



## INTERNATIONAL INDIAN TREATY COUNCIL

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## ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

### Complaint under OECD Guidelines for Multinational Enterprises (2008)

**Complainant:** Chickaloon Native Village Traditional Council, Alaska USA

**Multinational Enterprises:** Usibelli Coal Mine, Inc., Alaska USA  
The Electric Power Development Co., Ltd (JPower), Japan

#### Adhering Governments National Contact Points:

##### United States of America OECD National Contact Point

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#### In Representation of Chickaloon Native Village Traditional Council:

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## Petitioners

Chickaloon Native Village (CNV), Indigenous Athabascan Ahtna Peoples, is a United States of America (US) federally recognized tribe located in the State of Alaska. The Chickaloon Village Traditional Council (CNVTC) is the petitioner in this case. The International Indian Treaty Council (IITC) is a US based international Indigenous Non-Governmental Organization (NGO) with Special Consultative Status before the United Nations Economic and Social Council, since 1977. The IITC is filing this complaint in representation of CVTC.

## Multinational Corporations

Usibelli Coal Mine Inc. (UCM) is a multinational, family held corporation headquartered in Healy, in the State of Alaska. According to its website UCM customers include, *inter alia*, Hyundai Merchant Marine (Korea), Glencore Ltd. (Chile).<sup>1</sup>

The Electric Power Development Co., Ltd (JPower) is a Japanese publicly held corporation whose activities include generating electrical power and selling it wholesale to Japanese utilities. J-Power is Tokyo-based transnational buyer of coal that operates 67 power plants with a total output capacity of about 17,000 megawatts of electricity. In furtherance of its electrical generating activities, JPower purchases coal from foreign coal producers.

In 2010 the Mining News, an industry bi-weekly newspaper, reported that a ship loaded with 77,250 tons of Usibelli Coal from UCM's Healy Coal Mine, was sent to Japan as a test shipment and as part of a collaborative effort between J-Power and UCM.<sup>2</sup> This same story quoted Usibelli spokeswoman Lorali Carter, "J-Power has been identified as the most likely purchaser of the coal. They have expressed interest in purchasing all of the output from Wishbone Hill."

JPower's interest in UCM's Wishbone Hill coal mine has also been reported by various other news media. The Alaska Journal of Commerce reported that the assumption is that about 500,000 tons a year would be mined from Wishbone Hill and shipped to J-Power in Japan, The mine would be a conventional surface mine involving shovels and trucks.<sup>3</sup>

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<sup>1</sup> [http://www.usibelli.com/Mkting\\_custom.asp](http://www.usibelli.com/Mkting_custom.asp), last visited 15 April 2011. See, OECD Guidelines for Multinational Enterprises (2008) (Guidelines), Concepts and Principles 4, 5 and 6.

<sup>2</sup> Mining News, "Usibelli 2010 coal sales set new record" by Shane Lasley, Vol. 15, No. 51, Week of December 19, 2010 <http://www.petroleumnews.com/pntruncate/403879659.shtml>, last visited 5/4/2011 5:21:49 PM.

<sup>3</sup> Alaska Journal of Commerce, "Usibelli may have buyer for Wishbone coal; plan tests from MacKenzie" by Tim Bradner, Friday, June 4, 2010, [http://www.alaskajournal.com/stories/060410/loc\\_11\\_002.shtml](http://www.alaskajournal.com/stories/060410/loc_11_002.shtml), last visited 5/4/2011

## The Specific Instance

In December of 1997, UCM purchased coal mining leases for 8,000-acres near Wishbone Hill, 40 miles northeast of Anchorage<sup>4</sup> within Chickaloon ancestral lands and in close proximity to both Chickaloon Village itself and the non-indigenous communities of Sutton and Buffalo Mine Road/Moose Creek. With additional acquisitions, UCM land holding for the purposes of mining now total almost 45,000 acres.

