

ANNEXES

a. Complaint

- i. 1 July 2013 Complaint submitted by nomadic herders of Javhlant *bagh* in Khanbogd *soum*, Mongolia, and 2 Mongolian NGOs (OT Watch and Shuteen Gaviluut) to the Project Complaint Mechanism on 2 July 2013;
- ii. 5 August 2013 Complaint, submitted by nomadic herders of Jargalant, Uekhii *bagh* in Manlai *soum*, Mongolia, submitted electronically on 6 September 2013;
- iii. Individual Complaints from herders, 3 of which are dated 28 July 2013 and one of which is dated 9 August 2013, submitted electronically on 6 September 2013;
- iv. Supplemental Complaint letter from OT Watch prepared with support from Accountability Counsel, dated 1 April 2014;
- v. Response by Complainants to questions from the EBRD PCM regarding Oyu Tolgoi-related roads, submitted by electronic mail on 6 September 2013 by OT Watch to the PCM Officer;
- vi. Document titled “5 August 2013 Photos From Manlai to Oyu Tolgoi Road” submitted by electronic mail on 6 September 2013 by OT Watch to the PCM Officer.

b. Management’s Response

- i. Energy Resources and Oyu Tolgoi Management Responses submitted 23 October 2013 – “Excom No Objection: Mongolia Mining Corporation 39829 and Energy Resources 39957; Excom No Objection: Oyu Tolgoi Project (41158)”;
- ii. Revised Management response received by PCM expert on 10 June 2014 – “Management Response to PCM Complaint on Oyu Tolgoi Project (41158) & Energy Resources (39957)”.

a(i.) Complaint 2 July 2013.

EBRD COMPLAINT FORM



1. Name of the Person(s) or Organisation(s) filing the Complaint ("the Complainant").

B. Odgarig, Ts. Jargalsaikhan, D. Borkhuu, B. Odkhuu, Majigsuren, Surenkhuu, Badamsuren, Adya, Enhkzul, Enerzul, Ts. Altangerel,
O. Ijil (?), Ts. Norovbanzad, D. Namsrai nomadic herders of Javhlant bagh and OT Watch, Shuteen Gaviluut NGOs.

2. Contact information of the Complainant (please include email address and phone number if possible).

Javhlant bagh, Khanbogd soum, Umnugobi aimag, Mongolia - winter camps (residence address) at East and West Hachivch, Bada Huuvur, East Hanan Alag Del, Ulaan Tolgoi, Aman Us, Zurh Salaa, Goviin Shine Us, Malyn Shine Us, Ulziit Tsatsagt.

OT Watch, Baga Toiruu, Bldg 44, Apt 6, Ulaanbaatar -46A, Mongolia, Sukhgerel Dugersuren, Executive Director, mobile 976-99185828

Shuteen Gaviluut NGO - Khanbogd soum, Umnugobi, Mongolia, Chairperson Ts. Tsetsegmaa,

3. Is there a representative making this Complaint on behalf of the Complainant?

No

4. Are you requesting that this Complaint be kept confidential? Yes (if yes, please explain why you are requesting confidentiality)

No

5. Please provide the name or a description of the EBRD Project at issue.

Ukhaa Hudag coal mine at Tavan Tolgoi, Umnugobi aimag, Mongolia. Project number: 39957; Business sector: Natural resources

The Client: Energy Resources LLC ("ER" or the "Company"), an independent Mongolian mining company.

EBRD Finance: Up to USD 180 million term loan. Project Cost: USD 414 million. Environmental category: A;

Board date: 23 Mar 2010; Status: Signed PSD disclosed: 19 Feb 2010;

Oyu Tolgoi copper-gold-silver mine, Khanbogd soum, Umnugobi aimag, Mongolia.

Project number: 41158; Business sector: Natural resources Public/Private: Private Environmental category: A;

Board date: 26 Feb 2013; Status: Board approved, Pending signing; PSD disclosed: 5 Sept 2012

The Client: Oyu Tolgoi LLC (OT), a company established in Mongolia to implement the project.

OT is 66% ultimately owned by Turquoise Hill Resources Ltd (formerly, Ivanhoe Mines Ltd), a Canadian mining group, and 34% by Erdenes Oyu Tolgoi LLC, a corporate body owned by the Mongolian State.

Turquoise Hill Resources Ltd is ultimately majority owned and controlled by Rio Tinto Plc, a leading global mining group, which also acts as manager of the project.

EBRD Finance: A project finance loan to OT to be syndicated to commercial banks. The EBRD will lend up to USD 400 million for its own account (an A loan) and arrange syndication of up to USD 1 billion to commercial banks (a B loan). This will be part of a larger financing package including loans from, among others, the International Financial Corporation (IFC) and Export Development Canada (EDC).

6. Please describe the harm that has been caused or might be caused by the Project (please continue on a separate sheet if needed):

Ukhaa Hudag (Energy Resource) and Oyu Tolgoi (Rio Tinto\Oyu Tolgoi LLC) are building roads of various types through the pastures of Khanbogs soum to the mine sites and their facilities such as airports, power plants, water

storage and treatment units, waste storage and construction material mines. Larger roads include roads on which Energy Resource and Oyu Tolgoi LLC transport products and goods from Ulaanbaatar to the mines and from the mine to the Chinese border. All these roads cut through and fragment pastures of nomadic pastoralists of the Umnugobi aimag. Only one of these roads is paved. All other roads are dirt roads. 100 ton truck driving on bare desert soil raise huge amounts of dust in addition to fragmenting pastures of nomads. Dust is causing severe health damage to the health nomads living along these roads and their animals. While companies claim compliance with all norms and standards they do not provide evidence of such compliance. Please see enclosed letters.

7. If you are requesting the PCM's help through a Problem-solving Initiative, you must have made a genuine effort to contact the EBRD or Project Sponsor regarding the issues in this complaint.

a. Have you contacted the EBRD to try to resolve the harm caused or expected to be caused by the Project?

Yes (If yes, please list when the contact was made, how and with whom):

OT Watch, CEE Bankwatch and other CSO have expressed concerns regarding the pasture and water access issues raised in the complaint in numerous written correspondence and meetings since late 2011. Copies of some correspondence is enclosed here with in hard copy. However, taking into account the inconvenience of transporting heavy documents from Mongolia more documents will be delivered with the email submission of this complaint.

Please also describe any response you may have received.

Enclosed are copies of replies received from Energy Resource. Companies point to plans to mitigate negative impact while policies recommend prevention of problems. Enclosed letters do not contain the actual plans or discussion of their implementation with the participation of complainants. The response to the joint letter dated August 6, 2012 #039/12 does not provide answers to any of issues raised around impact on pastures; local community health; dust impact on pasture and water resources; decrease in living standards; and compliance with international standards in health and social impact assessments.

Is the written record of this contact with the EBRD attached to your complaint?

Yes

(if not, please arrange for all relevant documents to be delivered to the PCM Officer as soon as possible).

b. Have you contacted the Project Sponsor to try to resolve the harm caused or expected to be caused by the Project?

Yes (if yes, please list when the contact was made, how and with whom)

Please also describe any response you may have received.

Enclosed are copies of correspondence exchanged with Energy Resource, petitions of herders to all decision-making authorities and companies.

Is the written record of this contact with the Project Sponsor attached to your complaint?

Yes

8. If you have not contacted the EBRD and/or Project Sponsor to try to resolve the harm or expected harm, please explain why.

Although not required, it would be helpful to the PCM if you could also include the following information:

9. If you believe the EBRD may have failed to comply with its own policies, please describe which EBRD policies.

N/A at this point

10. Please describe any other complaints you may have made to try to address the issue(s) at question (for example, court cases or complaints to other bodies).

No formal complaints were made by this group at this point. Individual herders filed complaints with project grievance mechanisms with little to no effect, especially long-term effect in easing/mitigating continues harm from the projects.

11. Are you seeking a Compliance Review where the PCM would determine whether the EBRD has failed to comply with its Relevant Policies?

No

12. Are you seeking a Problem-solving Initiative where the PCM would help you to resolve a dispute or problem with the Project?

Yes

13. What results do you hope to achieve by submitting this Complaint to the PCM?

In order to resolve existing problems with roads impact on the pastures, water and animal health the complainants are requesting health impacts assessment as part of a social impact assessment with emphasis on their livelihoods through loss of pastures. Existing "sustainable pasture management or sustainable livelihood plans are geared toward "intensive livestock breeding" or other forms of settled form of activity. These are not acceptable to nomadic herders' desire to continue their ancient tradition of nomadic pastoralist lifestyle.

Required:

Signature of Complainant *: *Please see original hand-written complaint.*

Or

Signature of Authorised Representative *:

Date: July 1, 2013

Please send your Complaint to:

Project Complaint Mechanism

Attn: PCM Officer

European Bank for Reconstruction and Development

One Exchange Square

London EC2A 2JN

Fax: +44 20 7338 7633

E-mail: pcm@ebrd.com

Alternatively, a Complaint may be delivered by post or hand, at any one of the EBRD's Resident Offices, indicating that it is for transmission to the PCM.

* Note: If you submit your complaint through email, you must submit: an electronic scan of your signature; or alternatively, if emailed without a scan, you may send the PCM a signed version of the complaint through post, fax, or hand delivery at the same time as sending your email.

a(ii.) Complaint dated 5 August 2013 submitted by nomadic herders of Jargalant, Uekhii bagh in Manlai soum.

August 05, 2013

SOUTH GOBI AIMAG, MANLAI SOUM

We, the herders of Jargalant, Uekhii bagh, are approaching you regarding the many negative impacts imparted upon us by the EBRD financed Rio Tinto's Oyu Tolgoi gold-copper mine.

We live in Altagan Khuh Ovoo, Baishingiin Shand, Hadana Khand, berkh winter camps of Uekhnii bagh and Guchingin Ulaan Teeg, Guchin Us, Ulaan Tjtu, Budrhendii Us, Shine Har tsav, Hanan Buus, Ulaan Baagaraas winter camps and breed livestock on pastures along the Oyu Tolgoi road.

We define the negative impacts and damages as follows:

1. Health impacts from dust. We have approached the company repeatedly about the road and construction materials mining dust affecting health of those live along the road and degrading our pastures. No assessment of impact on health was done and no health protection is provided.

2. Animal health is affected by dust. Internal organs, lungs are in very poor condition and are no longer safe for human consumption. We thus are losing a part of our traditional diet.

3. Loss of pastures. Herders's pastures are fractured by many roads.

In order to resolve our complaint, we request that the economic and social impacts that are violating our social and economic conditions be assessed and appropriate compensation provided to remedy the situation.

Complainants:

B. Tsetsegchuluun

S. Bayarsaikhan

B. Lhasuren

R. Bazar

H. Oyungerel

2013 он 08.05.

Өмнөговь аймгийн Малгай сум

Маргалахт, Өлзийт багийн малчид бид ЕСБХБ-ны санхүүжилттэй РНО Жиртөгийн Оюу Толгой ойт ус мөхөөлбөр дэвсгэрийн хөдөөд хөдөөдөд өртөт асан талаар хохирол амсан ийнхүү танайд гелдэл гаргал байна.

Бид Өлзийт багийн ~~Хөх~~ Алталанхай Хөх овооны Бууцагч Байгалийн шанд, Хаданга Хонд, Бүрхний Бууц

Маргалахт багийн Гуржгийн Зуаан тээт, Гурж ус, Зуаан Фийн х бууц, Бүрхтөдий ус, Шинэ хур уав, Хонан бууц, ус, Зуаан багц, Зуаан Оюу Толгой хүртэлт зам дагуу Билсээр далан мал малот амьдардаг нүүдэлд малчид болно.

Бид өөртэй үснэгт бүт хохирол дараах байдлаар тодорхойлж байна.

1. Могоон замнаа ~~Бүрх~~ ас тос, карьерын тос замна дагуу амьдрал бүт бидний зүүн мтд дараахт болон малын бие ~~мтд~~ дараахт байгаа талаар үзэв дараа компанидад асуудал тавьсан боловч зүүн мтдийн хөдөөнийг үнэмтэй хийт хамгаалах ажил иийдэгддэггүй байна.

2. Могоон зүүн мтд тосноос дараахт малын гэрж дотор, уушгийн малч мүү хүмүүд хүртэлт үнэмтэй хамгаалт хүн хасалдаг байна.

3. Өмнөдрийн бэлт байна. Үүндээ бэлтгэж таслан өгөх
жам нь салахт байна.

Бидний дээрх гандныг барагдүүлэхын тулд нэгдлийн
үндсний эдийн засаг нийгэмийн асуудлыг дорнод
байгаа нийгэм дээр нэгдлийн нөлөөнд урлагд хийх
уриулан хөдлөхдөх нөлөө өгөхдөх гандныг нийгдвэр
лт өгөхийг хүсэ байна.

Гандыг гаргасан:

Б. Чулуунчиг - чингис Хөдөлгөөн Б. тасуулан

С. Бадарсайхан - Бадар Б. Бадар Бадар сайхан

a(iii.) Individual Complaints from herders sent electronically on 6 September 2013

TO: OT WATCH

DATE: AUGUST 09, 2013

I, resident of Khanbogd soum Bud BATBAATAR and my family have suffered irreparable losses since the OT project started its operations. In May 2012, my father D.

Chuluunbat lost his life in a road accident due to low visibility caused by dust raised by traffic driving on this dirt road from Oyu Tolgoi to Khanbogd.

I also lost my brother Bud Batbold in an accident when his Landcruiser crushed into a road construction truck on the road from Oyu Tolgoi to Gashuun Sukhait due to low visibility caused by dust. I am therefore filing this complaint.

TO: Petition to the Gobi Soil and Elected Herders' Team for the complaint negotiation
I, D. Boldbayar, am resident of the Javhlant bagh. Instead of promised transportation of the copper concentrate on blacktop road it is being transport of dirt road raising a lot of dust. This is having negative impact on our health. Therefore we request that the concentrate be transported only on blacktop road.

Petition signed:

July 28, 2013.

TO: Petition to the Gobi Soil and Elected Herders' Team for the complaint negotiation
I, Otgoduu, am a resident of Javhlant bagh. OT company has a contract to transport its concentrate on a hardtop road. It is however transporting it on a dirt road causing damages to us herders. This is in violation with provision 5.4 of the contract signed with the OT company. Therefore please discuss this complaint.

Petitioner

Kh. Otgonduu

July 28, 2013

TO: Petition to the Gobi Soil and Elected Herders' Team for the complaint negotiation
I, Bat Badamsambuu, am a herders of Javhlant bagh. We spend winter in Shavag Sair and Khatsavch areas. They have informed us that the concentrate will be transported on a hardtop road but it is now being transported on gravel road. This is causing negative impact not only on us but also animals. TO: Petition to the Gobi Soil and Elected Herders' Team for the complaint negotiation

The vegetation is contaminated with dust. It is necessary to reassess the negative impact with the participation of herders.

Petitioner

B. Badamsambuu

a(iv.) Supplemental Complaint from OT Watch dated 1 April 2014



Огноо April 1, 2014
Улаанбаатар хот

Дугаар 018 /14

Via Electronic Mail

Anoush Begoyan, Project Complaint Mechanism Officer
Susan Wildau, Project Complaint Mechanism Expert
European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom
Email: BegoyanA@ebrd.com, swildau@mediate.org

Re: Policy Violations Committed By Oyu Tolgoi LLC and Energy Resources LLC in South Gobi, Mongolia

Dear Ms. Begoyan and Ms. Wildau,

This letter supplements complaints submitted to the European Bank for Reconstruction and Development's ("EBRD") Project Complaint Mechanism ("PCM"), namely:

- the complaint dated July 1, 2013, submitted by nomadic herders of Javhlant *bagh* in Khanbogd *soum*, Mongolia, as well as 2 Mongolian NGOs, OT Watch and Shuteen Gaviluut (hereinafter, the "July 1, 2013 Complaint");
 - complaints submitted by an electronic mail dated September 6, 2013 from OT Watch to the PCM Officer, including the complaint dated August 5, 2013, submitted by nomadic herders of Jargalant, Uekhii *bagh* in Manlai *soum*, Mongolia (hereinafter, the "Aug. 5, 2013 Complaint"), and 4 complaints from individual herders, 3 of which are dated July 28, 2013, and one of which is dated August 9, 2013.
- (collectively, the "Complaint")

The Complaint relates to negative impacts caused by construction and use of all project-related roads associated with 2 EBRD-financed mining operations: (1) Oyu Tolgoi LLC's copper mining operation; and (2) Energy Resources LLC's coal mining operation at Tavan Tolgoi.

This letter first describes the physical imprint and harmful impacts of project-related roads and railroad, then summarizes the associated violations of the EBRD's Performance Requirements ("PRs")¹, which the herders alluded to in the interviews but could not put on paper in a form of a formal request for a compliance review. The roads and railroad described below are, or should have

¹ This letter was prepared with support from Accountability Counsel.

Sukhbaatar district, Bagatouruu, 44-6, POB-636, Ulaanbaatar-46A, Mongolia
Email: otwatch@gmail.com; Fax: 976-11-329798

been, considered part of the Oyu Tolgoi and Energy Resources projects' areas of influence.² As such, the EBRD should have conducted due diligence and performed ongoing supervision regarding the impacts of, and appropriate mitigation for, these roads and railroad. Impacts and violations arising from the beginning of these projects, and not only those arising after the approval of EBRD financing, are relevant. Failure by the EBRD to adequately consider impacts and violations that had already occurred in deciding whether to finance the projects would itself be a violation of the Bank's Environmental and Social Policy.³

I. Physical Imprint and Impact of the Roads

A. Roads Associated with Oyu Tolgoi

The Oyu Tolgoi mining operation relies on, or impacts, a multitude of roads, which include roads resulting specifically from its operations, as well as existing roads. These roads include:

- (i) The 105-kilometer Oyu Tolgoi-Gashuun Sukhait route. An existing earth (dirt) road along this route has been used by Oyu Tolgoi since around 2010 to deliver materials to the Oyu Tolgoi site from China.⁴ This route has been identified by Oyu Tolgoi and the EBRD as a facility associated with the project. Despite plans to upgrade the road to a "high-specification sealed road,"⁵ as of this date, the route remains an earth road, albeit one that Oyu Tolgoi has graded.⁶ While this road is also used for local transportation and trade, according to a traffic survey conducted in March 2011, more than half of the traffic along this road belongs to Oyu Tolgoi.⁷ Notably, the brother of one of the complainants in this Complaint died in an accident with a road construction truck along the Oyu Tolgoi-Gashuun Sukhait road due to low visibility caused by dust.⁸
- (ii) The diversion road from Tsagaan Khad to the Gashuun Sukhait border crossing, which Oyu Tolgoi constructed.⁹ This diversion road is an unsealed earth road.¹⁰
- (iii) The existing 42-kilometer Oyu Tolgoi-Khanbogd earth road. In September 2011, approximately 1,372 workers were commuting daily between Khanbogd *soum* centre and the Oyu Tolgoi mining site.¹¹ Oyu Tolgoi and the EBRD recognize this road as an "area of influence."¹² According to Oyu Tolgoi, it maintains this earth road "on a regular basis" and may consider further improvements to the road in future.¹³ Notably, the same

² See PR 1 ("Environmental and social impacts and issues will be appraised in the context of the project's area of influence. This area of influence may include... (iii) Associated facilities... that are not funded by the EBRD as part of the project and may be separate legal entities yet whose viability and existence depend exclusively on the project and whose goods and services are essential for the successful operation of the project... (v)... cumulative impacts from further planned development of the project or sources of similar impacts in the geographical area...").

³ See, e.g., EBRD Environmental and Social Policy, paras. 14-16, 28-29 (hereinafter "ESP").

⁴ Oyu Tolgoi, *Environmental and Social Impact Assessment*, "Chapter A4: Project Description," July 31, 2012, available at http://ot.mn/sites/default/files/documents/ESIA_OT_A4_PD_EN.pdf, p. 65 (hereinafter, "OT ESIA Project Description"); OT ESIA, "Chapter C12: Community Health, Safety and Security," available at http://ot.mn/sites/default/files/documents/ESIA_OT_C12_Community_HSS_EN.pdf, p. 3 (hereinafter, "OT ESIA on Community Health, Safety and Security").

⁵ OT ESIA Project Description, p. 65.

⁶ OT ESIA Project Description, p. 65.

⁷ OT ESIA, "Supplemental Appraisal: Diversion Road and Realignment Road," October 7, 2010, available at

http://ot.mn/sites/default/files/documents/ESIA_OT_SI_Supplemental_Appraisal_Diversion_Road_EN.pdf, p. 7 (hereinafter, "OT-GS Diversion and Realignment Road Appraisal"). According to the survey, 150 of 278 heavy and light vehicles were registered to Oyu Tolgoi.

⁸ Complaint of Bud BATBAATAR dated August 9, 2013.

