

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

**BETWEEN:**

**THE QUEEN**  
**On the application of**  
**WWF-UK AND CORNER HOUSE RESEARCH**

**Claimant**

**v**

**SECRETARY OF STATE FOR BUSINESS, ENTERPRISE AND REGULATORY  
REFORM**

**Defendant**

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**WITNESS STATEMENT OF JAMES MARTIN LEATON**

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I, James Martin Leaton, Senior Policy Advisor at WWF-UK, Panda House, Weyside Park, Cattleshall Lane, Godalming, Surrey GU7 1XR, SAY AS FOLLOWS:

1. I am James Leaton, Senior Policy Advisor at WWF-UK ("WWF"). I am a member of the Chartered Institute of Water and Environmental Management and the International Association of Impact Assessment. For the past four years I have managed WWF's policy and campaigns in relation to the global oil and gas sectors. Worldwide, WWF is the largest global conservation organisation operating in nearly 100 countries. WWF's mission includes the conservation of the world's biodiversity, and reducing pollution.
2. I make this statement in support of WWF's application for judicial review of a decision by the Export Credits Guarantee Department ("ECGD") dated 4<sup>th</sup> March 2004 ("the 2004 Decision") (pages 100-103) to grant approved support to Sakhalin Energy Investment Company ("SEIC") in respect of a number of preliminary contracts ("the Preliminary Contracts") relating to the Sakhalin (II) Phase 2 Project ("the Project") (104-139). Save where otherwise appears, the

facts set out in this statement are true to the best of my knowledge, information and belief.

3. This statement is divided into the following sections:
  - (a) the Sakhalin II Phase 2 Project;
  - (b) WWF's concerns about the Project;
  - (c) environmental impact assessment;
  - (d) the environmental and social consequences of carrying out environmental impact assessment ("EIA") for the Project after the event;
  - (e) WWF's discovery (in 2007) of the 2004 Decision;
  - (f) conclusion.

(a) The Sakhalin II Phase 2 Project

4. The Sakhalin II Phase 2 Project is a project for the development of the Piltun-Astokhshkoye and Luns koye oil and gas fields off Sakhalin Island in Russia's Far East. SEIC is a Bermuda-registered consortium whose head office is in Russia and which was originally wholly owned by Shell, Mitsui and Mitsubishi. Since April 2007, a Russian company, Gazprom, has additionally held a majority share in SEIC. I understand that SEIC originally signed the Production Sharing Agreement with the Russian Government for the Sakhalin II project in 1994.
5. Sakhalin II was split into two phases. Sakhalin II Phase I was completed in 1999, and consisted of a single offshore platform, (the Piltun-Astokhshkoye A (PA-A) platform) which operates during the ice-free half of the year, exporting oil via tanker. Sakhalin II Phase II will permit extraction to take place all year round and involves the building of an offshore oil platform, an offshore gas platform, undersea pipelines, onshore oil and gas processing facilities, 800 km of onshore pipelines and one of the world's largest facilities for processing and exporting natural gas and oil. Sakhalin II is distinct from Sakhalin I which is a similar project being undertaken by Exxon Mobil (*but for which ECGD funding has not been sought*). As far as we are aware, no ECGD funding was sought for Sakhalin II Phase 1.
6. For the past four years I have been very closely involved in WWF's work relating to the Sakhalin II project. I visited Sakhalin Island in August 2005 to

see the development for myself. I have also attended meetings on this subject with the UK Export Credits Guarantee Department (ECGD); the three relevant UK Ministers (Department of Trade and Industry (DTI) / Department for International Development (DFID) / Department of Environment, Food & Rural Affairs (DEFRA)) and their officials; the President of the European Bank for Reconstruction and Development (“EBRD”); Representatives of the banks Credit Suisse (financial adviser to SEIC) and ABN AMRO (potential lender to the project); the Chief Executive of Shell, the Chairman of Shell Russia and the CEO of SEIC. I have also been an observer at the meeting of the Interim Independent Scientists Group in Vancouver in September 2005 and at the subsequent meeting of the group, by then renamed the Western Gray Whale Advisory Panel, in Switzerland in November 2006.