Usibelli Coal Mine did almost nothing to develop its leases until March 1<sup>st</sup>, 2010, when it filed an application for a Surface Coal Exploration Permit at Wishbone Hill with the Alaska Department of Natural Resources Division of Mining Land and Water.<sup>5</sup> Although the mine has been inactive since 1968<sup>6</sup> the application was based on permits issued more than 20 years ago, based upon stale and misleading environmental data more than 20 years old. As a result of the exploration permit, and without any consultation with CVTC, UCM built a coal hauling and exploration road to the mine site less than 100 yards from the CNV Tribal school, drilled up to twenty exploratory drill holes and excavated three trenches<sup>7</sup> all without having to comply with Federal environmental statutes and without having to provide accurate and adequate environmental studies and other requirements for new mining. UCM avoided rigorous environmental oversight even though the area had undergone substantial changes since mining had been abandoned, including a substantial increase in residential population.<sup>8</sup> CNV's substantial expenditure and efforts to reclaim their traditional salmon run and moose habitat, ruined by previous coal mining operations, were ignored and given no consideration or regard.

## Petition to the National Contact Points

Complainant CNVTC and the IITC are concerned that the OECD Guidelines have been violated and will continue to be violated by UCM, without regard to sustainable development, to applicable human rights standards as well as to disclosure and to environmental standards.

Complainants request that the United States and Japan National Contact Points ascertain whether UCM has violated the below described sections in the OECD Guidelines for Multinational

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5:18:13 PM. See, also, Mat-Su Valley Frontiersman, "Buyer Found for Usibelli coal," by Andrew Wellner, Thurs. May 27, 2010, [http://www.frontiersman.com/articles/2010/05/28/local\\_news/doc4bfd9c378a372817934378.txt](http://www.frontiersman.com/articles/2010/05/28/local_news/doc4bfd9c378a372817934378.txt), last visited 5/4/2011; Alaska Center for the Environment, "Wishbone Hill (Usibelli) Impacts to Families, Landscapes and Fish for Coal Exported to Japan" <http://akcenter.org/climate-energy/coal-development-in-alaska/wishbone-hill-usibelli>, last visited 5/4/2011.

<sup>4</sup> [http://www.usibelli.com/History\\_KD.asp](http://www.usibelli.com/History_KD.asp), last visited 15 April 2011

<sup>5</sup> DRR: Permit to Conduct Surface Coal Exploration Activities, available at [http://dnr.alaska.gov/mlw/mining/coal/wishbone/WishboneHill\\_ExplorationRenewal\\_070710.pdf](http://dnr.alaska.gov/mlw/mining/coal/wishbone/WishboneHill_ExplorationRenewal_070710.pdf) (11/23/10)

<sup>6</sup> Anchorage Daily News, available at <http://www.adn.com/2010/07/07/1357828/state-grants-usibelli-drill-permit.html> (11/23/10)

<sup>7</sup> DRR: Permit to Conduct Surface Coal Exploration Activities, available at [http://dnr.alaska.gov/mlw/mining/coal/wishbone/WishboneHill\\_ExplorationRenewal\\_070710.pdf](http://dnr.alaska.gov/mlw/mining/coal/wishbone/WishboneHill_ExplorationRenewal_070710.pdf) (11/23/10)

<sup>8</sup> The State of Alaska improved Buffalo Mine Road, which borders the permit area and brought in power and utilities in order to encourage residential development in the area after the mine had closed in 1968.

Enterprises with respect to the UCM Wishbone Hill project, further the effectiveness of the Guidelines, and facilitate a resolution to the issues raised in this complaint.<sup>9</sup>

## **CNV's interest in this matter**

### ***Coal Mining, the CNV and UCM***

Coal mining in the Wishbone Hill area has cast a long and terrible shadow over the Athabascan peoples of Alaska and Chickaloon Native Village.

CNV's traditional homelands include the small streams and tributaries of the Matanuska River Valley, which are the most critical habitat for moose and salmon. Salmon require the clear and nutrient rich waters of these Matanuska River and its tributaries for spawning. Moose require the dense willows and plant life for food and protection from predators. It is in two of these small rivers, in what is now known as Wishbone Hill, that coal mining by the United States Department of Defense nearly wiped out of existence the moose, the salmon and people of the CNV. Prior to the United States Navy's invasion of their territory, the ancestors of the CNV relied on all five salmon species native to Moose and Eska Creeks for their means of subsistence and spiritual practice.