⁹ OT ESIA, "Supplementary Memorandum: Oyu Tolgoi to Gashuun Sukhait," September 1, 2012, available at http://ot.mn/sites/default/files/documents/ESIA_Supplemental_OT_GS_Road_Zone_EN.pdf, p. 3-4 (hereinafter, "OT-GS Supplementary Memorandum").

¹⁰ OT-GS Diversion and Realignment Road Appraisal, p. 42.

¹¹ OT ESIA, "Chapter B11: Transport and Infrastructure," available at

http://ot.mn/sites/default/files/documents/ESIA_OT_B11_Transport_and_Infrastructure_EN.pdf, p. 18. (hereinafter, "OT ESIA on Transport and Infrastructure").

¹² EBRD, "Oyu Tolgoi: Project Description," available at <http://www.ebrd.com/english/pages/project/psd/2012/41158.shtml>.

¹³ OT ESIA on Transport and Infrastructure, p. 18.

complainant who lost his brother along the Oyu Tolgoi-Gashuun Sukhait road, lost his father in an accident along this road, also due to low visibility caused by dust.¹⁴

- (iv) The long Oyu Tolgoi-Ulaanbaatar gravel/earth road, which goes through Khanbogd *soum*, Manlai *soum* and Choir, and the Oyu Tolgoi-Ulaanbaatar gravel/earth road, which goes through Mandalgovi. While the total length of these roads is unclear, the distance of road between Khanbogd and Manlai is itself 110 kilometers.¹⁵ Oyu Tolgoi transports fuel, supplies and any hazardous materials along these roads.¹⁶ In 2011 on the former road, an average of 140 out of 178 heavy vehicle movements per day and 38 out of 165 light vehicle movements per day were attributed to Oyu Tolgoi.¹⁷
- (v) The Oyu Tolgoi-Gunii Hooloi gravel road, a 5 meter wide road constructed by Oyu Tolgoi.¹⁸ This road provides Oyu Tolgoi with access to its water borefields for construction, inspections and maintenance.¹⁹
- (vi) All formal and informal roads leading to and from various project facilities, only some of which are gravel roads, while the rest are earth roads.²⁰ These include:
 - a. roads to the international airport and temporary airport that service the Oyu Tolgoi project;²¹
 - b. an estimated 70 roads leading to quarries and water bore holes and 56 roads leading to water stations associated with Oyu Tolgoi;²² and
 - c. roads leading to worker camps, river diversions and electricity transmission lines.²³
- (vii) Other local roads. In this regard, Oyu Tolgoi's Environmental and Social Impact Assessment observes that "[t]raffic on local roads (i.e. earth roads) will also increase as a result of population influx and commercial activity associated with the [Oyu Tolgoi] Project".²⁴

B. Roads and Railroad Associated with Energy Resources

Energy Resources' Ukhua Khudag coal mine is located at Tsogttsetsii. The main route of concern associated with this project is the Tavan Tolgoi-Gashuun Sukhait coal road leading from the coal mine to the Gashuun Sukhait border crossing. As of early 2011, 300 coal trucks per day from the Ukhua Khudag coal mine used the earth road, of a total of 800 to 1,300 coal trucks per day on the road.²⁵ The road was temporarily closed in 2011 due to violations of national legislation and severe negative impacts on the environment and human health.²⁶ A 245-kilometer paved road has since been built along that route by a consortium of coal mining companies, including Energy Resources.

Energy Resources also uses multiple other unsealed roads, for example:

- approximately 400 kilometers of unsealed roads from Choir to the mining site, which are used to transport fuel; and

¹⁴ Complaint of Bud BATBAATAR dated August 9, 2013.

¹⁵ OT ESIA on Transport and Infrastructure, p. 18.

¹⁶ OT ESIA on Community Health, Safety and Security, p. 3; OT ESIA Project Description, p. 61.

¹⁷ OT ESIA on Community Health, Safety and Security, p. 3.

¹⁸ EBRD, "Oyu Tolgoi: Project Description," p. 61.

¹⁹ EBRD, "Oyu Tolgoi: Project Description," p. 61.

²⁰ Response by complainants to questions from the EBRD PCM regarding Oyu Tolgoi-related roads, submitted by electronic mail dated September 6, 2013 by OT Watch to the PCM Officer (hereinafter "Response to PCM's Questions on Oyu Tolgoi").

²¹ July 1, 2013 Complaint.

²² Response to PCM's Questions on Oyu Tolgoi.

²³ July 1, 2013 Complaint.

²⁴ OT ESIA on Community Health, Safety and Security, p. 3.

²⁵ Leslie Johnston, USAID, *Mongolia – Oyu Tolgoi Copper/Gold/Silver Mine Project Trip Report*, May-June 2011, p. 8 (hereinafter "USAID Report").

²⁶ OT Watch Report, p. 30.

- the unpaved Dalangzadgad-Tsogtsetsii and Ulaanbaatar-Tsogtsetsii roads, which are used to transport personnel and supplies for the mine and mine camp.²⁷

Energy Resources will also use the Ukhaa Khudag-Tsagaan Khad railroad, which is currently under construction. While there are alleged future plans to connect this railroad to the national railroad grid, for now, it will only be used to transport coal and, as its name implies, it will run from Energy Resources' Ukhaa Khudag coal mine to the Chinese border. Although the railroad is being constructed by the Samsung Corporation and is reportedly being financed by the Government of Mongolia, it is clearly a production-to-market road for Energy Resources' Ukhaa Khudag mine and should, therefore, be considered an associated facility of the EBRD-funded project.²⁸ This 225-kilometer railroad will run through Tsogtsetsii, Khanbogd and Bayan-Ovoo soums. A 15-kilometer section of the railroad lies within the Gashuin Sukhait crossing territory. Construction of the railroad began in mid-2013, and there are plans to complete the construction of the railroad, as well as a 3,383-hectare transshipment area and five railroad-crossing sections by 2016. The railroad capacity is planned at 25 tons for coal transport,²⁹ with maximum speeds of 80 kilometers/hour for loaded cars and 100 kilometers/hour for unloaded cars.³⁰ There will also be a service road running the entire length of the railway.³¹

In addition, for the roads and railroad related to both Oyu Tolgoi and Energy Resources, large quarries are created alongside roads for construction purposes, which are also of concern to the complainants.

Finally, the planned coal road from Tavan Tolgoi to Oyu Tolgoi is also of concern to the complainants, although its status is uncertain at this time. Regardless of who ultimately constructs this road, it will clearly be a facility associated with these two projects and will pose similar concerns to the roads described above.

C. Brief Summary of Harm Caused by the Roads and Railroad

The use of unpaved (i.e. graded, gravel or earth) roads, the South Gobi's windy and arid climate and the volume of traffic associated with Oyu Tolgoi's and Energy Resources' mining activities have been causing:

- Dust pollution: The mines are located in the South Gobi desert, which is one of the windiest places in Mongolia.³² Heavy vehicles driving on unpaved roads raise huge amounts of dust. To illustrate the extent of dust pollution that can be created, Oyu Tolgoi's Environmental and Social Impact Assessment ("ESIA") observes that dust from the coal stockpile at Tsagaan Khad can be seen from 10 to 20 kilometers away, even on windless days.³³
- Fragmentation of pastures and local rivers and streams: The roads cut through pastures the nomadic herders use for grazing their livestock. Roads have also separated grazing areas from wells and other water sources.³⁴ The Ukhaa Khudag-Tsagaan Khad railroad will increase fragmentation and related problems.

²⁷ Energy Resources LLC, *Environmental and Social Impact Assessment: UHG Phase II Project*, February 26, 2010, available at http://www.energyresources.mn/uploads/14649Hrpt_-_ESIAfinal.pdf, p. 3-2 (hereinafter "ER ESIA").

²⁸ The applicability of EBRD policies to the railroad is supported by the fact that Energy Resources' ESIA for Phase II of the Ukhaa Khudag mine specifically mentions the proposed railway to the Chinese border as "within the scope of this ESIA," see ER ESIA, p. 1-2, and references EBRD's policies as applicable. See ER ESIA, p. 2-22.

²⁹ ER ESIA, p. 3-45.

³⁰ ER ESIA, p. 3-42.

³¹ ER ESIA, p. 3-43.

³² OT-GS Diversion and Realignment Road Appraisal, p. 22.

³³ OT-GS Diversion and Realignment Road Appraisal, p. 22.

³⁴ Document titled "August 5, 2013 Photos From Manlai To Oyu Tolgoi Road" submitted by electronic mail dated September 6, 2013 by OT Watch to the PCM Officer (hereinafter, "OT-Manlai Photos"); USAID Report, p. 19.

- Loss of pasture land: Roads and their associated quarries occupy land that could otherwise be used for pasture. Importantly, herders traditionally use the best grazing sites in the region, and many of the roads have deprived them of these sites.³⁵
- Loss of access to water sources: The roads run across river beds, blocking the free flow of local rivers and streams, especially the Undai River, which is an important source of water in the region,³⁶ and impeding access to these water sources.³⁷
- Noise pollution from traffic: In addition to vehicular noise, there has been loud honking from drivers along the roads.³⁸
- Pollution from vehicles and drivers: Traffic on the roads has resulted in trash littered around the road areas, e.g. plastic bags, rubber tire material and fuel and lubricant stains.³⁹ Wells have also been contaminated by fuel and lubricants, as drivers have used buckets or containers previously used for fuel or lubricants to take water from wells.⁴⁰

These problems have resulted in the following adverse impacts on the complainants' health and safety, livelihoods and indigenous tradition and culture.

1. Health and safety impacts

As stated in the Complaint, the increased dust is adversely affecting the health of the complainants. It has caused an increase in respiratory illnesses, such as bronchitis, in Khanbogd.⁴¹ Doctors in Khanbogd do not have the capacity to monitor or address dust-related health issues.⁴²

The dust has also dangerously decreased visibility on the roads. In 2010, during the construction phase of the Oyu Tolgoi mine and the operation of the Ukhaa Khudag mine, a police report on traffic accidents in the area cited overloaded coal trucks, poor roads surfaces and poor visibility due to dusty conditions as factors leading to these accidents.⁴³ As mentioned above, the father and brother of one of the complainants died in traffic accidents caused by low visibility due to dust along Oyu Tolgoi-associated roads.⁴⁴

2. Livelihood and economic impacts

Due to pasture fragmentation problems, as well as dust and traffic associated with the roads described above, herders are losing livestock and the quality of their livestock is deteriorating. Traffic on the roads and low visibility have led to collisions that have killed livestock.⁴⁵ Livestock have also suffered fatal falls into large, unfenced quarries created for road construction. These quarries are often left unreclaimed despite no longer being in use.⁴⁶

In addition, dust, noise and water pollution have directly harmed the health of livestock. Livestock that graze near the roads are dying off and, in most cases, are found with black internal organs as a

³⁵ USAID Report, p. 17.

³⁶ OT-Manlai Photos. Energy Resources' road to Tsagaan Khad has blocked the Undai River in a significant way.

³⁷ USAID Report, p. 19.

³⁸ OT-Manlai Photos.

³⁹ OT-Manlai Photos.

⁴⁰ Response to PCM's Questions on Oyu Tolgoi.

⁴¹ CEE Bankwatch et al., *Spirited Away – Mongolia's mining boom and the people development left behind*, December 2011, available at <http://bankwatch.org/sites/default/files/spirited-away-mongolia-mining.pdf>, p. 22 (hereinafter, "CEE Bankwatch Report").

⁴² CEE Bankwatch Report, p. 22.

⁴³ OT-GS Diversion and Realignment Road Appraisal, p. 22, citing Oyu Tolgoi, *Community Health, Safety and Security Impact Assessment. Supplemental Community Field Study Report*, 2010.

⁴⁴ August 5, 2013 Complaint.

⁴⁵ OT-Manlai Photos.

⁴⁶ OT Watch and Gobi Soil, *Oyu Tolgoi – Gashuun Sukhait Copper Concentrate Road Construction Work Observation Visit*, August 7, 2013, submitted by electronic mail dated September 6, 2013 from Oyu Tolgoi Watch to the PCM Officer (hereinafter "OT Watch Observation Visit").

result of the dust.⁴⁷ Contaminated vegetation and water, as well as trash, poison animals, and trash is also a choking hazard.⁴⁸ There are insufficient veterinary services to help treat ailing livestock.⁴⁹

There are also more subtle but still significant impacts on livestock. Due to emotional stress from the noise and dust, livestock are experiencing poor weight and fat gain, which makes it less likely that they will survive the harsh South Gobi winters.⁵⁰ Difficulty in accessing water sources and dust pollution may be resulting in greater dehydration of livestock.⁵¹ Animal grazing patterns have also changed due to the loss of good quality pasture, access to water and other physical effects of roads.⁵²

In short, the roads and traffic are negatively impacting the quantity and quality of the complainants' livestock. The decrease in quantity and quality of livestock has an adverse economic impact on herders. According to the complainants, the loss of *each* animal is a loss amounting to thousands of dollars.⁵³ Deterioration in quality also means a reduction in marketability of the livestock. Further, the loss of good quality pasture for grazing, and fragmenting of pastures into small grazing areas inadequate for large herds, has also rendered uncertain the viability of herders continuing with their nomadic pastoralist livelihood. While Oyu Tolgoi has formulated sustainable pasture management plans, it is questionable whether settled agriculture is viable in the South Gobi desert.

The full extent of the economic impacts on complainants is unclear as neither Oyu Tolgoi or Energy Resources has conducted adequate assessments of the impacts of the roads described above on the livelihoods of the herders in the region.

This pattern is continuing with the construction of the Ukhaa Khudag-Tsagaan Khad railroad, which started prior to an adequate assessment of impacts on local herders.⁵⁴ Pasture fragmentation from the railroad project will be particularly severe, considering that the railway will be fenced the its entire length, with the exception of the railway stations.⁵⁵

3. Impacts on indigenous tradition and culture

The complainants' nomadic pastoralist lifestyle defines their cultural identity. For the reasons given above, the roads greatly impede herders' ability to manage their livestock in the traditional nomadic way, and complainants believe they will have to leave behind their traditional nomadic lifestyle in order to survive.⁵⁶ Moreover, Oyu Tolgoi's sustainable pasture management plans are geared towards settled as opposed to nomadic modes of agricultural activity.⁵⁷ Most of the complainants desire to continue with their ancient tradition of nomadic pastoralist lifestyle and view this transition as unacceptable.⁵⁸

⁴⁷ Aug. 5, 2013 Complaint; Response to PCM's Questions on Oyu Tolgoi; CEE Bankwatch Report, p. 15.

⁴⁸ Response to PCM's Questions on Oyu Tolgoi.

⁴⁹ CEE Bankwatch Report, p. 22.

⁵⁰ OT-Manlai Photos; Response to PCM's Questions on Oyu Tolgoi.

⁵¹ Response to PCM's Questions on Oyu Tolgoi.

⁵² Response to PCM's Questions on Oyu Tolgoi.

⁵³ Response to PCM's Questions on Oyu Tolgoi ("The cost of an animal depends on its uses: transportation, breeding, meat, dairy, wool/cashmere or race breed. Animals that have good genes for training as race horse or camel can reach up to \$9,000-20,000. Horses or camels for breeding purposes cost \$3000-6,500. Animals sold for meat reach on average: horses \$1,000-1,400; camels 1,800-3,000; camels for wool \$3,700-6,000 (cost depends on the micron quality of hair) dairy animals (cost vary based on age) mare - \$3,700-6,000; camel 3,750- 5,500. A fowl from a mare with medals from horse races can reach up to \$85,000. These are significant losses, which are never recompensed adequately.").

⁵⁴ For example, Energy Resources' ESIA admitted that "many herder households were in other soums because of...drought conditions" during in-field surveys in July and August 2009. ER ESIA, p. 6-166. Prime Minister N. Altankhuyag issued Decree #111 ordering expedited earth works for the railroad, which resulted in moving ahead with quarries and construction material production without an ESIA by Samsung regarding the railroads current design and impacts.

⁵⁵ ER ESIA, p. 3-44.

⁵⁶ July 1, 2013 Complaint.

⁵⁷ July 1, 2013 Complaint.

⁵⁸ July 1, 2013 Complaint.

II. Violations of the EBRD's Social and Environmental Policies

This section briefly describes some of the most serious policy violations associated with Oyu Tolgoi's and Energy Resources' roads and railroads and the impacts outlined in the Complaint and described above.

A. Oyu Tolgoi

1. Failure to assess impacts from roads at the early stages of project development

EBRD PR 1.4, on environmental and social appraisal and management, clarifies that "potential environmental or social risks and impacts . . . should be assessed in the early stages of project development, and managed on an ongoing basis."

The Oyu Tolgoi mine is a Category A project. This means that it is likely to have significant and diverse adverse environmental and social impacts that require a comprehensive, formalised and participatory ESIA.⁵⁹ It is therefore a project whose impacts should have been assessed in the early stages of project development.

However, in violation of PR 1.4, the Oyu Tolgoi ESIA was not completed until July 31, 2012. At that time, the construction phase was over 94% complete; mine exploration had begun in 1997, the investment agreement between Oyu Tolgoi and the Mongolian government was signed in 2009, and construction on the project began in 2009.⁶⁰

The tardiness of the comprehensive ESIA meant that Oyu Tolgoi created and heavily used roads prior to identifying the actual and potential environmental and social risks and impacts. This left no opportunity for preventive or mitigation measures commensurate with the nature of these risks and impacts. Indeed, the mitigation measures applied from the time construction began to the publication of the ESIA have been wholly inadequate.

As will be explained below, the Operational Management Plans ("OMPs") are still inadequate. This calls into question whether the Bank properly considered the tardiness of the comprehensive ESIA and whether it is being sufficient proactive in engaging with Oyu Tolgoi to ensure that the project complies with the PRs.

2. Inadequate health and safety measures

PR 4.7, on community health, safety and security, requires Oyu Tolgoi to "establish preventive measures and address them in a manner commensurate with the identified risks and impacts... [which] will favour the prevention or avoidance of risks and impacts over minimisation and reduction." This requirement has been violated by Oyu Tolgoi's failure to adequately prevent or mitigate dust pollution and its failure to properly implement road safety measures.

a) *Inadequate dust pollution measures*

In violation of PR 4.7, Oyu Tolgoi's relative inaction regarding dust pollution from most of the project-related roads is greatly disproportionate to the serious impacts and risks to human life and health and to the herders' livestock.

⁵⁹ See ESP, para. 20 (An environmental category A project "could result in potentially significant and diverse adverse future environmental and/or social impacts and issues which, at the time of categorisation, cannot readily be identified or assessed and which require a formalised and participatory assessment process carried out by independent third party specialists in accordance with the PRs.").

⁶⁰ Oyu Tolgoi Watch et. al, 'A Useless Sham' A Review of the Oyu Tolgoi Copper/Gold Mine Environmental and Social Impact Assessment, December 2012, p. 6 (hereinafter, "OT Watch Report").

First, Oyu Tolgoi's due diligence documents and management plans do not begin to address the full scope of the problem. The ESIA specifies mitigation measures for only 3 roads: the Oyu Tolgoi-Gashuun Sukhait road, the Oyu Tolgoi-Khanbogd road and the Oyu Tolgoi-Ulaanbatar road.⁶¹ Even for these 3 roads, the mitigation measures are wholly inadequate.

- Oyu Tolgoi-Gashuun Sukhait road: Oyu Tolgoi began using this road during the construction phase, while it was still an earth road. Oyu Tolgoi graded the road, which makes the road smoother, but does not mitigate the dust impacts. To mitigate dust during the construction phase, Oyu Tolgoi reportedly watered the road twice a day.⁶² However, this measure is of limited utility, given the arid climate and strong winds.⁶³
- Oyu Tolgoi-Khanbogd road: The only mitigation measure cited by Oyu Tolgoi for this road is regular maintenance.⁶⁴ It remains an earth road.
- Oyu Tolgoi-Ulaanbatar road: The only mitigation measure cited is to ensure "good traffic management measures," such as enforcing speed limits.⁶⁵ This does not address the health or livelihood impacts of dust.

Similarly, the OMPs fail to address dust impacts related to a multitude of roads, such as the estimated 70 roads leading to Oyu Tolgoi's quarries and water bore holes, the 56 roads leading to its water stations and the numerous roads leading to its worker camps, river diversions and electricity transmission lines.⁶⁶ Further, neither the ESIA nor OMPs contain any provision for minimizing the construction of new roads.