7. WWF-UK first made contact with the ECGD regarding Sakhalin II in January 2004. WWF’s work on Sakhalin has involved a number of our international groups. WWF-UK, WWF Germany and WWF Netherlands have provided funding and resources of over £0.5 million over the last six years to monitor and protect the Western Gray Whale and its habitat through the WWF International Marine and Species Teams. WWF Russia has been responsible for implementing the monitoring and protection work on Sakhalin Island and contact with the Russian Government. The WWF International Species Programme has been raising the issue at the International Whaling Commission and supporting the proposal of Resolutions at this forum. WWF Russia is part of the group of over 50 Russian NGOs which signed a set of common demands in relation to Sakhalin II in January 2003. In addition WWF has also worked closely as part of a wider coalition of concerned NGOs (Including: Pacific Environment (regional experts), Wild Salmon Center (Salmon experts), IFAW (partners in whale monitoring programme), Friends of the Earth (corporate campaigning), CEE Bankwatch (familiar with EBRD processes), The Corner House (familiar with UK ECGD processes), the Banktrack coalition (engaged with commercial banks) and with the local group Sakhalin Environment Watch (to ensure monitoring of the construction phase).

(b) WWF’s concerns about the Sakhalin II project

8. The four key elements of the project which WWF has been concerned about are: the offshore platforms; the offshore pipelines; the 800km onshore oil and gas pipelines; and the Liquefied Natural Gas plant and tanker terminal. The

construction of these project components result in a range of environmental and social concerns.

9. These concerns include: impacts on the critically endangered Western Gray Whale and its only known feeding habitat; impacts on salmon spawning areas for both endangered species and commercial fish; impacts on fisheries in Aniva Bay; contribution of greenhouse gases from the use of extracted hydrocarbons to climate change; and impacts on local communities and indigenous peoples.
10. The uniquely challenging environment of Sakhalin Island has heightened WWF's concern over the potential impacts and risks of the Sakhalin II project. The island is home to active seismic faults which have caused earthquakes in recent years. The town of Neftegorsk was devastated by an earthquake measuring 7.6 on the Richter scale in 1995 and regular seismic events occur. For example on 2 August 2007 two tremors registering 6.4 and 6.7 *on the Richter scale* occurred in the south of the island, killing two people and leaving 2000 homeless. The onshore pipelines cross active faults at 24 different points. Offshore, the northern half of the island is surrounded by sea ice for 6 months of the year. This means that platforms have to resist pressure from moving ice, whilst offshore pipelines have to avoid ice scouring of the sea bed (whereby the ice can gouge several metres below the sea bed). The island experiences temperatures ranging from -40 deg C to +30 deg C, and the project infrastructure must be able to tolerate this range of hot and cold, whilst maintaining its integrity (ie not leaking).
11. The Sakhalin II project also heralded a new phase of activity on Sakhalin Island, which has stretched the capability of the oil development services industry, and created a new market for Russian operators and local suppliers. The 1994 Production Sharing Agreement between the Russian Government and SEIC stipulated that 70% of materials and labour must be Russian. This presented challenges in terms of managing local contractors to deliver on environmental and social standards.

#### *The Western Gray Whale*

12. The reason that WWF has put so many resources into this issue is because of the considerable importance that we attach to the species protection issues involved, because of the utmost level of sensitivity which is present on Sakhalin
13. The Western Gray Whale (*Eschrichtius robustus*) is on the endangered species 'red lists' of the U.S. and Russia, and has been recognized as critically

endangered by the International Union for the Conservation of Nature (IUCN). The degree to which the species is critically endangered can be seen from the figures. There remain in existence approximately 120 individuals of which only about 23 are thought to be potentially reproductive females. Crucially, the only known feeding area of this small population of whales is adjacent to SEIC's Sakhalin II development.

14. The threat to the Western Gray Whale population from the oil and gas sector generally, and more particularly the Sakhalin Project, has been extensively documented. A panel of experts (the Independent Scientific Review Panel – see further at para 35 et seq) convened to assess the impact of the Project on whales concluded that the vulnerability of the population was such that the loss of a single extra female per year over and above the death rates experienced in recent years could be enough to push the population to extinction. ((Whale scientists report #1 (Independent Scientific Review Panel) *ISRP Report: Impacts of Sakhalin II Phase 2 on Western North Pacific Gray Whales and Related Biodiversity*, February 2005, page 376-377). The threat is the subject of resolutions at both the International Whaling Commission (IWC) and the World Conservation Union (IUCN). The UK Government has been active at the IWC in gaining resolutions pertaining specifically to the Western Gray Whales. In 2001 the IWC concluded that “every effort must be made to reduce anthropogenic mortality (including directed catches) to zero and to reduce various types of anthropogenic disturbances to the lowest possible level”. (IWC Resolution 2001-3, pages 493-495). This conclusion has been reflected consistently in subsequent IWC Resolutions (see IWC Resolutions 2004-1, page 496-497 and 2005-3, page 498-499).

