environmental Assessment Adviser to EMR, followed with a report on the mineral resources in the Tatshenshini/Alsek region. Windy Craggy has the largest proven copper reserves in Canada along with significant deposits of gold, silver and cobalt. Opening it for development would help an important sector of Canada's economy which has been in a steady state of decline. Canada's 320 mines currently employ 2.7 percent of its workforce and produce minerals which account for 4.4 percent of its GDP, 17.1 percent of its exports and 60 percent of its rail and sea traffic. More than 20 percent of British Columbia's miners lost their jobs in the past three years. Windy Craggy would employ 500 miners for at least three decades. A newly discovered copper deposit ten miles away at the Rainy Monday site offers the prospect of additional employment.

-3-

Colleen Snipper of Environment Canada/Canadian Parks Service provided a history of the country's national park system. Still in its formative stages, the system's goal is to have at least one park which is representative of each of the 39 terrestrial and 29 aquatic region of Canada. Ms. Hamilton claims that the Kluane Reserve located just to the north of Windy Craggy mountain exhibits biodiversity and geological formations nearly identical to those found in the Tatshenshini/Alsek region. Thus, this region is already represented in the Canadian Park System. U.S. National Park Service rep Rick Cook does not concur with this assessment. If the BC Government decided in favor of the wilderness option, there are no plans or resources currently available to convert the Windy Craggy area into a national park.

### **The USG Role**

Hooper began the U.S. presentation by drawing a distinction between the "Haines problem" and the "Alsek problem." Haines, Alaska is where copper concentrate from Windy Craggy would be transshipped. The slurry pipeline, the de-watering facility and the deep water port are all subject to federal regulations. The Alsek River watershed is the area that could be affected by pollution from the Windy Craggy mine. In order to address the Alsek protection issue directly, the U.S. must invoke relevant international agreements such as the Boundary Waters Treaty of 1909 and the World Heritage Convention of 1972.

Hooper noted that the NEPA process, like Canada's EARP process, requires that all aspects of the project be studied; not just those that take place in the U.S. Connelly asked for a clarification on this point. John Bauman of EUR/CAN observed that Windy Craggy was a transboundary project which presented a unique set of circumstances. Nevertheless, it seems certain that a NEPA assessment triggered by part of the project in Haines, Alaska would require an assessment of the entire project including, for example, the controversial tailings dam at the mine site in Canada. Joe Montgomery of EPA concurred, adding that a negative assessment could be based on specific problems associated with the part of the project that triggered the study or on cumulative problems which raise doubts about the viability of the project as a whole. Pete Christich of EPA noted that the U.S., as a matter of policy in the U.S.-Canada Technical Group on Garrison Diversion reassured Canada that protection of Canadian territory would be part of any NEPA review of the Garrison Diversion Project in accordance with our 1909 Treaty (Article IV) obligations. Both sides agreed to look into the matter.

Hooper noted that, whereas there were only three ways to trigger a GOC environmental impact study, there were many triggers for U.S. involvement. He handed the Canadian



-4-

delegation a list prepared by the Bureau of Mines itemizing 25 regulatory requirements which would be activated if the BC Government decides in favor of the mining option. The Canadian delegation was advised that Executive Order 11423 on transboundary pipelines and the Clean Air Act (and thereby the U.S.-Canada Air Quality Agreement) should be added to this list. Hooper then turned the floor over to representatives of the Army Corps of Engineers, the Environmental Protection Agency and the Department of Interior who briefly described their roles in the regulatory process.

### Political Context

Ken Thomas of OES/ENV then described the U.S. environmental regulatory process from the perspective of a lawyer who used to represent clients like Geddes Resources. Thomas recalled how baffled his Canadian clients were by the inherently political nature of the process. They tended to focus solely on the narrow technical requirements contained in the regulations, not realizing that public opinion is given equal consideration in the NEPA process. U.S. investors are more keenly aware of the importance of public opinion and they factor this into their investment decisions.

John Bauman recounted that HR 460, introduced in the previous session of Congress, called for a referral of the Windy Craggy mine proposal to the International Joint Commission (IJC) for review. Congress adjourned before a vote was taken. The resolution is likely to be introduced again, however, with passage virtually assured. Sources in the White House, moreover, have indicated that if the BC Government decides to pursue the mining option, the administration will refer the matter to the IJC.

Hooper preempted the Canadians on the issue of compensation. He noted that on page 106 of the CORE report Commissioner Owen suggested that the Canadian and U.S. federal governments make compensation to Geddes Resources and to British Columbia for the income they would forego if the Tatshenshini/Alsek area is kept as wilderness. Hooper stated flatly that the United States will not consider requests for compensation, especially compensation for "opportunity costs" for which there is no precedence.

Both sides agreed in general to treat the issue of Windy Craggy in a low key manner while the British Columbia land use study is in progress. The Canadian side expressed appreciation for the U.S. presentation and support for our intention to pass a full report on the USG role in the Windy Craggy process to the BC Government through our Consul General in Vancouver.



PRIME MINISTER / PREMIER MINISTRE

OTTAWA, K1A 0A2

January 22, 1993

Dear Tim,

I write to report pursuant to your letter of September 30 expressing concern over the proposed Windy Craggy copper mine in the Alsek Tatshenshini Rivers' region of northern British Columbia.

While he was Canada's Ambassador to the United States, Mr. Derek Burney met with you and advised that the Province of British Columbia has suspended its review of the proposed mine while a land use study is undertaken by the British Columbia Resources and Environment Commissioner. The study will determine whether mining is compatible with the wilderness character and other land uses in the region. No new claims or mine developments will be allowed in the region while the study goes forward.

The Commissioner's mandate includes full public consultation with all interested parties. On a recent visit to Washington, the Commissioner made it clear in briefings on Capitol Hill that your contribution would be most welcome. This process should be given the opportunity to function. Accordingly, in my view any decision on further action or review, including a possible reference to the International Joint Commission, is premature.

The Honorable Timothy E. Wirth  
Counsellor Designate  
United States Department of State  
Washington, DC

- 2 -

Thank you for bringing your concerns to my attention. The Government will be watching closely the progress of the British Columbia land use study.

Yours sincerely,

*And with best personal regards*  
*John Blusson*