Moreover, none of the roads in use by Oyu Tolgoi are paved. A few are gravel roads, while the majority are earth roads. Although the company has constructed a sealed road for the Oyu Tolgoi-Gashuun Sukhait route, this comes too late to properly prevent or mitigate many of the impacts, such as the heavy traffic during the construction phase, as required by PR 4.7.

b) Inadequate road safety measures

Oyu Tolgoi has also violated PR 4.7 by failing to take adequate road safety measures. As explained above, the company has failed to take responsibility for many project-related roads. Failure to undertake regular maintenance and other mitigation measures in relation to these project-related roads causes or contributes to accidents, which threaten the lives of herders and their livestock. The complainants also report that roads have been created too close to existing herders' camps, putting families and animals living near these roads at additional risk.⁶⁷ Further, as mentioned above, the father and brother of one of the complainants were killed in road accidents along Oyu Tolgoi-related roads due to poor visibility caused by dust.⁶⁸

⁶¹ OT ESIA on Community Health, Safety and Security, p. 4-5, 15.

⁶² USAID Report, p. 19.

⁶³ USAID Report, p. 19.

⁶⁴ OT ESIA on Community Health, Safety and Security, p. 15.

⁶⁵ OT ESIA on Community Health, Safety and Security, p. 15.

⁶⁶ The OMP titled "Road and Power Line Inspection Procedure" only applies to 3 roads and provides only for a visual inspection to determine the roads' biodiversity impacts. See Oyu Tolgoi LLC, *Health, Safety and Environment Management System Procedures, Road and Power Line Inspection Procedures*, effective Aug. 1, 2013, available at http://ot.mn/sites/default/files/documents/ESIA_OT_OMP_Road_and_Power_Line_Inspection_Procedure.pdf. The OMP on transport management specifically identifies measures for only 3 major roads and the roads between Oyu Tolgoi and the international and temporary airports. See Oyu Tolgoi LLC, *Health, Safety and Environment Management System Procedures, Transport Management Plan*, effective Aug. 1, 2013, available at http://ot.mn/sites/default/files/documents/ESIA_OT_OMP_Transport_Management_Plan_EN.pdf.

⁶⁷ OT-Manlai Photos.

⁶⁸ Complaint of Bud BATBAATAR dated August 9, 2013.

3. Inadequate measures to prevent, mitigate and compensate for the physical and economic displacement of complainants

PR 5 on land acquisition, involuntary resettlement and economic displacement applies to all project-related physical or economic displacement.⁶⁹ Under PR 5.11, Oyu Tolgoi must “consider feasible alternative project designs to avoid or at least minimise physical and/or economic displacement.” Additionally, PR 5.39 requires Oyu Tolgoi to promptly compensate economically displaced persons for loss of assets, or loss of access to assets, at full replacement cost.⁷⁰ Nonetheless, the company has failed to appropriately consider alternative road placement or design features to avoid economic displacement and has failed to adequately compensate those experiencing economic or physical displacement due to project-related roads.

a) *Failure to implement adequate dust pollution and road safety measures*

Oyu Tolgoi’s failures to implement adequate dust pollution measures and road safety measures, as described above, adversely impact not only complainants’ health and safety, but also their livelihoods due to the harm caused to their livestock. These failures are hence also violations of PR 5.11.

b) *Failure to mitigate pasture fragmentation*

In violation of PR 5.11, there is no evidence that Oyu Tolgoi has considered feasible alternative road designs or road placement to avoid or at least minimise the physical or economic displacement caused by the fragmentation of pastures by roads and their associated quarries. Rather, the multitude of roads that have proliferated due to the Oyu Tolgoi project demonstrate a lack of planning or optimisation of road infrastructure. For example, Oyu Tolgoi has chosen a route for the Oyu Tolgoi-Gashuun Sukhait route that runs a significant distance away from the parallel Tavan Tolgoi-Gashuun Sukhait coal road. Choosing instead to either share the coal road or construct a parallel route nearer to the coal road would have mitigated pasture fragmentation. Yet, there is no clear evidence that Oyu Tolgoi considered all such measures or gave sufficient weight to preventing or minimizing pasture fragmentation when planning the location of this road. Further, neither the ESIA nor OMPs consider measures to minimize the construction of roads. This has resulted in the unnecessary and harmful fragmentation of herders’ pastures. As explained above, such fragmentation has adversely impacted herders’ livelihoods.

Additionally, Oyu Tolgoi has failed to build wildlife passages in the Oyu Tolgoi-Gashuun Sukhait paved road.⁷¹ Similarly, it has failed to build flood culverts into roads to allow for the free flow of local streams and rivers.⁷² These are feasible alternative project designs that could have mitigated the impacts of pasture fragmentation and other road-related problems on the complainants’ livelihoods. Oyu Tolgoi’s failure to consider these alternatives is a violation of PR 5.11.

⁶⁹ PR 5.7 (“This PR applies to physical or economic displacement, that can be full, partial, permanent, or temporary, resulting from the following types of transactions:

- land rights for a project acquired through expropriation or other compulsory procedures
- land rights for a project acquired through negotiated resettlements with property owners or those with legal rights to land, including customary or traditional rights recognised or recognisable under the laws of the country, if expropriation or other compulsory process would have resulted upon the failure of negotiation
- imposition of restrictions that result in people experiencing loss of access to physical assets or natural resources irrespective of whether such rights of restriction are acquired through negotiation, expropriation, compulsory purchase, or by means of government regulation.”).

⁷⁰ PR 5.39 (“If a transaction of the types described in paragraph 7 causes loss of income or livelihood, through for example interruption or elimination of a person’s access to his/her employment or productive assets, regardless of whether or not the affected people are physically displaced, the client will: Promptly compensate economically displaced persons for loss of assets or access to assets at full replacement cost. Where compensation is to be paid by a responsible government agency, the client should collaborate with the agency to help accelerate the payments. Where prompt compensation payments cannot be made due to government policy or practice, the client shall explore resettlement assistance options to help the displaced people with temporary loss of income.”).

⁷¹ OT Watch Observation Visit.

⁷² OT-Manlai Photos.

c) Failure to properly identify all physically or economically displaced complainants and provide adequate compensation or resettlement

Oyu Tolgoi has failed to properly identify complainants who have been physically or economically displaced. The livelihood losses experienced by herders as a result of impacts from project-related roads fulfill PR 5's definition of economic displacement.⁷³ Additionally, the roads and quarries, which physically occupy land that herders used to use, have physically displaced herders from traditional pastures. Moreover, some herders may need to relocate in order to mitigate serious damage to their health caused by the roads.⁷⁴

Oyu Tolgoi's ESIA, however, only identified one road, the Oyu Tolgoi-Gashuun Sukhait road, as a project component relevant to an "impact zone" (i.e. that will result in physical or economic displacement meriting compensation or mitigation).⁷⁵ Accordingly, and in violation of PR 5.7, persons physically or economically displaced by other roads relied on or impacted by Oyu Tolgoi have not been eligible for the company's compensation and resettlement package.

Additionally, in violation of PR 5.39, Oyu Tolgoi's compensation and resettlement scheme does not include compensation for loss of livestock from impacts associated with project-related roads.

4. Failure to consult and inform affected persons

PR 10.17 requires disclosure and consultation to be built into *each* stage of a Category A project.⁷⁶ Additionally, PR 4.8 requires Oyu Tolgoi to disclose relevant project-related information to enable the affected communities and relevant government agencies to understand the project's material health and safety risks and potential impacts, as well as its proposed protective measures.⁷⁷

In violation of these requirements, Oyu Tolgoi routinely failed to consult herders about the siting of its transport routes, or about appropriate measures to mitigate impacts of these routes, prior to constructing new roads or using the existing ones. Herders have reported that they were rarely given advance notice of important aspects of the Oyu Tolgoi project and its potential impacts, and that while Oyu Tolgoi staff would write down their concerns during interactions, there was never further feedback.⁷⁸ Moreover, it is unclear whether Oyu Tolgoi made any attempt to consult herders regarding the many roads not identified as impact zones.⁷⁹

Further, while Oyu Tolgoi claims to have "extensively consulted" with herders along the Oyu Tolgoi-Gashuun Sukhait road about dust and other road impacts,⁸⁰ there is no evidence that these consultations occurred prior to the use of the road or involved questions such as whether the company should take protective measures prior to using the road. Moreover, the ESIA does not refer to consultations in relation to other project-related roads.

⁷³ See PR 5.7 (defining economic displacement as resulting from "the imposition of restrictions that result in people experiencing loss of access to physical assets or natural resources..." including "demonstrated decreases in...livestock...yields resulting from project-related disturbance and/or pollution.").

⁷⁴ Response to PCM's Questions on Oyu Tolgoi.

⁷⁵ OT ESIA, "Chapter C10: Land Use and Displacement," July 31, 2012, *available at* http://ot.mn/sites/default/files/documents/ESIA_OT_C10_Land_EN.pdf, p. 15 (hereinafter "OT ESIA on Land Use and Displacement").

⁷⁶ PR 10.17 ("Projects classified as Category A could result in potentially significant and diverse adverse future environmental and/or social impacts that cannot be readily identified, assessed and mitigated and therefore require a formalised and participatory assessment process. Disclosure and consultation requirements are built into each stage of this process.").

⁷⁷ See PR 4.8 ("8. Where the project or stage of the project poses material risks to or potential adverse impacts on the health and safety of affected communities, the client will disclose relevant project-related information to enable the affected communities and relevant government agencies to understand these risks and potential impacts, as well as the client's proposed prevention, mitigation and emergency response measures, as appropriate. The client will consult with affected communities and relevant government agencies about the proposed measures before they are finalised and take their concerns and comments into account. The client will review the measures regularly, and engage the affected communities and agencies on an ongoing basis, informing them on the status of implementation of plans and commitments, results, and discussing with them any material changes needed to the plans, in advance of changes.").

⁷⁸ USAID Report, p. 20.

⁷⁹ See OT ESIA on Land Use and Displacement, p. 8.

⁸⁰ OT ESIA on Community Health, Safety and Security, p. 15.

5. Failure to prevent or mitigate adverse impacts on complainants' culture and tradition

- a) *Failure to properly identify nomadic herders as indigenous peoples and afford them protections such as the right to free, prior and informed consent*

Mongolia's nomadic herders are indigenous peoples under the definition in PR 7.10.⁸¹ First, in the Complaint, the herders self-identify as traditional, nomadic pastoralists with an ancient culture, which fits within the EBRD's description of indigenous peoples.⁸² They are also recognized as indigenous by others.⁸³ Second, they maintain an intimate attachment to distinct ancestral territories in and surrounding the project area. This centuries-old collective attachment is displayed in a seasonal and cyclical migration from one traditional location to the next. This attachment is also evidenced by the sacred status of various sites, such as the Bor Ovoo spring. Third, the herders descend from, and are themselves, nomadic pastoralists who have pursued traditional, non-wage subsistence strategies for centuries. Fourth, they are separated from mainstream culture by distinct cultural and economic customs, namely a nomadic lifestyle rooted in a natural-resource based livelihood that is tied to the geographic area they inhabit. Finally, the herders' use of words and phrases not heard in the mainstream Mongolian language distinguishes them from the rest of the country. This particularized dialect plays a significant role in the nomadic pastoralist identity.

Moreover, and perhaps more importantly, the nomadic herders demonstrate precisely the type of identity PR 7 intends to protect. They will suffer unique impacts because of their ties to the land,⁸⁴ and must be regarded as more than simply "vulnerable" affected communities.⁸⁵ Yet, despite the herders' distinct nomadic pastoralist identity, neither Oyu Tolgoi nor the EBRD undertook any analysis to determine whether the nomadic herders should be recognized as indigenous peoples under PR 7.⁸⁶

As a result of this failure, Oyu Tolgoi has failed to afford the herders the protections provided for by PR 7. For example, where a project is proposed to be located on indigenous peoples' customary land, PRs 7.31 and 7.33 require that free, prior and informed consent is obtained, that the indigenous peoples are given an opportunity for informed participation, that efforts are made to avoid or at least minimize the size of indigenous land to be used and that indigenous peoples are provided with compensation, whether in cash, land or in kind, as well as culturally appropriate development opportunities.⁸⁷ In this case, as a result of Oyu Tolgoi's the the EBRD's failure to identify the

⁸¹ See PR 7.10 ("In the Policy and this PR, the term 'Indigenous Peoples' is used in a technical sense to refer to a social and cultural minority group, distinct from dominant groups within national societies, possessing the following characteristics in varying degrees:

- self-identification as members of a distinct indigenous ethnic or cultural group and recognition of this identity by others
- collective attachment to geographically distinct habitats, traditional lands or ancestral territories in the project area and to the natural resources in these habitats and territories
- descent from populations who have traditionally pursued non-wage (and often nomadic/transhumant) subsistence strategies and whose status was regulated by their own customs or traditions or by special laws or regulations
- customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture
- a distinct language or dialect, often different from the official language or dialect of the country or region."

⁸² See PR 7.9 (recognizing that "Indigenous Peoples may ... be referred to in different countries by different terms").

⁸³ See, e.g., Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2011 Mongolia*, 2011, available at <http://222.unhcr.org/refworld/docid/4e16d36711.html> ("Mongolian herders, mostly minorities and indigenous peoples, were confronted with severe drought and a harsh winter, forcing thousands of them to abandon their nomadic life").

⁸⁴ See PR 7.32 (recognizing that "Indigenous Peoples are often closely tied to their customary lands and its forests, water, wildlife, and other natural resources, and therefore special considerations apply if the project affects such ties").

⁸⁵ OT Watch Report, p. 9-10.

⁸⁶ PR 7.11 specifically provides that the EBRD may seek expert advice in ascertaining whether a particular group is considered as indigenous peoples for the purpose of PR 7.

⁸⁷ See PR 7.31 ("As Indigenous Peoples may be particularly vulnerable in the project circumstances described below, the following special requirements will also apply, in addition to the General Requirements above. Common to these requirements is the need for the client to:

- enter into good faith negotiation with Indigenous Peoples
- ensure the Indigenous Peoples' informed participation
- obtain the free, prior and informed consent of Indigenous Peoples before starting with an activity described in paragraphs 32-37.")

and PR 7.33 ("If the client proposes to locate the project on, or commercially develop natural resources located within, customary lands under use, and adverse impacts can be expected on the livelihoods, or cultural, ceremonial, or spiritual uses that define the identity and community of the Indigenous Peoples, the client will respect their use as follows:

nomadic herders as indigenous peoples, Oyu Tolgoi failed to fulfill these requirements in relation to the project and, more specifically, the project-related roads.

b) Inadequate measures to preserve the complainants' traditional nomadic pastoralist lifestyle

Moreover, regardless of whether the herders meet the EBRD's definition of indigenous peoples, their ancient tradition of nomadic pastoralism qualifies as cultural heritage under PR 8 and should therefore be protected.⁸⁸ Specifically, PR 8.12 requires Oyu Tolgoi to locate and design the project so as to avoid significant damage to cultural heritage,⁸⁹ and PR 8.15 requires it to develop appropriate measures to reduce and mitigate any adverse impacts on the herders' cultural heritage.⁹⁰

Oyu Tolgoi's ESIA correctly identifies the herders' nomadic pastoralism to be an intangible cultural heritage,⁹¹ but then fails to appropriately consider measures to protect it. For instance, although the ESIA identifies the loss of traditional nomadic pastoralist livelihoods associated with the transition to wage-based employment as an impact to intangible heritage,⁹² it fails to identify the additional harm to cultural heritage caused by project-related roads. In violation of PR 8.12, there is no evidence that Oyu Tolgoi located and designed the many roads it relies on in a manner that would avoid harming the herders' nomadic pastoralist tradition. Further, the ESIA does not include any mitigation measures aimed at preserving the traditional nomadic pastoralist lifestyle of the herders from impacted caused by project-related roads. Rather, in violation of PR 8.15, the ESIA regards the diminishing of such a lifestyle as inevitable.⁹³

B. Energy Resources

1. Inadequate health and safety measures

a) Failure to adequately assess health and safety impacts of roads

-
- The client will enter into good faith negotiation with the affected communities of Indigenous Peoples, and document their informed participation and consent as a result of the negotiation.
 - The client will document its efforts to avoid or at least minimise the size of land used, occupied and/or owned by Indigenous Peoples which is proposed for the project.
 - ...
 - The affected communities of Indigenous People will be informed of their rights with respect to these lands under national laws, including any national law recognising customary rights or use.
 - The client will offer affected communities of Indigenous Peoples at the minimum compensation and due process available to those with full legal title to land in the case of commercial development of their land under national laws, together with culturally appropriate development opportunities; land-based compensation or compensation-in-kind will be offered in lieu of cash compensation, where feasible.").

⁸⁸ Traditional nomadic pastoralism falls within the definition of intangible cultural heritage. See PR 8.7 ("For the purposes of this PR, the term cultural heritage is defined as a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions... Intangible cultural heritage means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognise as part of their cultural heritage and which are transmitted from generation to generation.").

⁸⁹ See PR 8.12 ("The client is responsible for locating and designing a project so as to avoid significant damage to cultural heritage. If potential impacts are identified at the early stages of project development, preference should be given to avoiding adverse impacts during the design and site selection phases.").

⁹⁰ See PR 8.15 ("Based on the results of the field surveys, expert assessment of the significance of cultural heritage, requirements of national legislation and relevant international conventions, as well as on the results of consultations with affected communities (see paragraph 17), the client will be required to develop appropriate mitigation measures in order to reduce and mitigate any adverse impacts on the cultural heritage, along with the implementation schedule and required budget for such measures.").

⁹¹ OT ESIA, "Chapter C11: Cultural Heritage," p. 9-10, available at

http://ot.mn/sites/default/files/documents/ESIA_OT_C11_Cultural_heritage_EN.pdf (hereinafter, "OT ESIA on Cultural Heritage").

⁹² OT ESIA on Cultural Heritage, p. 9.

⁹³ OT ESIA on Cultural Heritage, p. 12-13 ("Loss of traditional livelihoods is also considered to be a moderate adverse impact although conditions and livelihoods of those under waged employment are likely to be better than those under pastoralism in terms of: access to healthcare and education opportunities, access to raised incomes and finance, access to food and heating etc.").

In violation of PR 4.7,⁹⁴ Energy Resources' failed to take adequate health and safety measures in relation to its heavy use of earth roads. In particular, Energy Resources has failed to adequately assess the health and safety impacts of its use of the Tavan Tolgoi-Gashuun Sukhait earth road. Energy Resources' Phase II ESIA does not sufficiently consider the impacts of transportation by trucks on the unpaved coal road, nor does it adequately explore possible mitigation measures.⁹⁵

b) Failure to mitigate adverse health and safety impacts of roads

Additionally, despite serious concerns regarding use of the Tavan Tolgoi-Gashuun Sukhait earth road, Energy Resources has failed to mitigate its harmful health and safety impacts. It continued to use the earth road even after commencement of mining operations in 2009 and expansion of mining operations in 2011. The alternative paved road built by Energy Resources with a consortium of other coal mining companies was not completed until September 2011.⁹⁶ In the meantime, the number of trucks on the earth coal road had reached over 1,000 per day, with about 300 belonging to Energy Resources.⁹⁷

The paved Tavan Tolgoi-Gashuun Sukhait road constructed by Energy Resources also fails to comply with PR 4.7. It does not have safe crossings for people, community vehicles or animals, which has resulted in road accidents that have injured or killed people and animals.⁹⁸

Finally, Energy Resources' risk assessment and implementation of mitigation measures in relation to other project-related roads needs to be further investigated.

c) Failure to maximize the capacity of the Tavan Tolgoi-Gashuun Sukhait paved road

Even though the Tavan Tolgoi-Gashuun Sukhait paved road is one of very few paved roads, if not the only one, used by mining companies in the area, and even though it was intended to be used by heavy coal trucks travelling between the coal mines and the Mongolia-China border,⁹⁹ Energy Resources has constructed it in such a way that it cannot carry all of the trucks wanting to use it. According to a report by Oyu Tolgoi, the paved road imposes weight restrictions, which limits its use by the many coal trucks that exceed these weight limits.¹⁰⁰ Consequently, coal trucks that do not meet these limits have to use the other roads leading from the coal mines to Gashuun Sukhait, which are all unpaved roads.

The frequent use of unpaved roads by heavy coal trucks inevitably results in dust pollution and the other adverse health and safety impacts described above. In particular, coal trucks are using the Oyu Tolgoi-Gashuun Sukhait earth road that leads from Tsagaan Khad to the border with China, creating heavy congestion and impeding the ability of Oyu Tolgoi to complete its sealing of the earth road to reduce adverse health and safety impacts.¹⁰¹

2. Inadequate measures to prevent, mitigate and compensate for the physical or economic displacement of complainants

a) Failure to implement adequate dust pollution and road safety measures

⁹⁴ PR 4.7 requires the client to "establish preventive measures and address them in a manner commensurate with the identified risks and impacts... [which] will favour the prevention or avoidance of risks and impacts over minimisation and reduction."

⁹⁵ See ER ESIA, p. 6-155 & 6-160; see also CEE Bankwatch Report, p. 15.

⁹⁶ CEE Bankwatch Report, p. 15.

⁹⁷ USAID Report, p. 8.