15. The main threats to the whales from oil and gas activity are:

- Excessive noise from platform and pipeline installation or seismic surveys;
- Collision between whales and ships involved in construction / operation;
- Disturbance of sediment affecting food availability on the sea floor; and
- Oil spills from the platform / pipeline polluting the feeding ground, especially during winter, when the sea is covered by ice inhibiting response.

(c) Environmental Impact Assessment (“EIA”)

*EIA generally*

16. Environmental Impact Assessment has been defined as “the process of identifying, predicting, evaluating and mitigating the biophysical [by which I take to mean “environmental” or including “environmental”], social, and other relevant effects of development proposals prior to major decisions being taken and commitments made” (International Association of Impact Assessment (IAIA), “Principles of Environmental Impact Assessment Best Practice”, January 1999, page 501). An EIA should be “purposive” that is it “should inform decision making” and be “participative” that is “provide appropriate opportunities to inform and involve the interested and affected publics” (page 502).
17. Shell’s mandatory Group Procedure for an HSE Management System issued in March 1997 confirms that “Environmental (impact) Assessment shall be conducted *prior to* all new activities,” (my emphasis) and that it “enables management to build mitigation into project design”. (Shell Integrated Impact Assessment – EIA Module, Feb 2003, page 508 and 512respectively) The timing of EIA is thus of paramount importance to whether it can meet these fundamental requirements.
18. One central requirement of the EIA process is the consideration of alternatives (including the “no project” alternative) with a view to preventing or reducing environmental impacts at source rather than merely trying to mitigate, or compensate for, those impacts after the event. If EIA is carried out as a paper exercise after choices have already been made (for example about the location of key elements of a project), it of course becomes impossible to select less environmentally damaging alternatives and this is one important reason why EIA must precede any definitive, binding decisions taken in relation to a project. In particular, if EIA follows the event, the “no project” option will no longer *be* available.

*The Lenders’ approach to environmental aspects of the Project*

19. The potential lenders for the Project (EBRD, ECGD, Export-Import Bank of the United States (EXIM) and Japanese Bank for International Cooperation (JBIC)) initially acted as a group, and identified EBRD as the lead on environment, whilst JBIC was likely to provide the largest financial component. This resulted in a sharing of resources by the lenders on environmental issues, for example in the hiring by them of AEA Technology as consultant to review materials, and the convening of whale experts to advise the potential lenders. ECGD has also

referred to EBRD as one of the organisations it uses as a benchmark in their Case Impact Analysis Process. We therefore understood that until EBRD (the relevant regional development bank) was satisfied with the environmental standards and performance of the project, the lender group as a whole would not proceed. This was certainly followed for the duration of EBRD's interest, which was suspended in January 2007, following Gazprom's entry into the project. Whilst there may be subtle differences in approach to environmental issues between EBRD and ECGD, for the purposes of Sakhalin II, they took a unified approach.

