



# SIERRA LEGAL DEFENCE FUND

March 6, 2002 – *Via Facsimile*

The Honourable David Anderson, P.C., M.P.  
Minister of the Environment  
28th Floor  
Les Terrasses de la Chaudière  
10 Wellington Street  
Hull, Québec  
Canada K1A 0H3

Victor Lichtinger  
Secretario  
Secretaría de Medio Ambiente y  
Recursos Naturales  
Periférico Sur No. 4209, 6° piso  
Colonia Jardines en la Montaña  
14210, México D.F., México

Christine Todd Whitman  
Administrator  
US Environmental Protection Agency  
401 M Street, S. W.  
Mail Code 2660R  
Washington, D.C.  
U.S.A. 20004

Dear Members of the CEC Council:

**RE: BC Mining Citizen Submission (SEM-98-004)**

We write on behalf of the Submitters of the BC Mining citizen submission (the Environmental Mining Council of British Columbia, the Sierra Club of British Columbia and the Taku Wilderness Association; SEM-98-004).

We are gravely concerned that the Council Resolution 01-11, issued November 16, 2001, fails to respect the independence of the CEC Secretariat and suggests manipulation of the citizen submission process designed to ensure an outcome favourable to one of the Parties. The recent letter of Council, signed by Norine Smith in her capacity as Alternate Representative for Canada, deepens our concerns.

The BC Mining citizen submission concerns acid rock drainage at three abandoned mines in BC (Britannia, Mt. Washington and Taku). The Submission alleges that the effluent draining from these sites violates the prohibition against the deposition of a “deleterious substance” found in section 36 of the federal *Fisheries Act*. The Council’s resolution limits consideration to only the

Britannia mine site on the basis that the other mines are subject to “pending judicial proceedings”.

At Mt. Washington and Taku, Environment Canada took samples in June 1998 (after the Submission was filed) that indicated that the mines were in fact in violation of the *Fisheries Act*. At the time, Environment Canada sent “formal warning letters” to the companies involved, but no further action has been taken. Based on the date of the sampling, the two-year statute of limitations for bringing summary conviction proceedings expired in June 2000 (see section 82 of the *Fisheries Act*). Despite this statutory bar, the Council still determined – on November 16, 2001 – that the Mt. Washington and Taku mines are subject to pending judicial proceedings.

The Council’s decision is even more troubling in the current political context. After 30 years, the federal and provincial governments and the potentially responsible private parties for Britannia have signed a clean-up agreement and have begun construction of a remediation plant. Thus, limiting the factual record to the Britannia mine site will almost certainly ensure Canada a favourable factual record. If all three mines were being examined, we would support recognition for the Britannia clean up. However, looking only at the Britannia site will paint an unrepresentative and inaccurate picture.

Resolution 01-11 of the Council contradicts the spirit and intent of the NAAEC and other Council resolutions, and contravenes the strong recommendations of the JPAC, national advisory committees and the public regarding citizen submissions. This resolution threatens to strip the citizen submission process of its integrity, utility and legitimacy. Resolution 01-11 also represents an unreasonable interpretation of the phrase “pending judicial and administrative proceedings”. Postponing the JPAC public review of these issue of narrowing the scope of submissions until the BC Mining factual record, *inter alia*, is complete precludes our concerns being addressed.

Given the seriousness of the issues raised by Resolution 01-11, we respectfully request that Council reconsider the terms of Resolution 01-11 and direct that factual record be prepared pursuant to the terms of the Secretariat’s recommendation. Alternatively, we would ask that the Council direct the JPAC to conduct a public review of the narrowing of factual records forthwith and, subject to the recommendations of the JPAC, allow the broadening of ongoing factual record investigations. We kindly request that the Council respond to our request by its next regular session in June 2002.

Sincerely,

(Original signed by)

Randy L. Christensen

Cc: Jonathan Plaut, Chair, Joint Public Advisory Committee  
Janine Faretti, Executive Director, Commission for Environmental Cooperation