⁹⁸ Response by complainants to questions from the EBRD PCM regarding Energy Resources-related roads, submitted by electronic mail dated August 26, 2013 by OT Watch to the PCM Officer (hereinafter "Response to PCM's Questions on Energy Resources").

⁹⁹ OT-GS Supplementary Memorandum, p. 3.

¹⁰⁰ OT-GS Supplementary Memorandum, p. 3.

¹⁰¹ OT-GS Supplementary Memorandum, p. 3.

Energy Resources' failures to implement adequate health and safety measures, as described above, have adversely impacted not only complainants' health and safety, but also their livelihoods due to the harm caused to their livestock. These failures are hence also violations of PR 5.11. Notably, the severe adverse impacts caused by the Tavan Tolgoi-Gashuun Sukhait road on livestock led to protests by herders in May 2011 and a temporary closure of the road.¹⁰²

b) Failure to mitigate pasture fragmentation

In violation of PR 5.11,¹⁰³ there is no evidence that Energy Resources has considered feasible alternative project designs to avoid or at least minimise the physical or economic displacement caused by the fragmentation of pastures by the roads it has constructed or relies on. Instead, the Tavan Tolgoi-Gashuun Sukhait paved road has closed the local community's nomadic tracks, blocking movement between *baghs* and to the *soum*.¹⁰⁴ The road's route has also separated at least one herder's pasture from the well.¹⁰⁵ Another consequence is that the locals are driving farther than usual to move between winter camps, pastures and herd animals, wasting more gasoline and time on the road, which results in them having less time to earn a living, and directly and indirectly reducing their income.¹⁰⁶

Energy Resources has also failed to mitigate the fragmentation caused by the roads by constructing safe crossings for herders and their livestock to mitigate the fragmentation.¹⁰⁷ In addition, Energy Resources has failed to construct flood culverts that are adequate to allow the free flow of the Undai river, thereby impeding access to water sources.¹⁰⁸

c) Failure to properly identify all physically or economically displaced complainants and provide adequate compensation or resettlement

In violation of PR 5.7,¹⁰⁹ Energy Resources' compensation and resettlement measures apply only to herders who live within a fixed proximity of the Tavan Tolgoi-Gashuun Sukhait paved road, which has resulted in the exclusion from the scheme of herders whose livelihoods have suffered equal or greater harm due to the road.¹¹⁰

The new Ukhaa Khudag-Tasagaan Khad railroad, which as discussed above should be considered an associated facility of the EBRD-funded Ukhaa Khudag mine, is following a similar pattern. Only the 39 nomadic families whose winter camps are located closest to the planned route are being considered impacted by the project, without regard to impacts on herders located further away. This faulty system for identifying impacted herders was described in Energy Resources' ESIA, which itself recognized that the ESIA's "map [did] not identify all herder households that regularly use this area" and that, according to community leaders, "many herder households were in other soums" at the time of Energy Resources' in-field surveys.¹¹¹ Moreover, Energy Resources' ESIA anticipated

¹⁰² OT Watch Report, p. 30.

¹⁰³ See PR 5.11 (requiring Oyu Tolgoi to "consider feasible alternative project designs to avoid or at least minimise physical and/or economic displacement").

¹⁰⁴ Response to PCM's Questions on Energy Resources.

¹⁰⁵ Response to PCM's Questions on Energy Resources, referring to the case of herder Ser-Od.

¹⁰⁶ Response to PCM's Questions on Energy Resources.

¹⁰⁷ Response to PCM's Questions on Energy Resources.

¹⁰⁸ Response to PCM's Questions on Energy Resources.

¹⁰⁹ PR 5.7 ("This PR applies to physical or economic displacement, that can be full, partial, permanent, or temporary, resulting from the following types of transactions:

- land rights for a project acquired through expropriation or other compulsory procedures
- land rights for a project acquired through negotiated resettlements with property owners or those with legal rights to land, including customary or traditional rights recognised or recognisable under the laws of the country, if expropriation or other compulsory process would have resulted upon the failure of negotiation
- imposition of restrictions that result in people experiencing loss of access to physical assets or natural resources irrespective of whether such rights of restriction are acquired through negotiation, expropriation, compulsory purchase, or by means of government regulation.").

¹¹⁰ Response to PCM's Questions on Energy Resources.

¹¹¹ ER ESIA, p. 6-166. See also ER ESIA, p. 6-165 ("The railways affected households are those assumed to have either a summer or winter dwelling (or both) within 5km of the railway alignment.").

compensating physically displaced households “based on negotiation, to be conducted by ER’s community relations managers and in consultation with local soum and bagh governors,” without reference to EBRD standards regarding appropriate compensation levels.¹¹²

3. Failure to consult and inform affected complainants

As mentioned above, PR 10.17 requires disclosure and consultation to be built into *each* stage of a Category A project.¹¹³ Also, PR 4.8 requires Energy Resources to disclose relevant project-related information to enable the affected communities and relevant government agencies to understand the project’s material health and safety risks and potential impacts, as well as its proposed protective measures.¹¹⁴

In violation of these requirements, Energy Resources has failed to properly disseminate information about the health and safety impacts of the roads it constructs. The complainants report a “complete lack of information on potential health hazards and mitigation plans,” and call for evidence that Energy Resources has properly assessed the impacts of the mine and roads on their health and livestock.¹¹⁵ According to one report, officials in the soum administration in Tsogtetsii have stated that health risks associated with the Energy Resources project were not discussed in enough detail during public consultations to ensure that the affected community would understand them sufficiently.¹¹⁶

4. Failure to prevent or mitigate adverse impacts on complainants’ culture and tradition

Finally, as is the case with Oyu Tolgoi, Energy Resources has failed to identify and protect the herders as indigenous peoples and has failed to properly prevent or mitigate impacts on their culture and tradition.¹¹⁷

III. Conclusion

OT Watch requests that the PCM team take into account the numerous and serious violations of EBRD policy described above, and the specific requests made in the complaints submitted.¹¹⁸ It is especially necessary for Energy Resources, Oyu Tolgoi and the EBRD to conduct an assessment of the damages to herders’ health and livelihood caused by the roads and railroad and provide compensation accordingly.

¹¹² ER ESIA, p. 6-168. The ESIA also unduly minimized the impacts of economic displacement caused by pasture fragmentation, stating, without reference to any consultations with affected households or any other means of calculating the impact, that “any economic displacement from the railway will be minor” because “culverts will not be more than 5km apart in any section of the rail and herders will retain access to grazing lands in general.” ER ESIA, p. 6-168. The failure to adhere to EBRD requirements regarding adequate compensation for physical or economic displacement continues; Samsung and the Mongolian Railroad Authority reportedly asked herders what they thought would be adequate after showing them an English-language presentation of the project, rather than conducting studies or even culturally appropriate consultations.

¹¹³ PR 10.17 (“Projects classified as Category A could result in potentially significant and diverse adverse future environmental and/or social impacts that cannot be readily identified, assessed and mitigated and therefore require a formalised and participatory assessment process. Disclosure and consultation requirements are built into each stage of this process.”).

¹¹⁴ See PR 4.8 (“8. Where the project or stage of the project poses material risks to or potential adverse impacts on the health and safety of affected communities, the client will disclose relevant project-related information to enable the affected communities and relevant government agencies to understand these risks and potential impacts, as well as the client’s proposed prevention, mitigation and emergency response measures, as appropriate. The client will consult with affected communities and relevant government agencies about the proposed measures before they are finalised and take their concerns and comments into account. The client will review the measures regularly, and engage the affected communities and agencies on an ongoing basis, informing them on the status of implementation of plans and commitments, results, and discussing with them any material changes needed to the plans, in advance of changes.”).

¹¹⁵ Response to PCM’s Questions on Energy Resources.

¹¹⁶ CEE Bankwatch Report, p. 12.

¹¹⁷ See Section II.A.5 Failure to prevent or mitigate adverse impacts on complainants’ culture and tradition above.

¹¹⁸ See Response to PCM’s Questions on Energy Resources and Response to PCM’s Questions on Oyu Tolgoi.

Additionally, OT Watch finds that each of these violations is a result of a failure by the EBRD to conduct appropriate due diligence and supervision over these projects and therefore justifies a compliance review.


As a result of the significant policy violations associated with the project-related roads and railroad at issue in this Complaint, complainants and other herders are suffering serious impacts to their health and safety, livelihoods and traditional culture.

OT Watch appreciates your attention to this important matter.

OT Watch stands ready to provide any additional information or clarification on this communication.

Sincerely,

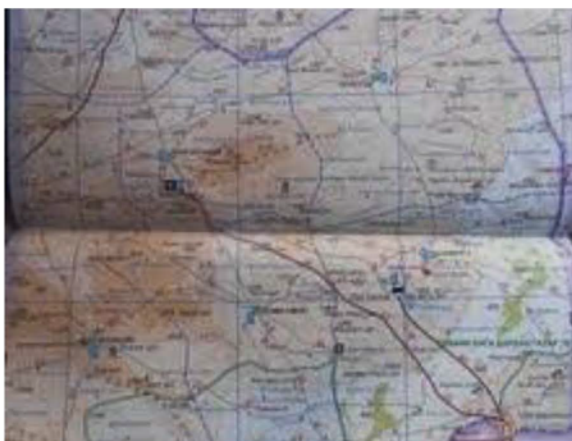



Sukhgerel Dugersuren
Executive Director
OT Watch
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a(v.) Response by Complainants to questions from the PCM submitted on 6 September 2013 by OT Watch

OT

1. Identify area on map that is of concern regarding OT's operations.



HERDER RESPONSE: The following winter camps are located along the OT – Gashuun Sukahit road: Khoroot, Budaagiin Ulaan Khoshut, Gashuun Sukhai, Dugat, Ukhaa Ovoo, Baga Oortsog, Ekhiin Huuvur, Uulzvar, Khatsavch, Zadgait sukhai, Budargana, and other winter camps and pastures located of Khanbogd soum Gaviluut bagh and baghs of Manlai soum.

OT WATCH RESPONSE: When roads are concerned we are not talking about a specific area of operations. It is pastures and access to water wells located along the OT roads: OT –Gashuun Sukhait, OT-Ulaanbaatar, OT – Gunii Hooloi and roads to each water station (around 56), OT – International and OT - Temporary Airport, OT – Zamun Uud, OT – Big Ger, OT- Tavan Tolgoi, OT – Water Lagoon; OT – South Camp, OT –Water Camp and roads to every quarry, every water monitoring boreholes (over 70). Only a few of these are gravel roads. The rest are dirt tracks, e.g. OT truck driving on bare soil.

One of the reasons why OT Watch is proposing to take a stock of pastures lost to OT physically as well as do an assessment of their quality or contamination status.

2. What impacts are there on the communities?

HERDER RESPONSE: Loss of pastures is impacting livelihoods;
Loss of pastures is leading to the loss of animal product quality and marketability;
Loss or change in animal grazing patterns leading to more time and effort spent on herding animals;
Emotional and health damages due to noise and loss of rest is common among these families;
We think there is need to assess the loss of cultural values due to loss of pastures to be carried out by an independent expert.

OT WATCH RESPONSE: Nomadic herders lose animals due to loss of access to water, loss of pasture, contaminated pasture as well as road accidents, fall in quarry pits or swallowing plastic garbage coming from traffic.

The cost of an animal depends on its uses: transportation, breeding, meat, dairy, wool/cashmere or race breed. Animals that have good genes for training as race horse or camel can reach up to \$9,000-20,000. Horses or camels for breeding purposes cost \$3000-6,500. Animals sold for meat reach on average: horses \$1,000-1,400; camels 1,800-3,000; camels for wool \$3,700-6,000 (cost depends on the micron quality of hair) dairy animals (cost vary based on age) mare - \$3,700-6,000; camel 3,750- 5,500. A fowl from a mare with medals from horse races can reach up to \$85,000.

These are significant losses, which are never recompensed adequately. In the cases when animals are lost to winter cold or do not survive the long dry spring no compensation is available. This is due to the fact that the mining companies do not recognize or measure pasture taken away from herders by their roads or fractured to too small pieces. Inadequate quality and quantity of pasture or access to water have direct impact on the animal's weight gaining process.

3. What impacts are there on the herds?

HERDER RESPONSE: There are over 80 families living along the Oyu Tolgoi roads: OT –Gashuin Sukhait, OT-Ulaanbaatar, OT – Gunii Hooloi, OT – international and temporary airport, OT – Zamun Uud, OT – Big Ger, OT- Tavan Tolgoi, OT – Water Lagoon. There about 80 herding households closest to these roads. In 60-80% of cases we find contaminated or sick lungs in animals slaughtered.

Former herder L. Battengel slaughtered 5 camels this spring – all had black lungs.

Animals die caught in quarry fences, fall in ditches and get hit by transportation trucks. (Photos available).

OT WATCH RESPONSE: Disruption of livestock grazing disrupted by the noise, vibrations and dust associated with the construction work and traffic reduces or eliminates the opportunity to raise healthy animals in a traditional nomadic lifestyle.

Inadequate quality and quantity of pasture or access to water have direct impact on the animal's weight gaining process.

Pasture fractured by roads, wells separated from pasture by roads change animal grazing pattern. Animal eating grass contaminated by dust and other contaminants appear to require more water to tackle thirst.

Herders complaint about drivers using buckets or containers from under fuel or lubricants to take water from their wells thus contaminating their water. Drivers leave plastic, rubber and/or fuel/lubricant waste, which present choking, poisoning hazard for animals. While Rio Tinto explains that they put out signs on roads warning to not to trash – the problem persists.

4. What is the concern about the OT specific road, road section, and/or traffic? Are you able to distinguish between OT related traffic and other traffic in this area?

HERDER RESPONSE: OT roads raise huge amounts of dust, create big noise which increase risks for animal safety and health leading to contamination of internal organs and/or loss of life. The lack of a blacktop road there are many road accidents involving humans and animals, bringing irreparable damage to us. The case of Bud Batbaatar enclosed to our response is one of most prominent. Manlai – Ulaanbaatar road is one very first which was used to bring goods and transport human resource to OT. OT –Gashuin Sukhait, OT- Tavan Tolgoi, OT-Ulaanbaatar roads are used mostly by

OT; while OT – Gunii Hooloi, OT – international and temporary airport, OT – Zamun Uud, OT – Big Ger, OT – Water Lagoon are used almost by only OT vehicles.

OT WATCH RESPONSE: We do hear complaints also from Khatanbulag soum in Dornogobi aimag through which OT transports goods from Zamuun-Uud port. There are roads to just about every borehole that are traveled by OT vehicles on a daily basis. We've documented green truck with coal

5. Are you in communication with OT or aware of methods that could be used to establish such communication? How often do you meet with the company?

HERDER RESPONSE: This issue has been raised with the company and there are opportunities to meet with the company, which are all however do not lead to any useful result.

OT WATCH RESPONSE: OT Watch meets with the company and engaged on various aspects of OT roads. Enclosed are copies of letters exchanged with the company.

6. Did you try to use the company's grievance procedure?

HERDER RESPONSE: We are not aware of a grievance mechanism. We have approached the company leadership and community relations office numerous times in writing and in person with petitions and demands but have failed to reach any results.

OT WATCH RESPONSE : In 2011 OT Watch completed the company complaint form regarding the closure of the community road to Bayan-Ovoo soum without signage or direction for detour. In this complaint we also demanded that we be compensated for lost time and fuel for taking a long detour. No reaction from the company has been documented. This incidence proves the fact that herders' claims that their complaints "disappear like stone thrown in deep water". This expression is used to express something disappearing forever.

7. Are there any further details that could be provided to help explain the reason for the complaint or details thereof?

HERDER RESPONSE: Because the methodology used to assess the impact from OT roads is incorrect, there is huge damage to our livelihoods. The negative impact is huge and continues to grow becoming so evident that does not require proof of evidence.

OT WATCH RESPONSE: Continuing construction of roads and infrastructure were not addressed by previous complaints. The previous compensation package measures negative impact based on the proximity of a herder's winter camp, a former home, to the source of impact, e.g. road. There is no recognition that road itself takes away sizeable amount of pasture. No recognition of negative impacts from fragmenting pasture, separating pasture and well and contamination from traffic.

Additional information on Manlai-OT road is attached in several separate documents. Please see attachment Manlai Complaint.

Additional information from a group of herders who reside in winter camps along the various OT roads. Please see attachment OT New Complaints

We also enclose copies of most recent exchange of correspondence with the company on road issues.

8. Do you have specific recommendations that you would like to see to avoid, minimise or mitigate this issue?

HERDER RESPONSE: This is in addition to what was proposed for the Energy Resource road.

1. Reduce dust,
2. Measure true impact on livelihoods,
3. Build blacktop roads,
4. Build in flood culverts in OT-Manlai road where necessary
5. Implement international standards of evaluating impact on livelihoods of affected communities.
6. Carry out a health impact assessment and implement protection plan;
7. Animal health assessment, laboratory testing and health protection plan;
8. Build passages for community vehicles, animals and wildlife where necessary;
9. Reclamation of construction material quarries; Fence around those that are still in use;
10. Set ban on honking to scare off animals crossing the road
11. Clean up waste and set ban on trashing along the road
12. Resolve issues of herders whose pasture and wells have been separated by OT road network in consultation with the affected party

OT WATCH RESPONSE: Mongolian herders are nomadic pastoralist – dependent on pastures for their livelihoods. We would like the EBRD to demonstrate that it has evaluated its impact on pastures and water resource access before designing the Oyu Tolgoi mine, its infrastructure and other facilities such as the power plant and international airport. Impact on pasture needs to be evaluated for measuring real impact on the livelihoods of nomadic herders.

Impact from dust needs assessment in terms of impact on human and animal health. We would like the EBRD to demonstrate that it has evaluated the impact of coal and road dust on human and livestock health. If these assessments have been done, in compliance with the EBRD requirements, but not disclosed to local communities –we would recommend carrying out consultations and developing\implementing a mitigation and\or compensation plans.

- It is absolutely necessary to take stock of pasture taken away, fractured and contaminated by roads.
- Based on the results of such evaluation of impact on pasture develop health mitigation plans for herders and livestock.
- Develop a compensation program for herder families, which have not been included in the “affected household” count.
- There may be a few families, which need to be relocated in order to mitigate serious damage to health.

a(vi.) Document titled “5 August 2013 Photos From Manlai to OT Road”

AUGUST 5, 2013 PHOTOS FROM MANLAI TO OYU TOLGOI ROAD

As stated by complainants there are several nomadic families whose well and pasture have been separated by OT road cutting through their land. While Oyu Tolgoi officials may claim that this section or other sections of the road are the responsibility of local government, herders will claim that there was no road here before. The road came with OT project and all its supplies were and are transported on this road.



This well across the road belongs to the nomadic family which lives below this Ovoo.



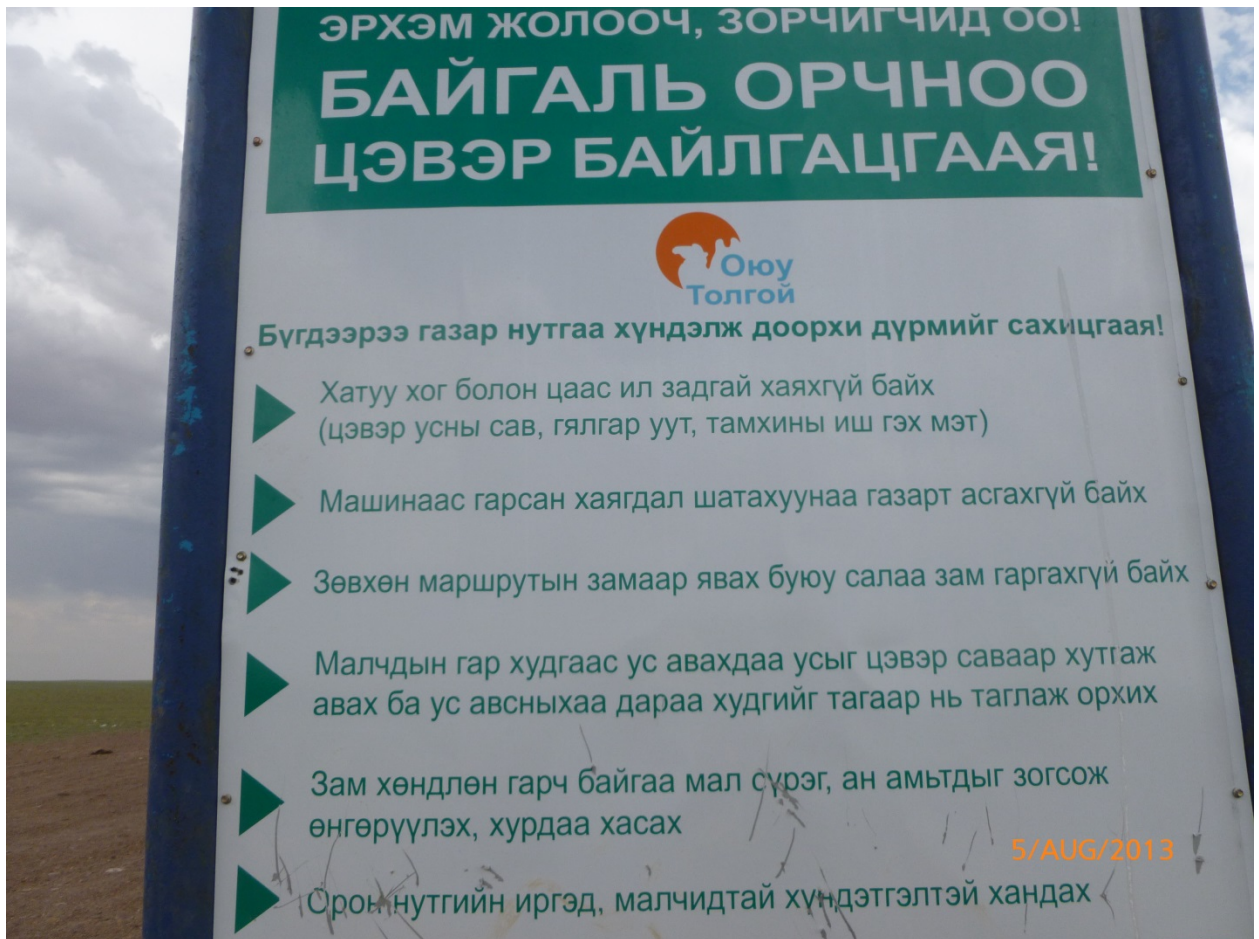
This household's winter camp where they live over 6 months of the year is located too close to the road. But there is an added significant inconvenience of animals having to cross the busy road to get to their water well. Normally all companies try to ensure that the wells and main pastures are on one side of the road. But not OT and not here. The herder approached the company numerous times without any change in the situation.