*The approach to environmental impact assessment of the Project*

20. In September 2003, SEIC published Environmental, Social and Health Impact Assessments ("ESHIA"), stating that these were intended to be in line with international standards. Shortly thereafter, SEIC proceeded to begin building the pipeline (I understand that SEIC broke ground for the onshore pipeline in January 2004). Please see paragraph 15 of the Grounds for the relevant weblinks.
21. EBRD, as lead on the environment on behalf of the lender group, declared this initial attempt at environmental impact assessment to be "unfit for purpose" in April 2004 (Article in Emerging Markets, EBRD Annual Meeting publication, Simon Pirani, April 2004). This reflected the EBRD's view that the 2003 EIA did not adequately identify environmental and social impacts or indicate how they would satisfactorily be mitigated. (page 587-588)
22. In particular (as the lender group acknowledged in EBRD's press release of 14 December 2005) there was no consideration of alternatives for a number of the core elements of the project in the original attempt at EIA (page 589-590). (Specifically alternatives were not adequately considered for the location of the offshore platform and the site for dumping dredging waste). Thus, for example, the United States Agency for International Development (USAID) (who advise EXIM on the environmental and social issues of projects EXIM are considering supporting) commented on the absence of the following in the 2003 documents: *"[a]nalysis of alternatives, which would include a side-by-side comparison of technical, social, environmental and economic risks and benefits for each alternative, including "no project" alternative, criteria used for assessment and discussion of analytical process for selecting the preferred alternative."* (Multilateral Development Bank Assistance Proposals Likely to

Have Adverse Impacts on the Environment, Natural Resources, Public Health and Indigenous Peoples - September 2002 – October 2004. USAID page 616.)

23. Moreover, despite the extreme sensitivity of the Western Gray Whale population and the risk of possible extinction, the 2003 EIA did not identify any potential impacts as being of major significance notwithstanding that population level impact of a critically endangered species would, according to Shell's own classification (see the Shell Integrated Impact Assessment – EIA Module, Feb 2003, p552 – *Predicting Species Impact Magnitude*), constitute such an impact.
24. It is, as I understand it, common ground between the parties in these proceedings that as at March 2004, ECGD considered that SEIC had not yet taken adequate measures to identify and mitigate the environmental impacts of the Project. It was for this reason that instead of granting full support for the Preliminary Contracts in 2004, ECGD decided to grant support subject to a condition subsequent requiring acceptable measures to identify and mitigate environmental impacts. EIA was, in essence, left over to be carried out *after* both (a) the 'in principle' funding decision, and (b) construction of the Project had started.
25. Meanwhile, construction of the Project continued apace. For example, in July-August 2005, the installation of the concrete bases of the two platforms, (the Lunskeye gas (LUN-A) and Piltun-Astokhshkoye oil (PA-B) platforms), was completed. This involved the tow out of two 90,000 tonne concrete structures, and their installation on a prepared site on the sea bed adjacent to the feeding ground of the Western Gray Whale.
26. It was not until November 2005 (nearly two years *after* construction had commenced) that SEIC published what it termed "environmental and social addenda" to the ESHIA, stating that an important focus in the development of addenda had been "to ensure that the project meets the policies and procedures required by the potential Senior Lenders" (which term I would understand to include ECGD and EBRD) (see para 10.3, page 690 of the Executive Summary of the 2005 Environmental Impact Assessment Addenda produced by SEIC) .
27. These additional documents were substantial, covering numerous issues. By this point the new documentation could not be applied to the fundamentals of project design but only to the remaining construction. At this stage I believe the project was over 50% completed. For example, the platform bases had been



installed, there had been two seasons of onshore pipeline construction, and waste material had already been dumped in Aniva Bay (*see below*).

28. In essence the publication of the addenda was, therefore, an attempt to achieve *paper* compliance with the environmental and social policies of the potential lender group.
29. Even after this publication there have continued to be problems implementing higher performance on river crossings and offshore noise levels. Better documents at this late stage did not mean a better project. The unacceptable environmental impacts remain, and the majority of the project can in my view now never be in compliance with the potential lenders' standards.
30. In December 2005, EBRD stated that it now considered SEIC's revised EIA documentation "fit for the purpose of consultation". (EBRD press release, 14 December 2005, page 589, para 2.) Thereafter, ECGD carried out a formal consultation period on the EIA information. That consultation period began in January 2006, two years after construction of the Project had commenced. As at that date, construction of the Project was substantially complete. For example, by January 2006, building work on the LNG terminal was 80% complete, 65% of onshore pipeline had been welded and completed, whilst 1930 km of linepipe had been manufactured and 1825 km coated and delivered to the island. Moreover, and very importantly, by January 2006, the installation of the concrete bases of two platforms (as described in paragraph 25) was already complete.
31. Given that the potential lenders have not agreed any financing since this date, I understand that at the time of writing the potential lenders have still not concluded that the environmental and social issues have been adequately dealt with. This is confirmed by the fact that – as WWF has now discovered (*see below*) – in March 2004 ECGD imposed a funding condition requiring SEIC to take adequate measures "to identify and mitigate any adverse environmental and social impacts arising from the project". I understand that ECGD's current position (as set out in its response to the letter before claim) is that ECGD has not yet determined whether or not that condition has been fulfilled. In the meantime, very considerable progress has been made on the construction of the Project which is now near completion. An SEIC press release of 25 October 2006 (page 735) indicates that the Project was at least 80% complete at that time. Since this date, a further season of pipeline