In the early 1900's, the miners and then the U.S. Navy occupied CNV ancestral lands in order to mine coal in support of the United States' Pacific Fleet during World War I. Coal miners introduced influenza and disease that devastated the fish camps and Tribal villages in the Matanuska Valley and near Wishbone Hill. Some Native children were taken by force from their homes and raised in orphanages and boarding schools. To make matter worse, when these children returned to their homelands, they found coal miners and homesteaders occupying their homelands and that these miners and homesteaders had left the Tribe's main food sources, salmon, caribou and moose, decimated.

The noise, pollution, deforestation railroad kills, and overhunting by miners and homesteaders killed off the moose and caribou vital to the Tribe. Damage done by the coal-carrying railroad placed directly in the bed of Moose Creek, left impassible waterfalls for the salmon on the lower end of the river.<sup>10</sup> Coal mining wastes not only negatively impacted salmon smolt (juvenile fish) survival, but coal mining related activities had directly cut off salmon from their extensive upstream spawning areas. In 1968, Congress required the US Navy to convert its fleet to diesel engines and the Anchorage military bases began using oil for heat and electricity. As a result, the Wishbone Hill area mines closed. The moose and vegetation slowly returned, but the caribou, once numerous never came back in sustainable numbers. Worse, salmon could not return to their spawning habitats on Moose Creek. In addition to the damage done to Moose Creek, coal mining in the Matanuska coal fields polluted and decimated salmon runs throughout the Matanuska

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<sup>9</sup> Guidelines, Commentary on the Implementation Procedures, I, Procedural Guidance I, National Contact Points, B, C and D.

<sup>10</sup> See [http://alaska.fws.gov/external/reflections/moose\\_creek\\_renaissance.htm](http://alaska.fws.gov/external/reflections/moose_creek_renaissance.htm)

Watershed including Eska Creek, the Chickaloon River, and many small and unnamed creeks and streams.

In 2002, the United States Fish and Wildlife Service (“USFWS”) and CVTC entered into cooperative agreements to restore the once prolific salmon runs in Moose Creek.<sup>11</sup> Similar efforts with the Tribe are now underway in Eska Creek. With funding from the USFWS and other partners, CVTC spent more than \$1,000,000 and thousands of man-hours rehabilitating the Moose Creek from the damage inflicted by coal mining. These benefits of these strenuous efforts accrue not only Tribal members, but all Alaskans and visitors.

Unfortunately, UCM conducted destructive exploration activities in sensitive, Sacred Tribal areas *without any Tribal consultation*, in anticipation of reopening the Wishbone Hill coal strip mine in 2012. Since it bought the coal leases UCM has failed to provide the Community with accurate information on the effects of its activities (or proposed activities) on the culturally important salmon species survival and other areas of great concern.

None of the above information was given adequate consideration and decisions have been made on incomplete and false information about mammal (particularly moose), salmon and bird species and habitats without substantive response to the clean water and sanitation concerns raised by the Tribe.<sup>12</sup>

On January 20, 2011, the US Environmental Protection Agency (EPA) announced a Consent Decree and Final Order concerning UCM’s Healy coal mine, “that resolves water permit violations and numerous unpermitted discharges. As part of the Agreement, Usibelli will pay a \$60,000 penalty to EPA.”<sup>13</sup>

“According to documents associated with the case, the Mine had 11 unpermitted discharges into the Nenana River, Hoseanna Creek, Sanderson Creek, and Francis Creek between April 2007 and July 2010. During that time, they also had 10 violations of their discharge permit limits.

“According to Edward Kowalski, Director of EPA’s Regional Office of Compliance and Enforcement, mining responsibly means paying attention and looking ahead to prevent future problems.

“Many of these discharges could have been minimized or avoided,” said EPA’s Kowalski. “By simply using and maintaining best management practices, we believe this penalty could have been avoided. Mining responsibly means making water quality protection a top priority.”