This herder's camp and well are too close to the road to be safe and have healthy environment both for the family and their animals. Families like this one compliant about dust, noise and safety as primary problem for them. This winter camp in 18 km from Manlai looks abandoned.



Large truck raise huge amount of dust that contaminates the pastures. But they also leave their trash behind. Plastic bags, rubber tire material, fuel and lubricant stains all cause health and safety hazards for the herds.



This is a recent stand placed by Oyu Tolgoi project along its roads to remind to not to trash.



This huge quarry right to next road was finally reclaimed. Regardless of the size and depth of quarries, they were not fenced in and no safety warning signage was put up to protect the local communities.



No flood culprits to allow free flow of waters of local streams and rivers.



Road cut through camel pasture. There is no herder family that has not lost a camel to traffic accidents. Loud honking that truck drivers use to scare off animals from the road is another complaint every herder will mention. They will also claim that animals whose pasture is fractured by roads, contaminated by dust and emotional stress put on animals result in poor weight gain. Poor weight and fat gain means less likelihood of surviving the winter.



Lack of adequate and timely road maintenance leads to serious damage of the road surface and sprawling of the road. Heavy trucks choose to drive off road as a safety and convenience measure. In most cases they create new tracks along the main road.



b(i.) Management's Response dated 23 October 2013.

**Excom No Objection: Mongolia Mining Corporation 39829 and
Energy Resources 39957**

Summary

The Bank has received and reviewed the complaint received in relation to this project. The details of the Bank's response at this time are presented below. This section has been prepared to provide a summary of the Bank's response to this complaint.

First and foremost the Bank suggests that the complaint lacks detail. Whilst the official filing of the complaint clearly indicates that they are requesting a problem solving initiative, it seem that somehow the complaint has evolved (without clear documentation provided by the complainant(s)) to include a compliance review. There is no detail about which Bank Policy or specific sections thereof should be reviewed for compliance, nor are there any details about specific areas of non-compliance. Without such detail, the Bank is unable to provide specific responses or comments, and therefore the Bank would like to reserve the opportunity to provide such comments in the event that specific details about compliance are made available or presented by the complainant(s).

Nonetheless, two main issues are presented in the complaint: 1) construction of the roads has fragmented pastures; and 2) dust generated from use of roads caused health problems.

In terms of fragmenting pastures, two main items should be considered. Firstly, while there are no formally designated pasture areas (use of pasture land is informal and changes from year to year) the entire area along the export road used by Energy Resources Ltd ('ER' or the 'Company') in Khanbogd Soum and the Chinese border (excluding the specially protected area) can and has been used for grazing. Therefore, it would be impossible to build any road (or other linear feature) without fragmenting pastureland. Secondly, it should be noted that the ER project did not develop any new road and therefore did not cause any additional fragmentation of pastureland beyond that caused by the pre-existing state dirt road. This road existed before the mine and was adequate for early site operations. It was always known that export volumes from the entire area would increase and that in the future other options would be required. In this regard the Company planned to build a rail link for export. Due to subsequent political events beyond the control of the Company, they could not pursue this option, so they decided to upgrade the dirt road to a paved road, which was completed in 2011. Therefore, the Company did nothing to further fragment any pastures; instead, they did pave the road thereby eliminating dust generation from their traffic. None of the coal

export trucks that use the dirt road are ER trucks. **All ER coal is currently (and has been for two years) exported in trucks on the paved road.**

The Bank has actively reviewed all project documents, and has been to the site numerous times to monitor Company performance for five years. Results of these visits indicate that site operations are well managed, and that they have a robust system for ongoing communication and dialogue with the local herders and the population of Khanbogd Soum. Further, the Bank has routinely monitored their grievance procedures and tracking system, and is satisfied that this system has been designed and implemented to be compliant with the Bank's policies and is fit for purpose.

Background

Owned by Mongolian Mining Corporation which is a listed entity in Hong Kong stock exchange, Energy Resources is the largest private high-quality coking coal producer and exporter in Mongolia. The Company owns and operates two open-pit mines - Ukhaa Khudag and Baruun Naran, both located in Southern Gobi province of Mongolia. ER is engaged in open-pit coking coal mining operations at the Ukhaa Khudag (UHG) deposit located within the Tavan Tolgoi formation in Southern Gobi of Mongolia, covering a licensed area of 2962 hectares in size. The necessary utility infrastructure facilities, including a small power plant and a water supply system, are available at the UHG site which serves as an operational hub for processing Run-of-Mine coking coal from both UHG and BN mines.

Mongolia's mineral deposits and growth in mining sector activities are vital to the economy, and such activities are transforming the country's economic profile which was traditionally dependent on herding and agriculture. Mongolia's rich copper, gold, coal deposits, among others, are attracting foreign direct investors which are expected to stimulate the development of the other economic activities within the country. EBRD has been involved in the financing of various mine development projects in Mongolia since 2007, also the Bank played a lead role in implementing internationally acceptable environmental standards to the projects.

The Project

The UHG mine commenced production in April 2009. In May 2010, EBRD signed the financing of Phase II of the UHG project which involved expansion of the open-pit mine, further infrastructure development around the mine-site and the miners' camp as well as construction and development of ER's coking coal handling and preparation plant, a small power plant, a water supply system, and an air strip.

Energy Resources has taken various measures to mitigate the adverse impacts caused by the transport operations in the region including upgrading of the road surface from dirt to gravel, construction of an industrial purpose paved road, and initial studies for the implementation of a rail link project.

The aforementioned complaint issued by herders from Khanbogd Soum, Umnugobi Aimag which is geographically located alongside the Chinese border, is broad in scope

and is mainly rooted in cumulative regional impacts caused by years of mineral products transportation on branches of dirt road to the Chinese border and mining activities by various companies rather than addressing a complaint to a particular company and its operations. The paving of the existing regional road was done by ER with commercial banks financing, and has been operational since 2011.

The Bank has reviewed the complaint submissions and the supplementary and supporting information supplied by the complainant prior to compiling this response. Upon reviewing the complaint, the Bank is unclear of the basis for the compliance section of the complaint; however, the documentation supplied does focus on the following two issues:

- Construction of roads has fragmented pastures; and
- Use of roads results in dust which has health impacts to animals and herders.

The Bank would like to state that in terms of a compliance review, there are no references in the complaint to any specific aspects of policy or requirements thereof, and therefore the Bank is not able to comment on the application of any specific policy requirement in detail. While the Bank is confident that the appraisals of this project were completed in accordance with the Environmental and Social Policies (2003 and 2008) and disclosure was completed in accordance with pertinent sections of the Public Information Policy (2008), without specific references to compliance issues the Bank is not able to provide further comment.

The Bank presents here its understanding and interpretation of the background to issues around the development of local transport infrastructure and a response to the issues which the Bank interprets as being raised in the complaint.

Background on Local Infrastructure

With regard to the Energy Resources Project, the main road involved in the export of high quality coking coal to China is a 245 km route from the Ukhaa Khudag mine to the border crossing at Gashuun Sukhait. The Bank's involvement with Energy Resources has included two phases of investment which has involved utilisation of this export route, Phase I (2008) which encompassed the initial development of the mine to a production rate of 0.6 Million Tonnes per Annum (Mtpa), rising to 1.75 Mtpa; and Phase II (five year programme commencing in 2010) bringing production up to a theoretical maximum of 15 Mtpa.

It is important to note that at the time that both Energy Resources projects were reviewed and approved by the Bank, the export road mentioned above, at the time a state-owned route, was already present and satisfied the transportation needs of the project (and other local projects such as the 'Little TT' majority publicly-owned coking coal mine) at that time and for the immediate future.

The Bank's Phase II project included funding for feasibility studies by the Company for the construction of a rail link to and from the mine to the border, under licence from the Government of Mongolia. However, due to political developments, all new rail construction in Mongolia was subsequently centralised under a newly-created state owned company (including the rail link of the Company). As a result of political

uncertainty, in the meantime the Company upgraded the existing dirt road by designing and installing a paved surface, after raising required funding from loans by commercial banks. In doing this, the Company was constrained to the existing alignment of the dirt road. Whilst the original agreement was to allow Energy Resources a five year concession on this road, recently the government has decided to take ownership of the road, and the Bank understands that the Government is in the process of taking ownership of the road.

The two main issues raised in the complaint are discussed below.

Construction of roads has fragmented pastures

The Complaint states that construction of the road used by Energy Resources has fragmented pastures in the Khanbog Soum. Indeed the road crosses some pastures used by herders, as the entire local area is used for grazing and every herder requires large land areas for their herds, therefore construction any linear infrastructure will result in the route crossing land used for pasture. It is important to note that this export route was a pre-existing national highway which at the time of the Project's initial development was an unpaved track utilised by the local population and for the export of coking coal and other mineral products by other mine operations in the South Gobi region, such as the majority publicly-owned 'Little TT' mine. Energy Resources did not develop the road in the first instance, nor were they operating when the road was first developed. This road is a state asset available for use by anyone. Energy Resources is only one of many projects in the area shipping coal through the Khanbogd Soum to the Chinese border. The Energy Resources Project has therefore not resulted in the construction of additional routes to the border or to the further fragmentation of pasture land. Energy Resources, at their own expense, paved the road in order to prevent dust generation during transportation, and since commissioning of the paved road in 2011 all coal shipped from Energy Resources has used this road. While this road is open to anyone for a nominal fee, many truck shipping coal from other mines do not use this road, and they continue to use and to develop new dirt tracks.

The Project is aware of the issue of pasture fragmentation and has taken measures to mitigate such impacts and those associated with the practice of maintaining livestock in the vicinity of road export routes. These mitigation measures; such as the construction of crossing points on the paved road, the supply of water wells, especially in the instance if a water well is located on the other side of the road to a shelter; the provision of fodder ; the construction of alternative livestock shelters etc. were designed and implemented via consultation with the local population. The Company has an active on-going program for consultation and interaction with the local herders and also continues to provide various amenities to the herders.

As pointed out above, during the Phase II development, the Company identified that the export of the planned increase in production could not sustainably use the gravel track and that the export route required paving to cope with the increased traffic flow. A wholly-owned subsidiary of Energy Resources was formed to carry out the construction works on the route construction and paving and the works were carried out during 2011. The road is currently operational and all Energy Resources traffic utilises this route.

Use of roads results in dust which has health impacts to animals and herders

The potential for dust generation from utilisation of a gravel track was identified during the Environmental and Social Impact Assessment works carried out as part of the Project planning for Phases I and II and the publically available documentation for both ESIA's provides clear descriptions of the impact assessment works carried out in this regard. As part of the Phase I works, mitigation measures including the regular compaction of the gravel track, watering and the use of binders were introduced to reduce the potential for dust generation.

Phase II as indicated previously, required the paving of the export route which substantially reduces (if not eliminates) the potential for dust generation from traffic movements which utilise this route. All traffic from Energy Resources through Khanbogd Soum uses this paved road. The Bank is aware however that there are numerous trucks owned and operated by other mines in the region which do not all utilise the paved route and still drive along gravel/dirt tracks which results in the generation of significant volumes of dust. This is clearly visible to anyone who visits the area.

Potential health impacts from dust generation is again an issue that was reviewed during the ESIA processes described above. The Energy Resources project provides support to the health-related infrastructure in the region. The Company provides for health screening of the workforce and local population and has supported the on-going training of local health professionals who serve the region.

In relation to impacts to the quality of meat produced by local livestock, and general livestock health, the Bank is not in possession of details of this issue, nor has the Bank received any communications on this issue previously. It is however worthwhile to point out the significant rise in the number of livestock in the region since the start of 2012.

Another issue to raise is that whilst the use of the dirt roads can generate significant volumes of air-borne dust, the concentrations of such dust (while controlled by many variables) generally diminishes exponentially with distance from the road, and certainly while the dust can be a nuisance, it is clear that any other possible impacts would be limited to those areas immediately in the vicinity of the road itself. There are very few, if any, herders' shelters within 500 m of the export road.

Detailed ESIA documentation was prepared by International teams of environmental and social consultants for both phases of this project, including the impact assessments themselves as well as a Non-Technical Summary, Resettlement Action Plan, Public Consultation and Disclosure Plan (PCDP), Environmental and Social Action Plan (ESAP) and the various Environmental and Social Management Plans. All of these documents were disclosed at numerous locations throughout Mongolia as set forth in the PCDP. Further, documentation in relation to the Phase I ESIA is available on the Bank's web-site <http://www.ebrd.com/english/pages/project/eia/39820.shtml>, and all the Phase II documents are still available on the Company's Web site http://www.energyresources.mn/sustainable?search_value=esia.

Both ESIA's were completed to international standards, and were reviewed by the Bank prior to public disclosure and consultation. As part of the consultation process numerous meetings were held with potentially affected people (PAP) near the site and

along the transportation corridor (which includes the existing road and the possible rail link).

In particular in relation to the Phase II works, there were a series of “Open Ger” events where the Company presented details of the project and allowed PAPs to make comments. This consultation included a series of four meetings which attracted over 1,000 participants. The local meeting in Khanbogd Soum attracted over 300 people. The comments received during these meetings are listed below in order of frequency raised, from most frequent to least frequent:

1. Training of local people and employment.
2. Investment in Soum and Bagh health, education and social sectors such as repair of cultural centre, kindergarten and co-operation with local NGOs.
3. Procurement of meat, especially goat meat, from local herders.
4. Rehabilitation of quarries and borrow-pits.
5. Sufficient over and under passes along the rail link for herders and livestock to pass, including a request that herders should be consulted about where the crossings should be located.
6. Resettlement policy questions and information.
7. Improvement of the current coal road, and concerns regarding truck driver behaviour.
8. Support to herders for the winter such as supplying hay during extreme winter conditions.
9. Expressions of support for the rail link project.
10. Dust management concerns.

These issues were considered during the finalisation of the Phase II ESIA. The consultation process did not end at this point, and in fact Energy Resources has an active program of interaction with herders in and around the mine site as well as along the transportation corridor. This active program includes periodic community meetings as well as individual visits by the community liaison officer (CLO). The herders along the entire length of the transportation corridor know the CLO and know how to use the Company grievance procedure, and several of the herders included in the complaint have done so over the past few years. ESD has reviewed the procedures used by Energy Resources for tracking and addressing grievances and the Bank believes this system is compliant with the Bank’s requirements and is adequate for the project.

As part of the ESIA, Energy Resources established the guidelines for compensation of the project, and identified herders who would be eligible for such. This procedure was completed in accordance with EBRD requirements and the Bank believes this was a fair and transparent process. The Bank acknowledges that dust generated from a dirt road could be considered a nuisance and that there may be some instances where a herder’s pastures are fragmented by the road; however, the Bank also acknowledges that the road is a state road and it was developed before the Bank’s involvement on the project. Recognising the issues related to dust and transportation, the Company’s original long-term development plans also included the use of a rail link for export, and as such Phase 2 funded the completion of a feasibility study for such rail link. However, as a result of political development, all Mongolian rail links and new rail developments were centralised under a newly-created state owned company (including the rail link of the

Company). At this point the Company went to great expense to pave the state road, and the government allowed the Company to operate a toll system to recover some of the investment costs. The road is also now in the process of reverting to state ownership. Regarding the dust, while this certainly is an issue, Energy Resources does not use any dirt roads for the export of coal. Whilst this is still a common practice among other producers in the area, the trucks that utilise other dirt roads in the area are not owned or operated by Energy Resources, nor are any of the trucks using dirt roads shipping coal from Energy Resources.

The Bank's five year involvement with Energy Resources (from original due diligence to the Bank's on-going monitoring) suggests that they have an adequate grievance mechanism. The Bank knows that some of the herders involved in the Complaint have used the Company's grievance mechanism, which supports the position that the herders are aware of the mechanism. The Bank also knows that the Company follows any logged grievance until they consider that the issue is resolved. In addition to the grievance mechanism and the compensation provided for the Phase II project, it should be recognised that Energy Resources works with the herders to provide on-going support for their traditional livelihood, through provision of hay and fodder to help herders through the Mongolian winter, and practical support to maintain water supply throughout the year.

b(i.) Management's Response dated 23 October 2013.

Excom No Objection: Oyu Tolgoi Project (41158)

Summary

The Bank has received and reviewed the complaint received in relation to this project. The details of our response at this time are presented below. This section has been prepared to provide a summary of our response to this complaint.

First and foremost the team suggests that the complaint lacks detail. While the official filing of the complaints clearly indicates that they are requesting a problem solving initiative, it seems that somehow the complaint has evolved (without clear documentation provided by the complainant(s)) to include a compliance review. There is no detail about which Bank Policy or specific sections thereof should be reviewed for compliance, nor are there any details about specific areas of non-compliance. Without such detail, the team is unable to provide specific responses or comments. Nonetheless, two main issues are presented in the complaints: 1) construction of the roads has fragmented pastures; and 2) dust generated from use of roads causes health problems.

In terms of fragmenting pastures, two main items should be considered. Firstly, while there are no formally designated pasture areas (use of pasture land is informal and changes from year to year) the entire area between the OT site and the Chinese border (excluding the special protected area) can and has been used for grazing. Therefore, it would be impossible to build any road (or other linear feature) without fragmenting pastureland. Secondly, it should be noted that the OT project did not develop any new road and therefore did not cause any additional fragmentation of pastureland beyond that caused by the pre-existing state dirt road. Upon a detailed review of options for export (applying the mitigation hierarchy as required by EBRD Environmental and Social Policy) it was decided to use an existing road, and to upgrade this road to an engineered paved road. This approach was also agreed with the government of Mongolia and actually a memorandum of understanding was signed with the government for this in 2007. This export route has been designed in consultation with the herders, and in fact 21 animal crossing points have been installed based on the input from local herders, to be conveniently located and to be designed to allow use by locals. Therefore, it is clear that OT took all reasonable steps to avoid any further fragmentation of pastures, and in cases where issues remained (such as a well located across the road) a series of mitigation measures have been implemented, such as provision of a new well or assistance rebuilding a winter shelter.

In terms of impacts caused by dust, it should first be noted that the company in consultation with the herders adopted a set back of 500m for any shelter or community facility from the road. This distance was agreed by the Compensation Working Group based on the information published by the US EPA indicating that 98% of dust generated will be avoided at a distance of 250m away from the source. Lastly, it should

be noted that OT is paving the main export road and this work is approximately 80% completed.

The team has actively reviewed all project documents, and has been to the site numerous (more than 15 times) to monitor company performance. Results of these visits indicate that site operations are well managed, and that they have a robust system for ongoing communication and dialogue with the local herders and the population of Khanbogd Soum. Further, we have routinely monitored their grievance procedures and tracking system, and we are satisfied that this system has been designed and implemented to be compliant with our policy and is fit for purpose.