onshore pipeline construction has been undertaken. As of July 2007, the topsides (ie from the platform deck upwards, including the drilling wellhead, process and utilities equipment and living quarters) *had been* installed on the LUN and PA-B platforms, and the LNG plant commissioning process had been initiated, marking the transition from construction to being fully operational, and during which time the new facilities are tested and flaring will be regular. In terms of construction, this only leaves the completion of the onshore pipelines and the connection and testing of all the systems. Neither SEIC or ECGD has, *to date*, responded to requests for an update on construction progress.

(d) the environmental and social consequences of carrying out EIA after the event

32. The failure to carry out EIA in advance of binding decisions on the Project has had a number of serious and irreversible environmental effects on the ground. I would like to draw the Court's attention to some of the most concerning impacts, which relate to the following:

- (i) siting of the offshore (PA-B) platform;
- (ii) indigenous peoples;
- (iii) dumping at sea;
- (iv) river crossings;
- (v) noise levels (which are an important aspect of whale protection).

*(i) Siting of the offshore platform*

33. The location and routing of the Project is key in determining its environmental impacts, especially because of the proximity of the Project to Western Gray Whale feeding areas.

34. The decision to tow out the PA-B platform base prior to the assessment of the environmental impact of the proposed location is one of the most concerning examples of the damaging, even disastrous, environmental consequences of allowing EIA to take place 'after the event'.

35. In September 2004, SEIC funded a panel of experts (the Independent Scientific Review Panel) convened by the International Union for the Conservation of Nature (IUCN) to assess the impact of the Project on whales. The panel's remit was to consider "*whether the risks associated with Sakhalin II Phase 2 are being, or will be, managed in an effective manner that will allow oil and gas*

*development to proceed without further jeopardising the survival and recovery of this critically endangered species”, including the question of the best location of the platform to minimise impact on the whales (Whale scientists report #1 (Independent Scientific Review Panel) ISRP Report: Impacts of Sakhalin II Phase 2 on Western North Pacific Gray Whales and Related Biodiversity, February 2005, para 1.2, p365). Yet before the panel had concluded its review, SEIC towed out and installed the PA-B platform base in July 2005 at the location which had initially been proposed, without waiting to consider less damaging alternatives.*

36. The panel of experts convened to assess whale issues later noted that on some issues, such as the location of the PA-B platform, they were too late to influence the outcome, as SEIC would not alter its construction schedule. The experts said in August 2005 that this “obviated the utility of our review” (E-mail from the chairs of the Panel to Sue Lieberman, Director of the WWF Global Species Programme, 18 August 2005, page 736-737).
37. The installation of the PA-B platform was an irreversible act that SEIC undertook, without waiting for assessment of environmental impacts. As a result the location has been selected only on cost and technical grounds rather than incorporating environmental aspects, such as construction noise impacts and oil spill risk. This decision to install the platform resulted in the resignation of the only oil spill expert on the whale panel (Richard Steiner) who felt this should have been delayed until the scientists had resolved the issue (see Professor Richard Steiner resignation letter of 29 August 2005, published on the website of the IUCN Commission on Environmental, Economic and Social Policy (CEESP)) (page 738-741).
38. The European Bank for Reconstruction and Development (the lead on environment for the potential lender group) confirmed in a December 2005 press release that the decision-making process on the platform location during the design phase had not conformed to its environmental policy on Environmental Impact Assessment. (EBRD press release, 14 December 2005, page 589-590)

(ii) *Indigenous peoples*

39. Despite having signed the contract for Sakhalin II in 1994, and receiving communications from stakeholders flagging the issue in 1997, SEIC failed to recognise the relevance of indigenous groups to their plans until 2005.