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<sup>11</sup> Id.

<sup>12</sup> Appeal of Final Decision and Findings of Compliance, Exploration Permit for Usibelli’s Wishbone Hill Development Permit, July 7, 2010 (Aug. 6, 2010), re-filed Sept. 10, 2010 and Appeal closed Oct. 14, 2010; see also CVTC Comments on Jonesville Mine Permit No. U-201 Renewal Jan. 24, 2011 Informal Conference.

<sup>13</sup> EPA Press release, Usibelli Coal Mine, near Healy, Alaska, agrees to pay \$60,000 EPA penalty for Clean Water Act violations, Contact Info: Eva DeMaria, EPA NPDES Compliance Unit, (206) 553-1970, [demaria.eva@epa.gov](mailto:demaria.eva@epa.gov) Tony Brown, EPA Public Affairs, (206) 553-1203, [brown.anthony@epa.gov](mailto:brown.anthony@epa.gov) (Seattle – January 20, 2011)

This situation only compounds CNV's concerns. Petitioners are informed and believe that UCM has received other State issued citations including Notices of Violations (NOV) fines and abatement records at UCM controlled sites, information which has not been made available to the Tribe by UCM.

### ***The Spiritual Life of the Community***

CVN's aboriginal territory encompasses vast and extremely diverse lands and waters that include the tallest mountains in North America, unique wet and dry tundra, grasslands, glaciers, beautiful fresh water lakes and rivers, sandy and mud-covered tidelands and icy ocean waters. CNV's ancestral homelands are rich in biodiversity and are home to caribou, moose, beavers, migratory birds, blueberries, cranberries, and all five species of pacific salmon. The CNV's way of life, their identity and their very cultural survival depend on these lands and waters, held Sacred by the Ahtna Athabascan communities. Their bounty and abundant fresh water makes their way of life, their self-sufficiency, their existence as Peoples and self-determination possible.

Both the United States government and the State of Alaska refer to this lifestyle as a "subsistence" culture or practice. However, the term "subsistence" wrongly implies "mere survival." More accurately, in the north, Indigenous Peoples very essence and identity is bound up with and inseparable from their relationship with the land and water, and the animals, plants, air, soil and sun.

Hunting, fishing, and picking berries are not just techniques for surviving the harsh climates of the north, but a spiritual, shared relationship that defines and dedicates the Indigenous way of life entirely. This way of life requires large volumes of free-flowing clean water for both spiritual and physical health and well-being. It is this way of life that is only possible with abundant clean water for the moose and salmon to thrive; these species are absolutely central to Athabascan culture and religious practices. Recognizing the importance of moose to Athabascan culture, in a case that has never been overruled in Alaska and one that remains the law of the land, the Supreme Court of Alaska, in *Frank v. State of Alaska*, held that one of the most important rights guaranteed by the Alaska Constitution to Alaska Natives, the Free Exercise Clause was violated by State interference with the taking of moose for Athabascan religious practices.<sup>14</sup>

In *Frank* the Alaska Supreme Court applied Alaskan Constitutional doctrine, that the Free Exercise Clause requires government to accommodate religious practices by creating exemptions from general laws."<sup>15</sup> The exemption in that case allowed Carlos Frank to follow the Athabascan cultural practices for taking moose for funerary services rather than the State's fish and game laws. The Court applied the well-established rule that government must grant exceptions, "to facially neutral laws in order to protect religiously based conduct."<sup>16</sup> Thus, the government may only burden a religious practice when the actions "pose some *substantial* threat to public safety, peace or order...or where there are competing governmental interests that are *of the highest*

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<sup>14</sup> *Frank v. State*, 604 P.2d 1068, 1070 (Alaska 1979) (religious practice protected where proponent is "sincere" and the practice is "deeply rooted" in religious belief rather than "essential." No value has a higher place in our constitutional system of government than that of religious freedom").