Background

On 26 February 2013, the EBRD Board approved an up to US\$ 400 mln A loan and up to US\$ 1bln B loan to finance the development of the Oyu Tolgoi copper and gold mine. This is part of a US\$ 4bln+ project financing including IFC, the ECAs of Canada, USA and Australia and commercial banks, including a MIGA covered portion of the commercial banks' tranche. Closing of the transaction has not yet occurred and is conditional on OT board approval.

The Project

OT is among the world's largest undeveloped copper and gold deposit, located approximately 550km south of Ulaanbaatar and 80km north of the Mongolia-China border. The project consists of an open pit mine, concentrator and associated processing facilities, and an underground mine. Production of concentrate from ore mined from the open pit is already under way. OT has a major systemic impact for Mongolia. By 2020, the project is estimated to account for one third of Mongolian GDP, one third of budget revenues and half of total exports.

OT is 66% owned by Canadian mining group Turquoise Hill Resources Ltd (formerly Ivanhoe Mines Ltd), which is itself majority owned by Rio Tinto Plc. The remaining 34% in the project is owned by the Government of Mongolia via a legal entity called Erdenes Oyu Tolgoi LLC.

The Complaint

The Bank has reviewed the complaint submissions and the supplementary and supporting information supplied by the complainant prior to compiling this response. Upon reviewing the complaint, the team is not entirely clear of the basis for the compliance section of the complaint; however, the documentation supplied does focus on the following two issues:

- Construction of roads has fragmented pastures; and
- Use of roads results in dust which has health impacts to animals and herders.

The Bank would like to state that in terms of a compliance review, there are no references to any policy or requirement thereof in the complaint and therefore the team is not able to comment on the application of any specific policy requirement. While the team is confident that the appraisal of this project was completed in accordance with the Environmental and Social Policy (2008) and disclosure was completed in accordance with pertinent sections of the Public Information Policy (2008), without specific references to compliance issues we are not able to provide further comment. The Bank presents here a general introduction providing the Bank's understanding of the background to the development of transport infrastructure around the Project and our response to the two general issues presented in the documentation are discussed below.

Background on Local Infrastructure

The South Gobi area includes large deposits of coal and metallic mineral deposits and the government of Mongolia has plans to develop these deposits and export much or all to the nearby border with China. Existing infrastructure is not sufficient to accommodate all of the planned development and associated export, so the government is working with the existing mines to help establish such infrastructure. At the time of developing the OT mine, several dirt roads were available between the mine and the Chinese border, and Energy Resources was in the process of upgrading one of these to a paved road for export of coal. OT completed a comprehensive review of export options which included review of various road alignments that could be used for export of their concentrate. This detailed review is presented in their detailed Environmental and Social Impact Assessment which is available in the public domain.

<http://ot.mn/en/node/2679>

The approach used by OT for selection of the export option included application of the mitigation hierarchy, as required by EBRD Environmental and Social Policy. Specifically, the review of alternatives required the following:

- The road used will avoid herder camps and community facilities by at least 500 m. This distance 500m was selected and agreed to by the Compensation Working Group (which includes representatives of local herder families and soum government officials) to avoid impacts associated with dust generated from the roads. Selection of this distance considered USEPA Report AP-42 which shows that 98% of total air-borne dust returns to the ground surface within 250m of the emission source. Therefore, it is anticipated that there is little chance for impacts caused by air-borne dust at a distance of 500m, and this was agreed to by local herders as part of early consultation.
- Impacts will be minimized/mitigated through the use of water trucks and various additives to minimise dust generation, export truck will travel in convoys to minimise impacts, and the road is in the process (currently about 80 % completed) of being paved. Further, the company has close interaction with all herders along the route to develop further mitigation measures with input from the herders, such as the selection of sites for animal crossings.

- The company has implemented a fair and transparent mechanism for compensation which has included replacement of herder wells, provision of fodder, rebuilding winter shelters etc. OT is also working closely with local herders on the pastureland management strategy in attempt to increase the value of products produced.

As mentioned above, the dirt track developed by OT for export route as part of their project was pre-existing before the OT project, and is a state road. After a careful analysis of export option OT selected this one for use by the project. OT is currently in the process of paving this road (which will remain a state road and can be used by anyone) and at this time the road is approximately 80 % completed. The road includes provision for the free flow of surface water, and includes 21 animal crossing points that have been designed in consultation with the local herders. The company has a pro-active procedure for consultation with the herders and applies this to all of their activities.

We understand that the government of Mongolia is in the process of constructing a railway for export of resources from the South Gobi to China. OT have been in discussions with the government about providing a rail spur to the OT site to allow rail export of concentrate, and ultimately this may be the final export route.

The two main issues raised in the complaint are discussed below.

Construction of roads has fragmented pastures

The Complaint claims that construction of the road used by OT has fragmented pastures in the Khanbogd Soum. Indeed the road will cross some areas used for pastures by herders, as the entire local area is used for grazing and every herder requires large land areas for their herds. Construction any linear infrastructure will need to cross some land used for pasture. In Khanbogd Soum herders have traditional grazing rights to pastureland at their winter shelter sites, which acts as an informal pastureland management system. Summer grazing is also conducted informally, and there are no designated summer pastures in the soum, as these change from year to year depending on forage quality, livestock numbers and individual herder family requirements. It is important to note that the export route selected by OT was a pre-existing national highway which at the time of the Project's initial development was an unpaved track utilised by the local population. OT did not develop the road in the first instance, nor were they operating when the road was first developed. This road is a state asset available for use by anyone. OT is only one of many projects in the area shipping resources through Khanbogd Soum to the Chinese border. The OT Project has therefore not resulted in the construction of additional routes (as this route was pre-existing) to the border or to the further fragmentation of pasture land. OT, at their own expense, is in the process of paving the road in order to prevent dust generation during transportation. When this paved road is commissioned it will be available for use by anyone and it will continue to be a state road.

The Sponsor is aware of the issue of pasture fragmentation and has taken measures to mitigate such impacts and those associated with the practice of maintaining livestock in the vicinity of road export routes. These mitigation measures; such as the construction of animal crossing points on the paved road (at specific locations agreed with the herders), the supply of water wells especially in the instance if a water well is located on the other side of the road to a shelter; the provision of fodder; the construction of alternative livestock shelters etc.; were designed and implemented via consultation with the local population. The Company has an active on-going program for consultation and interaction with the local herders and also continues to provide various amenities to the herders.

Use of roads results in dust which has health impacts to animals and herders

The potential for dust generation from utilisation of a gravel track was identified during the Environmental and Social Impact Assessment works carried out as part of the Project planning and the publically available documentation for the ESIA provides clear descriptions of the impact assessment works carried out in this regard. The export route for this project was developed consistent with EBRD requirements, including the application of the mitigation hierarchy. As part of this work, a series of avoidance and mitigation measures have been implemented. The main measures implemented include the fact that no new roads were developed, this project is relying upon an existing state road and is in the process of upgrading (paving) such so that no dust will be generated. Further, it was agreed that the road will not be located within 500 m of a herder shelter or other community facility. This distance is double the distance published by the US EPA shown to reduce dust levels to 98 % of total dust generated (USEPA Report AP-42).

Potential health impacts from dust generation is again an issue that was reviewed during the ESIA processes described above. The OT Project provides support to the health-related infrastructure in the region. The Company provides for health screening of the workforce and local population and has supported the on-going training of local health professionals who serve the region.

In relation to impacts to the quality of meat produced by local livestock, and general livestock health, the Bank is not in possession of details of this issue, nor has the Bank received any communications on this issue previously. It is however worthwhile to point out the significant rise in the number of livestock in the region since the start of 2012.

A detailed ESIA was prepared by an International team of environmental and social consultants for this project, including the impact assessment itself as well as a Non-Technical Summary, Resettlement Action Plan, Stakeholder Engagement Plan (SEP), Environmental and Social Action Plan (ESAP) and the various Environmental and Social Management Plans. All of these documents were disclosed at numerous locations throughout Mongolia as set forth in the SEP. Further, all of these documents are still available on the Company's Web site <http://ot.mn/en/node/2679> . The ESIA was completed to international standards, and was reviewed by ESD prior to public disclosure and consultation. As part of the consultation process numerous meetings were held with potentially affected people (PAP) near the site and along the

transportation corridor. Numerous meetings have been held with the population along the road and as well in Khanbogd Soum. Further, periodical informal meetings have been and will continue to occur between site liaison officers and herders.

All issues raised during by herders and other residents of Khanbogd were considered during the finalisation of the ESIA. The consultation process did not end at this point, and in fact OT has an active program of interaction with herders in and around the mine site as well as along the road. This active program includes periodical community meetings as well as individual visits by the community liaison officer (CLO). The Herders along the entire length of the transportation corridor know the CLO and know how to use the Company grievance procedure, as several of the herders included in the complaint have done over the past few years. ESD has reviewed the procedures used by OT for tracking and addressing grievances and we believe this system is compliant with our requirements and is adequate for the project.

As part of the ESIA, OT established the guidelines for compensation of the project, and identified herders who would be eligible for such. This procedure was completed in accordance with EBRD requirements and we believe this was a fair and transparent process. We acknowledge that dust generated from a dirt road could be considered a nuisance and that there may be some instances where a herders pastures are fragmented by the road; however, we also acknowledge that the road is a state road and it was developed before development of the OT mine. Recognising the issues related to dust and transportation, the Company has applied the application of the mitigation hierarchy in the development and design of export routes and is in the process of paving the existing state road which can then be used by anyone, including OT trucks.

Our involvement with OT (original due diligence and ongoing monitoring) suggests that they have an adequate grievance mechanism. We know that some of the herders involved in the Complaint have used this grievance mechanism, which supports the position that the herders are aware of the mechanism. We also know that the Company follows any logged grievance until they consider that the issue is resolved. In addition to the grievance mechanism and the compensation provided for the project, it should be recognised that OT works with the Herders to provide ongoing support for their traditional livelihood, through provision of hay and fodder to help herders through the rough Mongolian winters.

b(ii.) Revised Management's Response received by PCM Expert on 10 June 2014.

**Management Response to PCM Complaint
on Oyu Tolgoi Project (41158) & Energy Resources (39957)**

A complaint (2013/01) was registered with the Project Complaint Mechanism (PCM) on 02/08/2013 regarding both the Oyu Tolgoi project (41158) and Energy Resources project (39957) in Mongolia. Management responded to the complaint on 23 October 2013; noting that the complaint lacked detail with regard to areas of alleged non-compliance regarding impacts on roads, local herders, and fragmentation of pastures. During the Eligibility Assessment stage, an additional complaint letter dated 1 April 2014, was submitted by the Complainant and was registered as part of the complaint by the PCM. According to the PCM Register, these two documents (complaint and additional complaint) comprise "the Complaint" that is under investigation.

The Management Response addresses the complaints on Oyu Tolgoi (OT), then Energy Resources (ER), and ends with a few summary comments. We note that both projects were subject to the 2008 Environmental and Social Policy.

Oyu Tolgoi (OT)

Background

On 26 February 2013, the EBRD Board approved an up to US\$ 400 mln A loan and up to US\$ 1bln B loan to finance the development of the Oyu Tolgoi copper and gold mine. This is part of a US\$ 4bln+ project financing including IFC, the ECAs of Canada, USA and Australia and commercial banks, including a MIGA covered portion of the commercial banks' tranche. Closing of this transaction has not yet occurred and is conditional on a unanimous approval by the OT board.

The Project

OT is among the world's largest undeveloped copper and gold deposit, located approximately 550km south of Ulaanbaatar and 80km north of the Mongolia-China border. The project consists of an open pit mine, concentrator and associated processing facilities, and an underground mine. Production of concentrate from ore mined from the open pit is already under way. OT has a major systemic impact for Mongolia. By 2020, the project is estimated to account for one third of Mongolian GDP, one third of budget revenues and half of total exports.

OT is 66% owned by Canadian mining group Turquoise Hill Resources Ltd (formerly Ivanhoe Mines Ltd), which is itself majority owned by Rio Tinto Plc. The remaining 34% in the project is owned by the Government of Mongolia via a legal entity called Erdenes Oyu Tolgoi LLC. The environmental and social appraisal of this project was completed in accordance with the Environmental and Social Policy (2008) and disclosure was completed in accordance with the relevant sections of the Public Information Policy (2008).

Assessing the Issues Raised in the Complaint

The Bank has reviewed the complaint submissions and the supplementary and supporting information supplied by the Complainant. The main issues raised in the Complaint are the fragmentation of pastures and the impacts of roads. These issues have been expanded in the additional complaint.

In terms of fragmenting pastures, two main items should be considered. Firstly, while there are no formally designated pasture areas (use of pasture land is informal and changes from year to year) the entire area between the OT site and the Chinese border (excluding the special protected area) can and has been used for grazing. Therefore, it would be impossible to build any road (or other linear feature) without fragmenting pastureland. Secondly, the OT project did not develop significant new roads and therefore did not result in significant additional fragmentation of pastureland beyond that caused by the pre-existing dirt roads. Upon a detailed review of options for export (applying the mitigation hierarchy¹ as required by EBRD Environmental and Social Policy) it was decided to use the existing national unpaved road, and to upgrade this road to an engineered paved road. This approach was also agreed with the government of Mongolia and actually a memorandum of understanding was signed with the government for this in 2007. This export route has been designed in consultation with the herders, and more than 20 livestock crossing points have been installed based on input from local herders, to be conveniently located and to allow use by locals. OT took all reasonable steps to avoid any further fragmentation of pastures, and in cases where issues remained (such as a well located across the road), a series of mitigation measures were implemented, such as provision of a new well or assistance rebuilding a winter shelter.

The team has actively reviewed all project documents, and has been to the site numerous times (more than 15) to monitor company performance. Results of these visits indicate that site operations are well managed, and that there is a robust system for ongoing communication and dialogue with the local herders and the population of Khanbogd Soum. The Bank has routinely monitored OT's grievance procedures and tracking system as outlined in their Stakeholder Engagement Plan, and has assessed this system as being designed, implemented and continuously improved to be in line with the EBRD Performance Requirements and appropriate for the local stakeholders. The tracking system has recently been transferred from an OASIS database to a Rio Tinto-wide tracking system (CSETS) and fine-tuning of record entries in this database remains necessary as per the IESC's latest audit. The Bank presents here a general introduction providing the Bank's understanding of the background to the development of transport infrastructure around the Project and our response to the two general issues presented in the Complaint.

Background on Local Infrastructure

The South Gobi area includes large deposits of coal and metallic mineral deposits and the government of Mongolia has plans to develop these deposits and export much or all to the nearby border with China. Existing infrastructure is not sufficient to accommodate all of the planned development and associated export, so the government is working with the existing mines to help establish such infrastructure. At the time of developing the OT mine, several dirt roads were available between the mine and the Chinese border, and Energy Resources was in the process of upgrading one of these to a paved road for export of coal. OT completed a comprehensive review of export options which included review of various road alignments that could be used for export of their concentrate. This detailed review is

¹ The mitigation hierarchy comprises measures taken to avoid creating environmental or social impacts from the outset of development activities, and where this is not possible, to implement additional measures that would minimise, mitigate, and as a last resort, offset and/or compensate any potential residual adverse impacts.

presented in OT's detailed Environmental and Social Impact Assessment which is available in the public domain. <http://ot.mn/en/node/2679>

The approach used by OT for selection of the export option included application of the mitigation hierarchy, as required by EBRD Environmental and Social Policy. Specifically, the review of alternatives required the following:

- The road used would **avoid** herder camps and community facilities by at least 500 m. This distance 500m was selected and agreed to by the Compensation Working Group (which includes representatives of local herder families and soum government officials) to avoid impacts associated with dust generated from the roads. Selection of this distance considered USEPA Report AP-42 which shows that 98% of total air-borne dust returns to the ground surface within 250m of the emission source. Therefore, it is anticipated that there is little chance for impacts caused by air-borne dust at a distance of 500m, and this was agreed to by local herders as part of early consultation.
- Impacts would be **minimized/mitigated** through the use of water trucks and various additives to minimise dust generation, export truck will travel in convoys to minimise impacts, and the road is in the process (currently about 80 % completed) of being paved. Further, the company has close interaction with all herders along the route to develop further mitigation measures with input from the herders, such as the selection of sites for animal crossings.
- The company has implemented a fair and transparent mechanism for **compensation** which has included replacement of herder wells, provision of fodder, rebuilding winter shelters etc. OT is also working closely with local herders on the pastureland management strategy in attempt to increase the value of products produced.
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As mentioned above, the existing unpaved road developed by OT for export route as part of their project was pre-existing before the OT project, and is a state road. After a careful analysis of export options OT selected this road for use by the project. Construction of this road was completed in October 2013 and the road was commissioned for use in November 2013. The road includes provision for the free flow of surface water at several locations, and includes 21 animal crossing points that have been designed in consultation with the local herders. The company has a pro-active procedure for consultation with the herders and applies this to all of their activities.

We understand that the government of Mongolia is in the process of constructing a railway for export of resources from the South Gobi to China. OT have been in discussions with the government about providing a rail spur to the OT site to allow rail export of concentrate, and ultimately this may be the final export route.

The two main issues raised in the complaint are discussed below.

Construction of roads has fragmented pastures

The Complaint claims that construction of the road used by OT has fragmented pastures in the Khanbog Soum. Indeed the road will cross some areas used for pastures by herders, as the entire local area is used for grazing and every herder requires large land areas for their herds. Construction of any linear infrastructure will need to cross some land used for pasture. In Khanbogd Soum herders have traditional grazing rights to pastureland at their winter shelter sites, which acts as an informal pastureland management system. Summer grazing is also conducted informally, and there are no designated summer pastures in the soum, as these

change from year to year depending on forage quality, livestock numbers and individual herder family requirements.

It is important to note that the export route selected by OT was a pre-existing national highway which at the time of the Project's initial development was an unpaved track utilised by the local population. OT did not develop the road in the first instance, nor were they operating when the road was first developed. This road is a state asset available for use by anyone. OT is only one of many projects in the area shipping resources through Khanbogd Soum to the Chinese border. The OT Project has therefore not resulted in the construction of additional routes (as this route was pre-existing) to the border or to the further fragmentation of pasture land by construction of this road. OT, at their own expense, has upgraded this road to a sealed surface in order to prevent dust generation during transportation. The completed road can be used by anyone and it will remain as a state road.

The Sponsor is aware of the issue of pasture fragmentation and has taken measures to mitigate such impacts and those associated with the practice of maintaining livestock in the vicinity of road export routes. These mitigation measures; such as the construction of animal crossing points on the paved road (at specific locations agreed with the herders), the supply of water wells especially if a water well is located on the other side of the road to a shelter; the provision of fodder; the construction of alternative livestock shelters etc.; were designed and implemented via consultation with the local population. The Company has an active on-going program for consultation and interaction with the local herders and, in addition to the amenities listed above, OT also provides various livelihood programs, including the establishment of herder user groups and cooperatives, camel wool and milk branding initiatives, the building of veterinarian capacity, and other small business support.

Use of roads results in dust which has health impacts to animals and herders

The potential for dust generation from utilisation of a gravel track was identified during the Environmental and Social Impact Assessment (ESIA) works carried out as part of the Project planning and the publically available documentation for the ESIA provides clear descriptions of the impact assessment works carried out in this regard. The export route for this project was developed consistent with EBRD requirements, including the application of the mitigation hierarchy. As part of this work, a series of avoidance and mitigation measures have been implemented. The main measures implemented include the fact that no new roads were developed, this project is relying upon an existing state road and is in the process of upgrading (paving) such so that no dust will be generated. Further, it was agreed that the road will not be located within 500 m of a herder shelter or other community facility. This distance is twice the distance published by the US EPA shown to reduce dust levels to 98 % of total dust generated (USEPA Report AP-42).

Potential health impacts from dust generation is again an issue that was reviewed during the ESIA processes described above. The OT Project provides support to the health-related infrastructure in the region. The Company provides for health screening of the workforce and local population and has supported the on-going training of local health professionals who serve the region.

In relation to impacts to the quality of meat produced by local livestock, and general livestock health, the Bank has been informed that a recent investigation by the chief veterinarian in Mongolia determined that the health impacts in local herds that are affecting the quality of internal organs is a bacterial infection and unrelated to dust issues. We believe that this report will be released in the near future.

A detailed ESIA was prepared by an international team of environmental and social consultants for this project, including the impact assessment itself as well as a Non-Technical Summary, Resettlement Action Plan, Stakeholder Engagement Plan (SEP), Environmental and Social Action Plan (ESAP) and various Environmental and Social Management Plans. All of these documents were disclosed at numerous locations throughout Mongolia as set forth in the SEP. Further, all of these documents are still available on the Company's Web site <http://ot.mn/en/node/2679>. The ESIA was completed to international standards, and was reviewed by ESD prior to public disclosure and consultation. As part of the consultation process numerous meetings were held with potentially affected people (PAP) near the site and along the transportation corridor. Numerous meetings have been held with the population along the road and as well in Khanbogd Soum. Further, periodical informal meetings have been and will continue to occur between site liaison officers and herders.