Indigenous peoples made protests in January 2005 and again in July 2005. Indigenous leaders were concerned about the impacts of the Project, including, harm to traditional fisheries, reindeer pastures, and forest animal populations. Indigenous communities did not have any input into the routing of the onshore pipelines, and stated that SEIC were using sacred burial sites for the pipeline.

40. SEIC finally acknowledged that they would have to produce an Indigenous Peoples Plan in the summer of 2005. However, once again, this appears to be purely an attempt to meet *on paper* the lender group's requirement that projects comply with the International Finance Corporation's (IFC) Safeguard Policy on Indigenous Peoples (Operational Directive 4.20, IFC, September 1991, page 742-747).
41. SEIC then rushed to complete an "assessment". In doing so, it failed to take sufficient time fully to appreciate the seasonal variation of the way of life of indigenous groups. The EBRD stated in its December 2005 press release: "Equally the preparation of a plan for indigenous people was not prepared according to timing prescribed by the Policy." (EBRD press release, 14 December 2005, para 11, page 590). The EBRD apply the IFC Safeguard Policy referred to in the previous paragraph. (EBRD Environment Policy, 2003, page 758). The policy outlines the prerequisites for a plan which include the need for the process to be part of the design phase. The policy further stipulates that such a plan should be submitted to the bank prior to project appraisal. (Operational Directive 4.20, IFC, September 1991, page 744, section 14; page 747 section 18).
42. In an attempt to achieve paper compliance, SEIC finally published its "Sakhalin Indigenous Minorities Development Plan" in April 2006, far too late for these communities (or the public generally) to have any meaningful input into where and how the majority of the project was developed, given that at that date it had been over 60% completed (see above). Copy at pages 775-983.
43. Once again, the carrying out of impact assessment after the event led to irreversible impacts, in this case social impacts on indigenous peoples which could have been avoided or minimised by proper prior consideration of the alternatives. *The pipeline has put the established way of life of indigenous communities at risk.* The degradation and destruction of natural habitat caused by the pipeline construction has altered beyond recognition traditional hunting and fishing areas.

(iii) *Dumping at sea*

44. A discrete area of concern for WWF, and for local fishing companies in Sakhalin, has been the decision of SEIC to dump two million cubic metres of dredged material from construction of a jetty into Aniva Bay, close to the shore. This dumping took place during 2005 and led to reduced catches for local fishing companies, who also lost clients because of possible contamination of fish stocks. Once again, alternative disposal sites were not properly considered, as EBRD recognised in December 2005 (EBRD press release, 14 December 2005, page 590, para 11 beginning “Another area of concern...”)
45. Whatever the results of ECGD’s process of assessing environmental impacts of the Project (which is, as set out above, still ongoing), it is obviously not possible to change the location of this dumping now and its environmental effects cannot be undone.

(iv) *River Crossings*

46. One very significant environmental impact of the Project is its impact on any waterways which are crossed by the oil and gas pipelines. Environmental impacts can include increased sedimentation in those waterways (due to building works), damage to aquatic life, and erosion of riverbanks, which can in turn lead to landslides. The route selected by SEIC for the Project runs north to south and in doing so crosses some 1103 rivers (most of which run west to east on the island). By contrast, an alternative route, using the De Kastri port rather than the Aniva Bay site, would have involved constructing a 225km pipeline east to west across Sakhalin Island, parallel to the majority of watercourses. The selection of this route would have reduced the cumulative impact on freshwater bodies.
47. Once again, key decisions about the route (north-south rather than east-west) have already been taken and cannot now be changed. Indeed, it would appear that initial decisions about the orientation of the pipeline had been irrevocably taken by SEIC by 5 September 2003 (SEIC Press Release announcing contractors for onshore pipeline construction, 5 September 2003, page 984-987), more than two years before the ECGD consultation period on the EIA information for the Project (set out, inter alia, in the ESHIA Addenda) began in January 2006. In the intervening period, a number of irreversible adverse environmental effects have occurred as a result of this routing decision. These include (a) disturbance to sensitive rivers because of SEIC’s failure to apply

alternative crossing techniques such as raised pipelines; (b) failure by SEIC to ensure that sensitive rivers are crossed by the oil and gas pipelines simultaneously (which would mean only one lot of disturbance rather than two); (c) failure (in the case of at least 20 sensitive rivers) to cross during the frozen winter period (which would limit direct sedimentation of flowing waterways); (d) inadequate erosion control measures, leading to landslides.