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 1071 (citations omitted).

order...and are not otherwise served.”<sup>17</sup> The Court held that the Athabascan practice of taking moose for funerary services meets that standard, making the practice a necessary component of the free exercise of Athabascan religion that the State may not impermissibly burden.<sup>18</sup>

The Court found that, “the evidence is inescapable that the utilization of moose meat at a funeral potlatch is a practice deeply rooted in the Athabascan religion,” and that “[m]oose is the centerpiece of the most important ritual in Athabascan life and is the equivalent of sacred symbols in other religions.” It went on, finding that taking moose for funerary ceremonies was a right that exists outside of the State’s regulatory structure for either sport or subsistence hunting and is not governed by “seasons.”<sup>19</sup> This case applies directly to CNV’s spiritual and ceremonial interests not only in Moose, but to the lands and resources that sustain them. Under state law, the State may not impermissibly burden CNV’s religious practice of taking potlatch moose for funerary services from areas customarily and traditionally used by the Tribe, such as the Moose Creek and Eska Creek drainage.

CVTC’s religious, spiritual, cultural and ceremonial rights and interests in Wishbone Hill and the surrounding area are thus well established under Alaska State law. These vested rights and interests extend not only to the land and water, the habitat restoration efforts, and salmon runs themselves, in Moose and Eska Creeks, but to other small streams that drain in to the Matanuska River. Although no real base line understanding of the salmon population has ever been established, these small streams have been affected adversely already by the road system in the area and their poor condition would only be compounded by the additional heavy use envisioned in the coal mining operation.

With financial support from federal agencies and other partners, CVTC invested over \$1,000,000 and years of effort on streambed restoration and salmon population enhancement seeking to remediate the grievous damage. Moose Creek was originally a highly productive and dependable salmon stream ruined by previous coal mining. CVTC’s fish passage restoration project has received substantial funding and won national awards from the United States Federal Government. But without any direct consultation and input from the Tribe, UCM has and will undoubtedly frustrate, if not annul these efforts.

Objections raised to the lack of consultation and consideration of the proposed mines’ impacts to water, cultural, archeological and historic resources, sacred sites, religious practices, the health and safety of the community have not been addressed. Anticipated greatly increased dust, noise and danger from the blasting and transporting the coal, toxic drilling compounds introduced into the environment, clouds of coal dust and interference with access rights for of Tribal members, as well as inaccurate and stale baseline data, have all been ignored.

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<sup>17</sup> *Id.* at 1070 (citations and internal quotation marks omitted) (emphasis added). See also, *infra*, the conclusions of the UN Rapporteur on Religious Intolerance, Mr. Abdelfattah Amor, on his visit to the United States, applying an equally rigorous standard under international law (ICCPR) to Indigenous religious practice in the United States.

<sup>18</sup> *Id.* at 1070-1074.

<sup>19</sup> *Id.* at 1073.



## **OECD Guidelines Violated**

### ***General Policies (II): Enterprises should take fully into account established policies in the countries in which they operate***

#### **Contribute to economic, social and environmental progress with a view to achieving sustainable development (Guideline II 1).**

The OECD Guidelines quote the 1987 World Commission on Environment and Development (the Brundtland Commission)<sup>20</sup> a fact that Indigenous Peoples and particularly the Indigenous Ahtna Athabascan CNV have known for millennia, that “sustainable development” is, “Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

By the EPA announced fine against UCM in other mining operations, UCM has been proven to violate this guideline. Further, UCM, by not considering CNV’s considerable restoration efforts of the salmon run (and other acts and omissions cited below) further violates this guideline.

#### **Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments (Guideline II 2)**

#### **The International Convention on the Elimination of all forms of Racial Discrimination (ICERD) (1966); ratified by the United States on 21 Oct 1994**

The UN Committee on the Elimination of Racial Discrimination (CERD), the ICERD’s Treaty Monitoring Body made has made recommendations to the United States regarding their failure to uphold and consider the rights of Indigenous Peoples concerning the protection of sacred sites and areas of cultural importance which continue to be threatened, desecrated and destroyed by imposed development and resource extraction carried out without their consent.