All issues raised during consultation by herders and other residents of Khanbogd were considered during the finalisation of the ESIA. The consultation process did not end at this point, and in fact OT has an active program of interaction with herders in and around the mine site as well as along the road. This active program includes periodical community meetings as well as individual visits by the community liaison officer (CLO). The Herders along the entire length of the transportation corridor know the CLO and know how to use the Company grievance procedure, as several of the herders included in the complaint have done over the past few years. ESD has reviewed the procedures used by OT for tracking and addressing grievances and we believe this system is compliant with our requirements and is adequate for the project.

As part of the ESIA, OT established the guidelines for compensation by the project, and identified herders who would be eligible. This procedure was completed in accordance with EBRD environmental and social requirements and we believe this was a fair and transparent process. Recognising the issues related to dust and transportation, the Company has applied the application of the mitigation hierarchy in the development and design of export routes and is in the process of paving the existing state road which can then be used by anyone, including OT trucks.

Our appraisal and monitoring of the OT project suggests that they have an adequate grievance mechanism. We know that some of the herders involved in the Complaint have used this grievance mechanism, which supports the position that the herders are aware of the mechanism. We also know that the Company follows any logged grievance until they consider that the issue is resolved. In addition to the grievance mechanism and the compensation provided for the project, it should be recognised that OT works with the herders to provide ongoing support for their traditional livelihood, through provision of hay and fodder to help herders through the rough Mongolian winters.

Specific Points Raised

The additional complaint raised more specific issues that we are able to clarify.

- Section I, A, (i) and (iii). With regard to traffic safety and accidents, we understand the concerns about road safety. Road safety is an important issue for EBRD and is taken into account in due diligence and monitoring. Given that this is a public road, it would be important to clarify if any OT vehicles were associated with the accidents cited.

However, it was not possible for OT to provide information on the incidents as they remained under police investigation. We also understand that the local authorities completed an investigation into the cited accidents, including analysis of cause. To date, we have not seen this report.

- Section I, C, loss of access to water sources. The Bank is not aware of any road outside of the OT mine licence area that blocks the free flow of the Undai River, and while we recognise the importance of this water source, we are not aware of any road impeding access to the Undai. Please identify the statement in the referenced USAID report stating this claim so that we can further investigate.
- Section I, C, noise pollution from traffic. Potential noise impacts on local herders were identified in the ESIA and have been (a) avoided by keeping a safe distance between the key export route and other major project assets and any winter shelters, and (b) minimised by organising transport by truck convoys and training OT drivers and contractors to behave respectfully of herders and their animals.
- Section I, C, 1, health and safety impacts. It is stated that increased dust is adversely affecting the health of the complainants and they state this has caused an increase in respiratory illnesses, such as bronchitis in Khanbogd. As above, the information on dust impacts, which was discussed with the herders was based on US EPA information that 98% of dust generated will be avoided at a distance of 250m away from the source. Given these data, OT, in consultation with the herders, adopted a set back of 500m for any shelter or community facility from the road. This distance was agreed by the Compensation Working Group. The main export road has been paved and commissioned for use since late 2013 and therefore the main source of dust generation as part of operations has been addressed. Further, OT has embarked on a comprehensive dust monitoring program and results of this monitoring to date are consistent with the general predictions made in the ESIA. Results of the dust monitoring are available in the annual environmental monitoring reports on the OT website.
- We note that the Complaint states that doctors in Khanbogd do not have the capacity to monitor or address dust related health issues. We are not aware of any studies linking dust from the project to increases in respiratory illness in the project area. We would also welcome clarification on the source of statements/studies that link increased dust in the project area with adverse health impacts of humans or animals. We note that OT continues to support staffing in local clinics (the latest audit report notes that the project has achieved an “increased coverage of doctors in the aimag per capita from 15:10,000 to 25:10,000”)
- Section I, C, 2, livelihood and economic impacts. Our understanding is that numbers of livestock and herd size have generally increased in the region, so we are not clear on the source of the statement that there has been a documented decline in numbers and quality of livestock. OT has developed and put in place a Land Use Management Plan as well as a Land Disturbance Permit process to prevent the occurrence of unfenced and/or un-reclaimed work areas. A recent veterinarian study (we believe to be released in the near future) found no linkage between the poor health of livestock and dust or any other aspect of the project. The OT project has provided activities under the Pastureland and Livelihood Improvement Strategy to help address these issues including veterinarian capacity building, well rehabilitation, fodder distribution, and herder cooperative development.
- Section 1, C, 3, Impacts on local tradition and culture. OT’s Pastureland and Livelihoods Improvement Strategy is not aimed at a more sedentary mode of production and it would be an error to characterise it as such. One of its key objectives is to “preserve the pasture and livestock sector and nomadic culture.” With the right support from the Project,

herders' livelihoods may actually improve to outperform pre-project incomes, when there were already issues with overgrazing, insufficient access and fewer market outlets for their products, and no opportunities for a diversified livelihood strategy; a lack of opportunity that in the past has driven many herders from all rural areas in Mongolia to migrate to Ulaanbaatar or other regional towns to make a living.

Response to Allegations of Non-Compliance

The following comments are presented to provide some context to the issues raised by the Complainant, and to provide additional information on those issues.

1. Failure to assess impacts from roads at the early stages of project development.

It is alleged that the ESIA was not completed until July 2012 at a point when construction was mostly complete and therefore not compliant with PR1 paragraph 4 requiring assessment of potential environmental or social risks in the early stages of a project, and managed on an ongoing basis.

Early assessment is required to ensure timely review of possible impacts and to allow evaluation and selections of options that promote avoidance, minimisation and mitigation of impacts. EBRD began working with Oyu Tolgoi in early 2010 on the appraisal of risks associated with this project, more than two years before release of the ESIA. As presented in the Project Summary Document (PSD), this appraisal included numerous site inspections and interviews with company officials and local, regional and national administrators.

The ESIA was disclosed on the EBRD web site on 10 September 2012, at a time when construction had started, however, the assessment of potential impacts (required by PR1, paragraph 4) was initiated long before this time. EBRD worked closely with OT for two years on the documentation, carried out the necessary gap analysis to ensure compliance with EBRD's Environmental and Social Policy and Performance Requirements and that adequate information was available for public consultation. From the outset, the project has always been developed and operated in accordance with the local permitting and project approval requirements. This includes the completion of numerous EIAs and Detailed Environmental Impact Assessments (DEIAs) which have been reviewed and approved by the Mongolian environmental authorities. These documents are presented on the OT website, and as shown here there are twenty EIA/DEIA reports dating back to 2004.

2. Adequacy of health and safety measures

It is alleged that the potential risks associated with dust were not adequately assessed, as required by PR4 paragraph 7.

The issue of dust generation and associated potential impacts was considered as part of the ESIA, please see the following sections of the ESIA report, all available on the internet: <http://ot.mn/en/about-us/environmental-social-impact-assessment/esia>

- Section B3 on Baseline Air Quality
- Section C2 on Impact Assessment associated with Climate and Air Quality
- Section C12 on Impact Assessment associated with Community Health, Safety and Security
- Operational Management Plan covering Transportation Management Plan and the underlying plans

As stated earlier, OT worked with local herders to establish a 500m set back for any structure relative to the roads, and used modelling developed by the US Environmental Protection Agency which indicates that 98% of dust generated from transportation on a dirt road will attenuate within 250m of the road.

EBRD confirms that the export road from the site to the south is now paved, commissioned and operating. This road includes signs to warn of livestock and wild animals, and incorporates more than 20 grade crossings for herders at locations selected in consultation with the herders.

As presented in the ESIA, the focus of dust mitigation has been on the main export route, as this road poses the greatest risk due to long term sustained use. The dust related to construction is temporary and therefore considered less significant. Nonetheless, it is important to point out that all of the other roads, many only temporary roads used for construction phase, have not been neglected. Potential impacts associated with dust generation from all dirt roads as well as other sources have been considered in the ESIA in Section C2. Further, the mitigation and management actions that are implemented to address dust from all roads are presented in various Operational Management Plans, including Transportation Management, Road Construction and Maintenance Procedures, Atmospheric Emissions Management Plan, Air Quality Control Standard. Measures to avoid and minimise impacts associated with quarries and access roads to such are presented in Land Disturbance Procedures, Rehabilitations Procedures and Topsoil Handling Procedures, among others. These various documents clearly show how potential impacts associated with dust generation from all project activities have been addressed.

3. Adequacy of measures to prevent, mitigate and compensate for physical and economic displacement

Economic displacement could not be entirely avoided but OT minimised it where possible and applied the mitigation hierarchy to address the issue. OT has provided a series of technical mitigation and compensatory measures in relation to impacts on access to resources/land fragmentation. This is documented in Chapter C10 of the ESIA (Land Use and Displacement) and the Resettlement Action Plan (RAP).

The RAP states that “The route adopted for the road to Gashuun Sukhait has also been developed to minimise any further resettlement. Mongolian law requires that the easement be such that there should be a distance of at least 50 m from winter shelters for any national road. A minimum distance of 250 m has in fact been maintained by the Project to avoid any unnecessary resettlement of herder winter shelters, and minimise disruption to herding practices of those closest to the road route.”

Further, the RAP considers *all* herders using summer pastures in KB *soum* as impacted and eligible for communal compensatory measures under the Pastureland and Livelihood Improvement Strategy. This is appropriate in situations such as these, where the impacted summer pastures are communally owned and it would be difficult to quantify livelihood impacts on individual households and to provide like-for-like compensation on an individual basis. It is, however, good practice to use collective compensation measures to ensure herders are not worse off and their livelihoods are restored or improved; as is currently being implemented by OT through pasture improvement initiatives, well rehabilitation programs,

and capacity building of veterinarian services, among other things. OT's well-rehabilitation program, it has been reported, has been particularly well received. Other herders, whose winter camps are located near OT project facilities or associated facilities, are eligible for direct compensation measures as per table 13 in the RAP. This general approach was agreed by a working group that included herder household representatives, as well as local *soum* and *bagh* government members, and received legal support to obtain improved compensation measures and increased coverage (the 'impact corridor' along the OT-GS road was widened from 5 to 6.5km as a result). This consultation process used to develop eligibility criteria and entitlements is considered to be inclusive as required by the EBRD PRs.

4. Alleged failure to consult and inform affected persons

The extensive consultation about the OT-GS road and other local roads is well documented in, among other places, Chapter A6 of the ESIA. These include, inter alia:

Chapter A6, Table 6.6: Summary of Consultation with Economically-Displaced Herders, 2010 – 2011

| Public Consultation Meetings | Date | Persons in attendance | Main Topics |
|--|-------------------|-----------------------|---|
| Oyu Tolgoi to Gashuun Sukhait Road: road upgrade works. | Jun 30, 2010 | 150 | How to manage the impacts of road construction. |
| Household visits: regarding Oyu Tolgoi to Gashuun Sukhait Road information | Jul 23 – 24, 2010 | 31 | Follow up of public consultation on road route and potential impacts (permits, route, traffic signs, water, and dust). |
| Animal crossing points along Oyu Tolgoi to Gashuun Sukhait Road. | Aug, 2010 | 12 | Identified animal crossing points with herders along Oyu Tolgoi to Gashuun Sukhait road. |
| Oyu Tolgoi fence extension: local road route | Dec 20, 2010 | 55 | Obtained community input into detouring of local road around Oyu Tolgoi fenceline. |
| Oyu Tolgoi to Gashuun Sukhait road: borehole use by Oyu Tolgoi contractors | Jan 3, 2011 | 10 | Information delivered, water expert provided detailed data on Oyu Tolgoi water use and obtained input and feedback from herders. |
| Oyu Tolgoi to Gashuun Sukhait road impact management: agreed workers and contractual details | Feb 02, 2011 | 20 | Follow up on earlier Oyu Tolgoi to Gashuun Sukhait road consultation on impact management and compensation for most affected herders. Agreed herders to be employed by Oyu Tolgoi. |
| Group meetings on compensation packages for affected households | May 18 | 80 | Herders discussed the proposed entitlements with each other and Oyu Tolgoi, for: <input type="checkbox"/> Oyu Tolgoi to Gashuun Sukhait road <input type="checkbox"/> Airport <input type="checkbox"/> GH pipeline <input type="checkbox"/> Transmission Line <input type="checkbox"/> Unoccupied shelters <input type="checkbox"/> Other |

Further, as shown on p. 20 of this chapter: “At the larger meetings about road and airport construction impacts and their management, and at the *bagh khurals*, issues of major concern to herders such as potential loss of access to water and pasture were consistently raised. Subsequently, targeted meetings on the more specific details of mitigating potential water and grazing impacts were held with those who felt they were likely to be impacted.

Consultations were also held on the Oyu Tolgoi to Gashuun Sukhait road in November 2010 in relation to the minor changes to alignment and were completed by Oyu Tolgoi and EcoTrade (Mongolian environmental consultants). The road alignment considered the prevention of situations where herder camps could be cut off from water supply wells. Among other issues raised by the herders were dust emissions from the road. The key issues raised through the consultations with herders are summarised in *Table 6.7 of Chapter A6.*”

5. Alleged failure to prevent or mitigate adverse impacts on complainants’ culture and tradition

Mongolian herders do not meet EBRD’s definition of Indigenous Peoples (IPs) in Performance Requirement 7 (PR7), which requires the following characteristics:

1. *Self-identification as members of a distinct ethnic or cultural group and recognition of this identity by others:*

Mongolian herders are not ‘distinct’ from ‘a dominant national group’ ethnically or culturally. Of Mongolia’s total population of approximately 2.9 million, 37% live in rural areas and are nomadic or semi-nomadic herders. Herding still provides 40% of employment and accounts for about 20% of GNP. The vast majority of Mongolians belong to the Khalkh Mongol ethnic group, including the herders in the South Gobi. Herders may self-identify as ‘indigenous’ but so would over 85% of Mongolians, who are of the same Khalkh ethnic background.

2. *Collective attachment to geographically distinct habitats, traditional lands or ancestral territories (...) and to natural resources in these habitats and territories:*

Herders are indeed ‘attached’ to the land they live on and the natural resources that form the basis of their livelihoods, but this land is not ‘distinct’ from the homeland of all Mongolians and it may indeed change over time. Mongolian herders have undergone 4 major land tenure and livelihood shifts in less than 100 years with fundamentally differing livelihood strategies (i.e., splits between subsistence and yield-focused economies), entailing periodic relocation of many herders across Mongolia, changes in administrative boundaries, and associated erosion of customary pasture rights and institutions.

3. *Descent from populations who have traditionally pursued non-wage subsistence strategies (...) and whose status was regulated by their own customs or traditions or by special laws or regulations:*

This applies to all Mongolians equally (in the 1950s, only 15% of the population was urban). As noted above, however, these ‘traditions’ have undergone many changes over the past 100 years and production was not always focused on subsistence strategies

4. *Customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture:*

This is not applicable in the Mongolian context as herders are regulated by the same laws and institutions of all Mongolians.

5. *A distinct language or dialect, often different from the official language or dialect of the country or region:*

This is not applicable in the Mongolian context.

PR7 aims to provide specific protections to IPs because it recognizes that “IPs, as a social group with identities that are distinct from dominant groups in national societies, are often among the most marginalized and vulnerable segments of the population”. In Mongolia, herders are neither distinct, nor are they marginalized. The vulnerability of herders is not caused by their distinctiveness, but is linked to their dependency on scarce natural resources. In this context, the Bank’s view is that PR7 does therefore not apply, and instead, their specific needs are assessed under the social assessment (PR1), resettlement (PR5), and stakeholder engagement (PR10) requirements as potentially vulnerable.

The principle of self-determination of IPs is reflected in key international conventions (ILO 169 of 1989) and declarations (UNDRIP 2007) and is aimed at groups that are separate and distinct from larger, dominant groups within a given country. Again, this does not apply to Mongolia and until several generations ago the vast majority of Mongolians were herders. Herding is part of Mongolia’s national identity and pride, and while it is currently declining in economic importance in the country, it is still central in terms of defining Mongolia as a nation.

The complaint further alleges that measures to preserve the complainants’ traditional nomadic lifestyle were inadequate.

One of the key objectives of OT’s Pastureland and Livelihoods Improvement Strategy was explicitly formulated to “preserve the pasture and livestock sector and nomadic culture”. As noted previously, no road design could have avoided some level of fragmentation and associated loss of access to pastures entirely, but most of the roads were pre-existing and improved as a result of OT road upgrades. The OT-GS road was carefully designed to prevent impact on tangible cultural heritage, and livestock crossings were designed and their locations selected in close consultation with herders to permit them to cross roads and access pastures with their herds as much as possible. Further, it should be noted that the project has undergone extensive anthropological field-studies of local customs and oral history; this has been documented in great detail in a comprehensive study and Cultural Heritage Program for *Umnogovi Aimag*, unprecedented in its scope.

The traditional nomadic lifestyle was threatened prior to the project’s early beginnings, due to wide-spread overgrazing, over-reliance on cashmere goats for cash income, and a relative lack of capacity in local government or other regional agencies to provide the necessary infrastructure and support functions needed by herders, such as well maintenance and fodder production and distribution during harsh weather events. It could be argued the project has increased the opportunity to support and promote traditional lifestyles by applying agreed mitigation measures or adapting said measures as needed to produce the desired outcome to “preserve the pasture and livestock sector and nomadic culture”.

Energy Resources Project (39957)

Background

Background

Owned by Mongolian Mining Corporation which is a listed entity in Hong Kong stock exchange, Energy Resources (ER) is the largest private high-quality coking coal producer and exporter in Mongolia. The Company owns and operates two open-pit mines - Ukhaa Khudag and Baruun Naran, both located in Southern Gobi province of Mongolia.

ER is engaged in open-pit coking coal mining operations at the Ukhaa Khudag (UHG) deposit located within the Tavan Tolgoi formation in Southern Gobi of Mongolia, covering a licensed area of 2962 hectares in size. The necessary utility infrastructure facilities, including a small power plant and a water supply system, are available at the UHG site which serves as an operational hub for processing Run-of-Mine coking coal from both UHG and BN mines.

Mongolia's mineral deposits and growth in mining sector activities are vital to the economy, and such activities are transforming the country's economic profile which was traditionally dependent on herding and agriculture. Mongolia's rich copper, gold, coal deposits, among others, are attracting foreign direct investors which are expected to stimulate the development of the other economic activities within the country. EBRD has been involved in the financing of various mine development projects in Mongolia since 2007, and played a lead role in implementing internationally acceptable environmental and social standards to the projects.

The Project

The UHG mine commenced production in April 2009. In May 2010, EBRD signed the financing of Phase II of the UHG project which involved expansion of the open-pit mine, further infrastructure development around the mine-site and the miners' camp as well as construction and development of ER's coking coal handling and preparation plant, a small power plant, a water supply system, and an air strip.

Energy Resources has taken various measures to mitigate the adverse impacts caused by the transport operations in the region including upgrading of the road surface from dirt to gravel, construction of an industrial purpose paved road (245 km in length), and initial studies for the implementation of a rail link project.

Two main allegations are presented in the complaint: 1) construction of the roads has fragmented pastures; and 2) dust generated from use of roads caused health problems.

In terms of fragmenting pastures, two main items should be considered. Firstly, while there are no formally designated pasture areas (use of pasture land is informal and changes from year to year) the entire area along the export road used by Energy Resources Ltd ('ER' or the 'Company') in Khanbogd Soum and the Chinese border (excluding the specially protected area) can and has been used for grazing. It would therefore not be possible to build any road (or other linear feature) without fragmenting pastureland. The ER project did not develop any new road and therefore did not cause any additional fragmentation of pastureland beyond that caused by the pre-existing state dirt road. This road existed before the mine and was adequate for early site operations. It was always clear that export volumes from the region would increase and that in the future, other options would be required. In this regard the

Company planned to build a rail link for export. Due to subsequent political events beyond the control of the Company, they could not pursue this option, so they decided to upgrade the dirt road to a paved road, which was completed in 2011. Therefore, the Company did nothing to further fragment any pastures; instead, they paved the road, thereby eliminating dust generation from their traffic. According to the client, none of the coal export trucks that use the existing unpaved state or other dirt road/track are ER trucks. *All ER coal is currently (and has been for two years) exported in trucks on the paved road.*

The aforementioned complaint issued by herders from Khanbogd Soum, Umnugobi Aimag which is located adjacent to the Chinese border, is broad in scope and is mainly caused by years of mineral products transportation on branches of dirt roads to the Chinese border and mining activities by various companies rather than addressing a complaint to a particular company and its operations. The paving of the existing regional road was done by ER, and has been operational since 2011.

