Undai River Diversion Complaint
Independent Expert Panel
Terms of Reference

Introduction

In February 2013, local nomadic herders and community members living close to the Oyu Tolgoi mine (the "Project") in Mongolia's South Gobi desert, with support from local NGO Gobi Soil and national NGO OT Watch, filed a complaint to the Office of the Compliance Advisor Ombudsman ("CAO")[1] regarding the Project's planned diversion of the Undai River and relocation of the Bor Ovoo Spring. As part of the CAO's Ombudsman/Dispute Resolution process an Independent Expert Panel (the "Panel") is going to be recruited to study these issues, along with issues relating to the diversion of the Haliv-Dugat River,[2] an important tributary of the Undai River to inform CAO and the parties of the case, the Elected Herder Team ("EHT") and Oyu Tolgoi LLC ("OT"), about their findings and recommendations.

Objective

The purpose of the Panel is to assess the Project's impacts on three important water sources—the Undai River, the Bor Ovoo spring and the Haliv-Dugat River—and how those impacts will affect the herders' pasture, access to water and water quality. In particular, the herders want the Panel to assess whether the information and analysis provided by Oyu Tolgoi LLC regarding the impacts of the Undai River diversion, the relocation of the Bor Ovoo spring and construction and operation of the tailings storage facility and waster rock piles is correct and whether there are any alternatives, modifications or additional mitigation measures that could avoid or reduce impacts on the herders' pasture, access to water and water quality.

Agreed upon principles guiding this work include:

- the need for shared confidence among stakeholders regarding both the panel's expert composition and its methodology; and
- implementation of the work in two phases relying on shared understanding and acknowledgement of the parties' respective priorities and
- finding a balance between a mutually credible scope and what is practical and feasible in terms of cost and time.

Membership and Selection Criteria

The Panel will be composed of a small team of 3-5 experts, including, at a minimum, two hydrologists with local and/or international expertise in assessing the environmental and community impacts of large-scale mines and a pasture or desert grasslands management expert.

Experts will be selected by CAO (pending mutually agreed by parties) on the basis of their independence, competence and credibility, as well as their ability to work constructively with the parties and familiarity with the Project.

[Please note: it may be difficult to find mutually acceptable experts who have not already worked for OT / Rio Tinto. Given this, candidates with OT/ Rio Tinto experience will undergo additional in-person rigorous review to ascertain their willingness and intent to perform the panel's scope and communicate findings in a balanced, unbiased manner.]

[1] CAO is the independent recourse mechanism for the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. For additional information, please see http://www.cao-ombudsman.org/

[2] Some of the herders know this river as the Haliv River, while others know it as the Dugat River. For the sake of clarity, we refer to it throughout as the "Haliv-Dugat River."

Specifically, proposed independent panel is to be collectively vetted against the following qualifications:

Academic credentials

- Academic degree and/or background that is suitable for the type of work required:
    - The basics of the hydrologic cycle, including climate, surface and ground water hydrology
    - Water chemistry
    - How water quality and quantity are affected by human activities
    - How the Project uses water and could potentially alter water quality and quantity
    - The relationship between water quality, standards and different uses
    - Basic monitoring methods
    - Data interpretation, graphing, and statistics
    - Experience working with desert ecology
    - Familiarity with nomadic use of natural resources, and
    - Ability to appropriately convey the findings of complex hydro studies into clear understanding of water access impacts for nomadic rural communities

Suitable past experience

- Has conducted on-the-ground research, academic research, peer-reviewed science-based impact assessments meeting international standards, document reviews, etc.
- Experience working with government, industry, multilaterals, and affected communities on complex issues.
- Candidate has never been directly involved in any design, development or implementation of the OT project

Ability to be objective and credible

- Past work shows candidate does not "advocate" for or against a position, and provides neutral, objective evidence/recommendations/opinions based on professional assessments
- Candidate has not worked for OT or RT in the past, nor taken clear positions on either

Note: Should the panel determine that additional expertise is needed to complete the Scope of Work envisioned below, they will identify appropriate candidates and present their recommendations to CAO.

Methodology

Once selected, members of the Panel should develop a proposed methodology for the study, which must take into consideration the specifics of nomadic peoples' lifestyle and based on international best practices of assessing the impacts of mining projects on nomadic people and their natural resource needs. The methodology will be presented to the EHT and OT for approval prior to the commencement of the study.

At minimum, the proposed methodology will include:

- Interviews with affected herders and relevant offices of local and central government ministries and agencies;
- A desk review of all relevant engineering; water, soil and plant monitoring and testing; management and mitigation plans and reports;

- Interviews with appropriate social and environmental staff and consultants on the Project and a physical inspection of the site.

Scope of work

To achieve the above objectives, members of the Panel will study and provide recommendations as they relate to the follow shared priorities of the parties: (1) the diversion of the Undai River; (2) the relocation of the Bor Ovoo spring; and (3) the diversion of the Haliv-Dugat River.

This work will be phased in accordance with the Expert Panel's own recommendations, taking into account cost considerations, technical feasibility and time necessary to complete work. Moreover, the scope may expand based on phase1 of the work.

For Phase One, the Panel will study and provide recommendations related to:

PHASE 1

- The construction and design of the Undai River diversion, in particular:
  - Whether the diversion of the Undai River is designed and has been constructed to function as needed to return the quality and quantity of water to the herders that the Undai previously provided;
  - The direct, indirect and cumulative impacts on herders' pasture, access to water and water quality resulting from the diversion of the Undai River; and
  - Any feasible alternatives or modifications to the diversion of the Undai River or associated monitoring and/or mitigation plans that would avoid or reduce impacts on the herders' pasture, access to water and water quality.
- The planned relocation of the Bor Ovoo spring, in particular:
  - The appropriateness of the proposed design for the relocation of the Bor Ovoo spring and any alternatives or modifications that would better replicate the ecological, cultural and social functions of the original spring; and
  - The direct, indirect and cumulative impacts on herders' pasture, access to water and water quality resulting from the relocation of the Bor Ovoo spring.
- Proactive opportunity for engaging herders and experts jointly in the spring design – where progress a mutual priority.

Based on above findings, the Expert panel will make recommendations regarding the feasibility for an expanded phase of study (phase 2), including, but not limited to:

PHASE 2

- Impacts to the Haliv-Dugat River and cumulative impacts in the Undai River basin, in particular:
  - Whether the Haliv-Dugat river has been diverted or will be diverted in the future, and the potential cumulative impact of the diversion of Undai and Haliv-Dugat on the water and pasture resources in this region;
  - Whether the tailings storage facility is currently leaking, the risk of such leakage in the future and what impact(s) such leakage would have on the Haliv-Dugat River or any other source of drinking water for the herders and their livestock; and
  - The feasibility of modifying the Project's tailings storage facility or related monitoring and/or mitigation plans in order to avoid impacts on the Haliv-Dugat River.

Panel results and recommendations for both Phase 1 and 2 will be made available for peer-review.