In their 2008 examination of the United States’ compliance with the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) the CERD voiced concern “... about reports relating to activities, such as nuclear testing, toxic and dangerous waste storage, mining or logging, carried out or planned in areas of spiritual and cultural significance to Native Americans, and about the negative impact that such activities allegedly have on the enjoyment by the affected indigenous peoples of their rights under the Convention (arts. 5 (d) (v), 5 (e) (iv) and 5 (e) (vi)).”

“The Committee recommends that the State party take all appropriate measures, in consultation with indigenous peoples concerned and their representatives chosen in

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<sup>20</sup> III, Commentaries, Note 1.

accordance with their own procedure, – to ensure that activities carried out in areas of spiritual and cultural significance to Native Americans do not have a negative impact on the enjoyment of their rights under the Convention. The Committee further recommends that the State party recognize the right of Native Americans to participate in decisions affecting them, and consult and cooperate in good faith with the indigenous peoples concerned before adopting and implementing any activity in areas of spiritual and cultural significance to Native Americans.”<sup>21</sup>

### **The International Covenant on Civil and Political Rights (ICCPR) (1966); ratified by the United States on 8 June 1992**

The Human Rights Committee (HRC) the Treaty Monitoring Body of the ICCPR, in its 2006 examination of the United States, recommended that the United States, “... should take further steps in order to secure the rights of all indigenous peoples under articles 1 and 27 of the Covenant to give them greater influence in decision-making affecting their natural environment and their means of subsistence as well as their own culture.”<sup>22</sup>

ICCPR Article 1 refers to the right of all peoples, including Indigenous Peoples, to Self Determination; Article 1 also requires that, “In no case may a people be deprived of their own means of subsistence;” Article 27 recognizes the right to practice language, culture and religion.

The HRC has further determined that for Indigenous Peoples, their right to practice their cultures includes the right to control the lands and natural resources necessary for the maintenance of their culture. The HRC also requires, “positive measures to ensure the effective participation of communities in decisions which affect them must also be ensured.”<sup>23</sup>

In 1998 Mr. Abdelfattah Amor, the then the United Nations Special Rapporteur on Religious Intolerance applied ICCPR Article 18 (the right to practice and manifest religion or belief) to Indigenous Spiritual Practice in the United States. Mr. Amor applied the requirements of Article 18 to land based religion and the forced relocation of the Sovereign Dine (Navajo) Elders on account of a coal mine on their Sacred lands:

“As far as Native Americans' access to sacred sites is concerned, this is a fundamental right in the sphere of religion, the exercise of which must be guaranteed in accordance with the above-mentioned provisions of international law on the matter.”<sup>24</sup>

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<sup>21</sup> Committee on the Elimination of Racial Discrimination Seventy-second session Geneva, 18 February - 7 March 2008, Concluding Observations, United States of America, UN Doc. CERD/C/USA/CO/6, 8 May 2008., para. 29.

<sup>22</sup> Human Rights Committee, Concluding Observations, United States of America, Eighty-seventh session, 10-28 July 2006, UN Doc. CCPR/C/USA/CO/3, 15 September 2006 Para. 37.

<sup>23</sup> Human Rights Committee, Fiftieth session (1994), General comment No. 23: Article 27 (Rights of minorities), para. 23.7.

<sup>24</sup> Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1998/18, Addendum, Visit to the United States of America, E/CN.4/1999/58/Add.1, 9 December 1998, para. 82. See discussion *supra*, *Frank v. State*, echoing a similarly rigorous standard under Alaska Constitutional law to land and resource based Indigenous religious and spiritual practice in the United States.

## The United Nations Declaration on the rights of Indigenous Peoples (2007)

### United States Commitments

It should be noted that the General Policies Guideline 2 calls on the Enterprise to: “Respect the human rights of those affected by their activities consistent with the host government’s international obligations **and commitments**.” (Emphasis supplied)

During the second Tribal Summit held Dec. 16, 2010, in Washington, D.C., President Obama announced support for the United Nations Declaration on the rights of indigenous peoples.<sup>25</sup>

"Today I can announce that the United States is lending its support to this declaration," he said. "What I hope that we are seeing is a turning point in the relationship between our nations."