The Bank has actively reviewed all project documents, and has been to the site numerous times to monitor Company performance over the past five years. Results of these visits indicate that site operations are well managed, and that they have a robust system for ongoing communication and dialogue with the local herders and the population of Khanbogd Soum. Further, the Bank has routinely monitored their grievance procedures and tracking system, and is satisfied that this system has been designed and implemented to be compliant with the Bank's performance requirements and appropriate for the sector and complexity of the project and location.

Background on Local Infrastructure

The main road involved in the export of high quality coking coal from the ER Project to China is a 245 km route from the Ukhaa Khudag mine to the border crossing at Gashuun Sukhait. The Bank's involvement with ER has included two phases of investment, Phase I (2008) which encompassed the initial development of the mine to a production rate of 0.6 Million Tonnes per Annum (Mtpa), rising to 1.75 Mtpa; and Phase II (five year programme commencing in 2010) bringing production up to a theoretical maximum of 15 Mtpa.

It is important to note that when both Energy Resources projects were reviewed and approved by the Bank, the export road mentioned above, a state-owned route, was already present and satisfied the transportation needs of the project (and other local projects such as the 'Little TT' majority publicly-owned coking coal mine) at that time and for the immediate future.

The Bank's Phase II project included funding for feasibility studies by the Company for the construction of a rail link to and from the mine to the border, under licence from the Government of Mongolia. However, due to political developments, all new rail construction in Mongolia was subsequently centralised under a newly-created state owned company (including the rail link of the Company). As a result of political uncertainty, in the meantime the Company upgraded the existing dirt road by designing and installing a paved surface, after raising required funding from loans by commercial banks. In doing this, the Company was constrained to the existing alignment of the dirt road. Whilst the original agreement was to allow Energy Resources a five year concession to operate a toll system on this road, recently the government has decided to take ownership of the road, and the Bank understands that the Government is in the process of taking ownership or already has taken ownership of the road.

The two main issues raised in the complaint are discussed below.

Construction of roads has fragmented pastures

The Complaint states that construction of the road used by Energy Resources has fragmented pastures in the Khanbogd Soum. Indeed the road crosses some pastures used by herders, as the entire local area is used for grazing and every herder requires large land areas for their herds, therefore construction of any linear infrastructure will result in the route crossing land used for pasture. It is important to note that this export route was a pre-existing national highway which at the time of the Project's initial development was an unpaved track utilised by the local population and for the export of coking coal and other mineral products by other mines operations in the South Gobi region, such as the majority publicly-owned 'Little TT' mine. Energy Resources did not develop the road in the first instance, nor were they operating when the road was first developed. This road is a state asset available for use by anyone. Energy Resources is only one of many projects in the area shipping coal through Khanbogd Soum to the Chinese border. The Energy Resources Project has therefore not resulted in the construction of additional routes to the border or to the further fragmentation of pasture land. Energy Resources, at their own expense, paved the road in order to prevent dust generation during transportation, and since commissioning of the paved road in 2011 all coal shipped from Energy Resources has used this road. While this road is open to anyone for a nominal fee, many trucks shipping coal from other mines do not use this road, and they continue to use and to develop new dirt tracks.

The Project is aware of the issue of pasture fragmentation and has taken measures to mitigate such impacts and those associated with the practice of maintaining livestock in the vicinity of road export routes. These mitigation measures; such as the construction of crossing points on the paved road, the supply of water wells, in particular if a water well is located on the other side of the road to a shelter; the provision of fodder; the construction of alternative livestock shelters. were designed and implemented via consultation with the local population. The Company has an active on-going program for consultation and interaction with the local herders and continues to provide various amenities to the herders.

As pointed out above, during the Phase II development, the Company identified that the export of the planned increase in production could not sustainably use the gravel track and that the export route required paving to cope with the increased traffic flow. A wholly-owned subsidiary of Energy Resources was formed to carry out the construction works on the route construction and paving and the works were carried out during 2011. The road is currently operational and all Energy Resources traffic to China utilises this route.

Allegations that roads result in dust which has health impacts to animals and herders

The potential for dust generation from utilisation of a gravel track was identified during the Environmental and Social Impact Assessment works carried out as part of the Project planning for Phases I and II and the publically available documentation for both ESIAs provides clear descriptions of the impact assessment works carried out in this regard. As part of the Phase I works, mitigation measures including the regular compaction of the gravel track, watering and the use of binders were introduced to reduce the potential for dust generation.

Phase II as indicated previously, required the paving of the export route which substantially reduces (if not eliminates) the potential for dust generation from traffic movements which utilise this route. All traffic from Energy Resources through Khanbogd Soum uses this paved road. The Bank is aware however that there are numerous trucks owned and operated by other mines in the region which do not utilise the paved route and still drive along gravel/dirt tracks which results in the generation of significant volumes of dust. This is clearly visible to anyone who visits the area.

Potential health impacts from dust generation is again an issue that was reviewed during the ESIA processes described above. The Energy Resources project provides support to the health-related infrastructure in the region. The Company provides for health screening of the workforce and local population and has supported the on-going training of local health professionals who serve the region. The main source of dust generation has been mitigated, that is the export road has been paved and all ER coal is exported on trucks using this road. While coal export continues on unpaved roads, it is believed this is not related to ER, this is from other projects in the area. There are limitations on what EBRD and the client can do, other than raise the issue with the relevant local authorities. Further, we are not aware of any scientific studies linking local dust to health impacts of local animals, and as mentioned above on the discussion on OT, we have recent information from a veterinary study indicating these problems are related to a bacterial infection.

While use of the dirt roads can generate significant volumes of air-borne dust, the concentrations of such dust (while controlled by many variables) generally diminishes exponentially with distance from the road, and certainly while the dust can be a nuisance, it is clear that any other possible impacts would be limited to those areas immediately in the vicinity of the road itself. There are very few, if any, herders' shelters within 500 m of the export road.

Detailed ESIA documentation was prepared by International teams of environmental and social consultants for both phases of this project, including the impact assessments themselves as well as a Non-Technical Summary, Resettlement Action Plan, Public Consultation and Disclosure Plan (PCDP), Environmental and Social Action Plan (ESAP) and the various Environmental and Social Management Plans. All of these documents were disclosed at numerous locations throughout Mongolia as set forth in the PCDP. Further, documentation in relation to the Phase I ESIA is available on the Bank's web-site <http://www.ebrd.com/english/pages/project/eia/39820.shtml>, and all the Phase II documents are still available on the Company's Web site http://www.energyresources.mn/sustainable?search_value=esia.

Both ESIA's were completed to international standards, and were reviewed by the Bank prior to public disclosure and consultation. As part of the consultation process numerous meetings were held with potentially affected people (PAP) near the site and along the transportation corridor (which includes the existing road and the possible rail link).

In particular in relation to the Phase II works, there were a series of Open House ("Open Ger") events where the Company presented details of the project and allowed PAPs to make comments. This consultation included a series of four meetings which attracted over 1,000 participants. The local meeting in Khanbogd Soum attracted over 300 people. The comments received during these meetings are listed below in order of frequency raised, from most frequent to least frequent:

1. Training of local people and employment.
2. Investment in Soum and Bagh health, education and social sectors such as repair of cultural centre, kindergarten and co-operation with local NGOs.
3. Procurement of meat, especially goat meat, from local herders.
4. Rehabilitation of quarries and borrow-pits.
5. Sufficient over and under passes along the rail link for herders and livestock to pass, including a request that herders should be consulted about where the crossings should be located.
6. Resettlement policy questions and information.
7. Improvement of the current coal road, and concerns regarding truck driver behaviour.
8. Support to herders for the winter such as supplying hay during extreme winter conditions.
9. Expressions of support for the rail link project.
10. Dust management concerns.

These issues were considered during the finalisation of the Phase II ESIA. The consultation process did not end at this point; Energy Resources has an active program of interaction with herders in and around the mine site as well as along the transportation corridor. This active program includes periodic community meetings as well as individual visits by the community liaison officer (CLO). The herders along the entire length of the transportation corridor know the CLO and know how to use the Company grievance procedure, and several of the herders included in the complaint have done so over the past few years. ESD has reviewed the procedures used by Energy Resources for tracking and addressing grievances and the Bank believes this system is compliant with the Bank's requirements and is adequate for the project.

As part of the ESIA, Energy Resources established the guidelines for compensation of the project, and identified herders who would be eligible for such. This procedure was completed in accordance with EBRD requirements and the Bank believes this was a fair and transparent process. The Bank acknowledges that dust generated from a dirt road could be considered a nuisance and that there may be some instances where a herder's pastures are fragmented by the road; however, the Bank also acknowledges that the road is a state road and it was developed before the Bank's involvement on the project. Recognising the issues related to dust and transportation, the Company's original long-term development plans also included the use of a rail link for export, and as such Phase 2 funded the completion of a feasibility study for such rail link. However, as a result of political development, all Mongolian rail links and new rail developments were centralised under a newly-created state owned company (including the rail link of the Company). At this point the Company went to great expense to pave the state road, and the government allowed the Company to operate a toll system to recover some of the investment costs. The road is also now in the process of

reverting to state ownership. Regarding the dust, while this certainly is an issue, Energy Resources does not use any dirt roads for the export of coal.

The Bank's five year involvement with Energy Resources (from original due diligence to the Bank's on-going monitoring) suggests that they have an adequate grievance mechanism. The Bank knows that some of the herders involved in the Complaint have used the Company's grievance mechanism, which supports the position that the herders are aware of the mechanism. The Bank has checked that the Company follows logged grievances until the issue is considered resolved. In addition to the grievance mechanism and the compensation provided for the Phase II project, Energy Resources works with the herders to provide on-going support for their traditional livelihood, through provision of hay and fodder to help herders through the Mongolian winter, and provides practical support to maintain water supply throughout the year.

Specific points raised

These comments are primarily aimed at the allegations in the amended complaint. In many cases, we are not aware of any supporting evidence regarding the allegations, so it will be important for the EA to qualify such statements or assumptions.

- Section I, C, 1. Health and safety impacts. It is stated that increased dust is adversely affecting the health of the complainants and that this has caused an increase in respiratory illnesses, such as bronchitis in Khanbogd. We are not aware of any studies linking increased dust in the area, or associated with this project, with adverse health impacts of humans or animals, nor are we aware of any studies recording increases in respiratory illness. We note that this section of the Additional Complaint clearly states that doctors in Khanbogd do not have the capacity to monitor or address dust related health issues.
- Section I, C, 2, Livelihood and economic impacts. Our understanding is that numbers of livestock and herd size have generally increased in the region, so we are not clear on the source of the statement that there has been a documented decline in numbers and quality of livestock. A recent veterinarian study (we believe to be released in the near future) found no linkage between the poor health of livestock and dust or any other aspect of the project. The ER project is in fact involved in numerous programs with the local herders, including the provision and distribution of fodder.

Responses to Allegations of Non-Compliance

The following responses comment on points largely raised in the amended complaint. The information presented below is presented to provide some context to the issue and additional information on those issues.

1. Allegations of inadequate Health and safety measures

The ESIA for the Energy Resources project was prepared for public comment and is available through the link on the EBRD and through the ER web pages. As shown in the ESIA, the issues related to the identification, assessment, management and mitigation of dust, and associated possible health impacts are covered in the following sections of the report:

- Section 3.2 covering a description of the project components;
- Section 3.12 covering analysis of alternatives, including rail versus road transportation;
- Section 4.2, specifically on dust suppression standards and 4.6 on air quality;
- Section 5.1 on baseline conditions in the area, including air quality and traffic;
- Section 5.2 covering Community Health, Safety and Security; and,
- Sections 6.2.3, 6.2.8, and 6.3.5 covering the potential impacts related to air quality, traffic and community health and safety, and the associated mitigation measures.

Further, it should be pointed out that when ER used the unpaved existing national road for transportation of coal, they were not the only user, nor were they the majority user (typically ER traffic was about 30% of overall traffic). Lastly, it should be stressed that ER constructed a paved road and since construction of this road (completed in 2011) have made a representation that they confined *all* of their export traffic to this road. Others companies, however, have continued to use tracks along the newly paved road in order to avoid paying a nominal toll or having to comply with maximum loads allowable on the paved road. This is not something that ER has any authority to change, apart from repeated communications with the relevant transport authorities.

2. Adequacy of measures to prevent, mitigate and compensate for the physical and economic displacement

The complaint alleges that the project failed to (a) implement adequate dust pollution and road safety measures, (b) mitigate pasture fragmentation, and (c) properly identify all physically or economically displaced complainants and provide adequate compensation or resettlement.

Planning surrounding the South Gobi transportation network is complex and prone to constant changes. The original project approved included a railroad connection to the Chinese border. The Government of Mongolia later changed their position and did not allow construction of a rail link at that time. The ESIA, SEP and RAP developed at that initial stage were fit for the purpose of that initial project design.

Rapid material changes and the need for ER to quickly adapt to new constraints, have at times, created some gaps between the original ESIA package and implementation; however, the ESIA had equipped the project with the required tools and processes to identify, assess and manage new impacts or impacts of increased magnitude, such as the air pollution and road safety issues coming from the interim use of the unpaved road.

Sections of the ER ESIA that cover dust related issues are mentioned in item 1 above. Potential road safety impacts and mitigation measures are discussed in the following sections of the ER Phase II ESIA:

- 5.1.8 Traffic^[1]
- 5.2.5. Community Health, Safety and Security
- 6.2.8.1 Traffic Impacts to Community Safety
- 6.3.5.1 Community Health Impacts (Construction Phase) - Safety Risks from Traffic
- 6.3.5.3 Mitigation Measures - Injury and Death from Traffic Accidents
- 7.0 Cumulative Impact Assessment

The national road in this area that was used by ER and many other local companies to transport coal to the Chinese border was a pre-existing route that could not be changed by the project. When the anticipated railroad project was dropped (or delayed), ER implemented the most significant and effective regional mitigation measure possible, that was to pave the road. While the resulting pasture fragmentation was pre-existing (although exacerbated by project traffic), loss of access to wells or pastures was remediated based on discussions with herders about their livelihoods and economic displacement impacts, and converted into various compensation measures aimed at mitigating the consequences of fragmentation. Where the road cut off winter camps from wells, new wells were provided by ER without delay.

In summary, ER promptly undertook the process to identify risks for potentially impacted herders, consulted with them, and defined entitlements and compensation measures on a case-by-case basis. ER provided EBRD with a report about this process after the fact and while there were some gaps, the EBRD social experts/lender consultants deemed it an appropriate basis to handle displacement impacts from the paved road. Detailed information about the affected herder households and their impacted assets was included in that report, and even though it was written after the construction it showed that the process followed by ER prior to building the road was adequate.

3. Alleged failure to consult with affected complainants

The complaint alleges that information about potential impacts was not disclosed and therefore the associated public consultation was not adequate.

Sections of the ESIA pertaining to the identification, assessment, management and mitigation of potential impacts are reference in item 1 above. We believe these sections present an adequate coverage of the issues. In terms of the consultation, this is described in the ESIA Section 2.4 covering the time period 2008 and 2009. Over this time period numerous meetings were held with approximately 2,000 local people in attendance. Several of these meetings were observed by Bank personnel. The ESIA provides information on these

[1] "In response to the environmental, health and safety issues relating to the existing coal haul road, ER conducted further investigations along the coal haul road to assess road conditions (including traffic safety and road quality), road repair activities and temporary worker camp sites. Based on these investigations, an environmental protection plan was developed and implemented to manage coal road maintenance activities. According to this environmental protection plan, road repair, dust maintenance, and traffic safety activities were conducted in 2008 and 2009 to immediately respond to the negative impacts of the existing coal haul road."

meetings including number of people in attendance, topics covered. The ESIA also outlines access to information above and beyond the ESIA in terms of context and where the information is available. We know that ER continues dialogue with local people formally and informally, through periodic meetings and constant outreach of their community liaison officer. The ESD team has been present in community meetings in Khanbogd where local people praised ER for their comprehensive outreach and the fact that ER always informs them of what they are doing, before they start an activity. We believe that the public consultation on the ER project was and is continuing in a meaningful way, consistent with EBRD requirements.

4. Alleged failure to prevent or mitigate adverse impacts on complainants' culture and tradition

The complaint alleges that the local herders should have been classified as indigenous people and therefore the provisions of PR 7 should have been applied. EBRD does not agree with this position. The ER ESIA provides the following assessment in line with EBRD's PR7 (p.5.101):

"Indigenous People

ADB, IFC and EBRD policy requirements on indigenous peoples have been deemed to not apply to this Project. This is based on the fact that residents in the Project area of influence are not considered indigenous people or ethnic minorities. The ethnic composition of Tsogttsetsii soum is representative of the general composition of Mongolia. Almost all residents of Mongolia are ethnic Mongol, of whom over 95% are ethnically Khalkha and the remainder are of other Mongol ethnicities. In Umnogovi aimag, over 99.8% of the resident population is Mongol.

Of those surveyed for the Phase I ESIA in October – November of 2008, 85.7% of respondents were original residents in the soum. There is no evidence of ethnic discrimination amongst existing residents of the area, ethnically separate communities, or the presence of minority groups (such as Kazakhs) which might require special protection.

Khalkha people comprise of nearly 100% of ethnic groups in Umnogovi aimag. In 2000, 46,795 people were of the Khalkha ethnicity and 63 people (less than 0.1 percent) were of other ethnic groups of Durvud, Torguud, Urianhai, Zahchin and Oold. A survey conducted to gain insight on the attitudes of Khalkha people toward other minority ethnic groups determined that there were no significant differences or tensions between Khalkha people and other ethnic minorities in Umnogovi aimag⁹⁵. Given the equitable levels of social outcomes among ethnic minorities, no indigenous people's development plan or special actions in favour of any particular group are considered necessary for this Project."

With regards to local culture and tradition, the ER Phase II ESIA appropriately notes the following in its Cumulative Impacts section (pp 7.8 – 7.9):

"7.2.3.1 Risks to Traditional Livelihoods

The scale of the various opportunities, and the associated infrastructure requirements, will inevitably lead to economic displacement and resettlement of herders. If this is poorly managed, then additional pressures will be placed on existing grazing areas, leading to reduced herder margins and pressure to abandon herding as an income source. If this is accompanied by large scale pasture degradation, these pressures will increase.

In addition, if herders perceive that life as a mine worker, or as part of an influx population, is preferable to herding, then they will likely migrate to towns and abandon herding. Should this occur on a small scale, it would have the likely effect of balancing against increased grazing. However, if large wage disparities and significant pasture degradation lead to many herders abandoning herding, then this could lead to a permanent and major impact on the culture of the region.

7.2.3.2 Opportunities for Traditional Livelihoods

Conversely, if the mining industry takes action to support herder livelihoods, then it presents a considerable opportunity to strengthen an already endangered livelihood. This could occur by creating employment for young people, such that they are encouraged to stay in the region, rather than migrate to Ulaanbaatar, adding diversity to their family's livelihood and income, without encouraging the entire family to abandon herding.

New mining infrastructure, especially improved transport and communication links, hold the potential to expand marketing options for herders. This could include the sale of cashmere, milk products and higher value meats to new markets, or more directly to consumers. Also, with a larger resident population and significant food demands at mine camps, there will be a new market for traditional herder products.

To access these market opportunities, herders will need support for the transition in market demand and quality standards. Efforts such as the EBRD's TAM/BAS8 programme's support at Tsogttsetsii, including studies to create an accredited slaughter house for local animals, are part of this solution. These solutions need to be developed to a point that they address health & safety concerns at mine sites. If this is achieved, then local sourcing by mines, especially of meat and milk products, could play an important role in strengthening traditional livelihoods and securing herding as a living form of cultural heritage."

While we do not consider the herders as Indigenous People, we do appreciate that many could be considered as vulnerable, and this is handled in line with requirements for social assessment (PR1), resettlement (PR5) and stakeholder engagement (PR10). We believe that the ER ESIA has adequately addressed this situation, and that the actions of ER do in fact respect and protect local culture and traditions.

Conclusion

The team has worked closely with OT and ER over the past several years, making numerous visits to both sites, visiting with local and regional authorities, meeting with herders, participating in local meetings and driving the many unpaved roads throughout the region and it is believed that EBRD fully complied with the ESP. EBRD has done everything that is reasonably expected to ensure compliance with Performance Requirements by the Clients, and not much more could be reasonably done to improve the herders' livelihoods. While it is recognised that creation of dust from traffic can certainly be considered a nuisance, published

data indicate that amounts of dust decrease exponentially away from the road, and that amounts of respirable dust (that is the fraction of dust that can make it into the lungs) represent only a small fraction (about 15% of the total) of the dust liberated by traffic on a dirt road. We are not aware of any results linking dust caused by these projects to health issues in humans or animals.

It would not be possible to build a road in this area that does not cross pastureland; however, it should be stressed that neither project has constructed a road within 500m of a herder's winter shelter.

Both projects also have comprehensive active grievance mechanisms that allow affected people to raise complaints. The project team has actively reviewed these systems and confirm that they are fit for purpose.