48. In its December 2005 press release, EBRD stated that it (pages 589-590), and other potential lenders (including ECGD), was of the view that procedures prescribed in its Environmental Policy were not fully followed in the planning phases of the Project in relation to river crossings. No further details were provided to WWF.

49. That there have been irreversible environmental impacts on the ground is further highlighted by the fact that the local regulators have also intervened on the construction of the pipeline on a number of occasions. Construction has been halted on the onshore pipelines because of breaches of Russian regulations and concerns over erosion making the pipeline unstable.

50. In September 2006, the Russian Ministry of Natural Resources suspended the environmental permit of the onshore pipeline construction due to breaches of environmental legislation, pollution of watercourses and illegal felling of forest due to an unauthorised change of pipeline route.

51. In July 2007, the Natural Resources Committee of the Sakhalin Regional Administration recorded several concerns relating to the clearance of the pipeline route storage of excavated material leading to geohazards, which threatened landslides and resulted in undesirable pollution of rivers. As a result construction licenses have been suspended on part of the onshore pipeline, whilst these issues are rectified.

52. Once again, these problems have already occurred, but might have been avoided had environmental impact assessment *preceded* binding decisions on the Project.

(v) *Noise levels*

53. WWF originally supported the formation of an independent advisory panel on whale issues, on the basis that its outputs would inform the way the project was developed and the mitigation measures that were required. I am now of the opinion after several offshore construction seasons, that the panel has been of

limited value in this regard. This is mainly due to SEIC ignoring the recommendations of the panel, or failing to wait until agreement on mitigation had been reached before proceeding with construction.

54. A key risk to the whales is the underwater noise associated with the installation of the platforms and pipelines offshore. Excessive noise levels and durations have been shown to cause whales stress, and could displace them from their feeding area.
55. As noted earlier, the expert whale panel concluded that the vulnerability of the population was such that the loss of a single extra female per year over and above mortality rates experienced in recent years could be enough to push the population to extinction. Only around 23 females are thought to remain, and they are obviously critical to the reproduction of these marine mammals. If a pregnant female were caused unnecessary stress or had her food intake reduced, this could have disastrous consequences for the whole population (Whale scientists report #1 (Independent Scientific Review Panel), *ISRP Report: Impacts of Sakhalin II Phase 2 on Western North Pacific Gray Whales and Related Biodiversity*, February 2005).
56. WWF remains concerned that in this area too, decisions about the Project were taken before the necessary environmental assessment had been carried out. For example, in their first report the scientists concluded:

*“Given the potential effects of the identified risks, as well as the uncertainty surrounding them and the questionable efficacy of proposed mitigation measures, the most precautionary approach would be to suspend present operations and delay further development of the oil and gas reserves in the vicinity of the gray whale feeding grounds off Sakhalin, and especially the critical nearshore feeding ground that is used preferentially by mothers and calves. This would allow much-needed refinement of risk assessment and further development of appropriate, independent mechanisms for monitoring and verification of mitigation practices.”* (Whale scientists report #1 (Independent Scientific Review Panel), February 2005, page 366, penultimate paragraph).
57. SEIC failed to follow this approach and instead continued with the Project in the absence of the necessary risk assessment information.
58. A fundamental recommendation of the whale panel was that the duration of exposure to noise levels of 120dB and above should be limited. For example the maximum duration recommended by the whale panel for 120dB was four hours. However SEIC have used, and still continue to use, their own limits,

which allow ten hours exposure to noise levels of 120dB. I believe this is a clear example of SEIC designing mitigation measures to fit their construction, rather than the construction activities being designed to fit the precautionary standards required. Had a complete assessment of the Project's environmental impacts, and of alternatives having lesser impacts, been carried out before binding decisions were taken, these precautionary standards could have been built in from the beginning and the problem of excess noise would have been avoided. To the extent that the recommended noise levels have already been exceeded, that is once again damage which cannot be undone whatever the outcome of ECGD's current EIA process.