The State Department quickly followed suit:

“In his Presidential Proclamation last month honoring National Native American Heritage Month, President Obama **recommitted**, ‘to supporting tribal self-determination, security and prosperity for all Native Americans.’ He recognized that —[w]hile we cannot erase the scourges or broken promises of our past, we will move ahead together in writing a new, brighter chapter in our joint history. (Emphasis supplied)

“It is in this spirit that the United States today proudly lends its support to the United Nations Declaration on the Rights of Indigenous Peoples (Declaration).”<sup>26</sup>

### CNV’s Rights under the United Nations Declaration on the rights of Indigenous Peoples

Article 3 recognizes the right of Indigenous Peoples to self determination: “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Article 20 recognizes that: Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

Other rights applicable in this case include”

- “Article 8. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.”
- Article 12. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access in privacy to their religious and cultural sites...”

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<sup>25</sup> Leaders applaud Obama's support for indigenous-rights declaration, Erny Zah, Navajo Times, Window Rock Arizona, Dec. 22, 2010

<sup>26</sup> Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples, I. Introduction

- Article 25. Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.”
- “Article 26: 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.”
- “Article 29. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.”

And, most importantly to this complaint: Article 32:

“1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

“2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

All of these rights have been violated or are threatened to be violated by UCM.

**Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues (Guideline 5).**

As noted above, UCM has substantially avoided complying with environmental impact statements and other environmental regulation by providing stale and misleading data about the environmental impacts of its 2010 exploration of the Wishbone Hill site.

***Disclosure (Guidelines Part III)***

Enterprises should ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance. (Guideline III 1)

Enterprises should apply high quality standards for disclosure, accounting, and audit. Enterprises are also encouraged to apply high quality standards for non-financial information including environmental and social reporting where they exist. The standards or policies under which both financial and non-financial information are compiled and published should be reported. (Guideline III 2)

Enterprises should also disclose material information on: b) The Company **objectives**; e) **Material foreseeable risk factors**; and, f) **Material issues** regarding employees and other stakeholders (Guideline III 4).

Enterprises are encouraged to communicate additional information that could include: a) Value statements or statements of business conduct intended for public disclosure including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. (Guideline III 5)

These disclosure requirements have not been met with regard to Wishbone Hill. In addition, UCM has failed to provide CVTC with even minimal information on the material issue of their activities and performance, including any Notices of Violations (NOVs), fines and abatement records at UCM controlled sites, alleged herein on information and belief.

### ***Environment (Guidelines Part V)***

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, **take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.** In particular, enterprises should:

#### **Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights (Guideline V 2)**

a) provide the public and employees with **adequate and timely information on the potential environment, health and safety impacts of the activities** of the enterprise, which could include reporting on progress in improving environmental performance; and,

b) engage in **adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.**

Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. **Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.** (Guideline V 3)

Again, these Environmental Guidelines have not been met. And as no relevant information has been forthcoming, compliance with other Part V Guidelines have not been capable of

assessment. What can be alleged with certainty is the failure of UCM to take due account of public health and safety by building a coal hauling road, already used in their exploration activity and projected to provide access to hundreds of truck loads of coal in extremely large trucks, per day, less than 100 yards from the entrance to the CNV Tribal school.

## Conclusion

For the above stated reasons, the Chickaloon Native Village Traditional Council requests that the United States and Japan National Contact Points ascertain whether Usibelli Coal Mine has violated the OECD Guidelines for Multinational Enterprises (2008) with respect to the UCM Wishbone Hill coal mining project, that the DCNs further the effectiveness of the Guidelines and facilitate a resolution to the issues raised in this complaint.

For all our relations,



Alberto Saldamando, General Counsel, IITC  
Geoffery A. Stauffer, Attorney at Law  
In representation of Chickaloon Village Traditional Council

Dated: May 5, 2011

cc: Chickaloon Native Village Traditional Council  
Chief Gary Harrison, Chickaloon Native Village  
OECD Watch