59. In a statement on 20 July 2007, the IUCN panel said:

*"The panel finds Sakhalin Energy's apparent decision to reject the noise criteria proposed in April for the 2007 season extremely disappointing and potentially unsafe for the western gray whale population; it has received no new information from the company to justify its decision. We are especially concerned that the company appears to have decided not to include thresholds for prolonged exposure to lower noise levels. Without more rigorous noise management and mitigation efforts on the part of Sakhalin Energy and other companies operating in the region, their activities may have significant long-term effects on gray whales attempting to feed in this area. Such a possibility is of particular concern with regard to pregnant females and females with calves."* (WGWAP statement, 20 July 2007, page 988, final two paras).

60. The WWF team observing the whales during this period reported a change in the distribution of whales, with fewer whales observed in the southern end of the feeding area, close to the sources of noise. Once again, the Project has had irreversible environmental impacts which could have been avoided by proper and timely EIA.

#### *The decision to re-route the offshore pipelines*

61. SEIC did eventually change one major component of the project from its original 2003 EIA. When ECGD issued its letter of conditional support in March 2004 (page 100-103), the project was proposing to route the offshore pipelines directly through the southern end of the Western Gray Whale feeding area.

62. In April 2005, SEIC announced it would reroute this offshore pipeline further to the south - outside of the feeding area. This is a useful demonstration that the 2003 EIA did not adequately identify alternatives. Whilst this was later corrected, it only shifted the pipeline a few kilometres. This change was, however, by no means a panacea for all offshore problems. The fundamental issues of noise, oil spills, sediment and collisions still remain.



63. I would further note that the estimated cost of this rerouting was \$300 - \$500 million. ("Royal Dutch Shell – Sakhalin II – many rivers to cross", Citigroup, 8 December 2005, p991, para 2). This demonstrates to me that it is not advisable to separate any decisions on environmental and financial matters. The delay and cost increase that resulted from the late timing of this decision, could impact negatively upon suppliers and contractors. ECGD should be considering environmental and social issues at the very earliest stage, and consulting with relevant stakeholders. Otherwise the British contractors it is aiming to support could be adversely affected by changes in project design.

(d) WWF's discovery (in 2007) of the 2004 Decision;

64. Since January 2004, WWF and its partners have made a number of submissions to ECGD regarding the Sakhalin II project, including during a formal consultation period at the start of 2006, as well as regular updates of ongoing environmental concerns. WWF has not received any substantial feedback on how those issues have been addressed by ECGD with SEIC.

65. WWF and its partners have, therefore, utilised the Freedom of Information Act to try and better understand the process of government discussion on Sakhalin II. It was as a result of one of these requests that we learnt of the existence of the 2004 Decision through disclosures in a letter from ECGD in March 2007 (ECGD letter to Friends of the Earth, 15 March 2007, page 140). ECGD finally provided the letter in question on 13 June 2007 (ECGD letter to Friends of the Earth, 13 June 2007, page 271-272).

66. At no time during the three years between March 2004 and March 2007, was I aware of the existence of the March 2004 letter sent by ECGD to SEIC granting conditional ECGD support. Indeed, as set out in more detail in the Grounds for Judicial Review, the existence of what ECGD now assert was a binding statutory commitment to support the Preliminary Contracts (ECGD letter to FOE, 15 March 2007, page 140), albeit subject to a number of conditions subsequent, flew in the face of a number of assurances given by Government to WWF and its partners over a number of years to the effect that no decision on whether to support the Project had yet been made (see *Grounds for Judicial Review* paras 17, 18, 19, 20, 22, 27, 28, and 29).

(e) Conclusion

67. With the project now over 80% completed, and only the onshore pipelines component unfinished, it is impossible to turn back the clock and take a more

precautionary approach, or change the location of all the different elements of the project. ECGD has not managed to enforce adequate mitigation measures for this project which is located in the most sensitive of habitats.

68. In conclusion, I believe that the fact that binding decisions in relation to the Project were taken first and questions about its environmental impacts only asked later has led to extremely damaging and irreversible environmental effects, many of which could have been avoided had a proper environmental impact assessment, including consideration of less environmentally damaging alternatives, been carried out prior to commencement of the Project and prior to a binding funding commitment *by ECGD*.
69. I respectfully ask the Court to grant permission to apply for judicial review and, subsequently, to grant the claimants' application for judicial review and to make the orders sought in the Grounds for Judicial Review.

Statement of Truth

I believe that the facts set out in this statement are true.

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James Leaton

Date: