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October 3, 2014

To: Mr. Michael Shepard
Project Assessment Manager
Environmental Assessment Office

To the Ministers for decision on the TransCanada Coastal GasLink Project.

RE: BC EAO list of Coastal GasLink Pipeline Project's Conditions

Dear Sirs,

In light of the premature list of Conditions that was supplied by the British Columbia Environmental Assessment Office, the Office of the Wet'suwet'en had requested for an Extension of Time (two weeks) before the October 3, 2014 deadline, and was quickly denied less than an hour later. The request for the time extension was for the review of the Conditions and how they are applied within the TransCanada Coastal GasLink Application

The Coastal GasLink 27 Conditions supplied by BC EAO does not align itself to with the EA process, nor can they be connected with Section 11 requirements, and completely ignore Aboriginal Title and Rights. Wet'suwet'en submissions and concerns surrounding the project's Environmental Assessment process have not been addressed.

The three documents supplied by the Office of the Wet'suwet'en were:

1. *EAO process report for the Coastal GasLink Project,*
2. *The Morice Fish Aquatic and Habitat Review Report, and;*
3. *The Wet'suwet'en Rights and Title Report.*

In the Application, Coastal GasLink's data does not represent the complexity, value, and significance in regards to fisheries values and Wet'suwet'en values. The data presented shows a lack of survey intensity, and frequency. The Coastal GasLink data provided in the Environmental Assessment for Fisheries Aquatics would not be acceptable in Forestry Standards, why is it being accepted in the Environmental Assessment Process. Property risk assessment requires data to be in spreadsheet form to allow analysis, the fisheries and aquatic data have not been presented in this fashion.

In the 1st document listed by the Office of the Wet'suwet'en, the Province was quoted in the Joint Review Panel Hearings for the Enbridge Northern Gateway Pipeline application requesting a Precautionary Principle be taken in respect to the project. Yet, BC EAO is not setting the example themselves.

British Columbia Environmental Assessment Office (BC EAO) fails to comprehend the evidence submitted by the Office of the Wet'suwet'en which demonstrates the central inter-relationship between the Wet'suwet'en and their lands and resources.

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This is not a perspective that BC EAO appears able to understand. The lands and resources are vital to the survival of Wet'suwet'en society. This evidence demonstrates the serious importance of that relationship and how it was addressed in pre-contact times. Indeed, the Wet'suwet'en relationship to their land has and continues to be a matter of 'life and death' in that it is not only integral, but also critical to the survival of the Wet'suwet'en society.

The Wet'suwet'en must be allowed to examine in detail the Conditional material put forward by Coastal GasLink in relation to the Proposed Conditions, so that we can fully understand the scope of Infringements to Wet'suwet'en Title, Rights and associated Interests. In speaking to BC EAO, the Office of the Wet'suwet'en was told that there is an additional three Conditions that the Working Group does not have for review; The Office of the Wet'suwet'en is part of the CGL Working Group, yet this information has not been disseminated.

The proposed conditions as written do not give clarity as to "appropriate mitigations" and do not identify what Wet'suwet'en rights are being avoided or mitigated.

The proposed Conditions does not describe how the proposed project will negatively impact the functioning of Wet'suwet'en society. The proponent cannot have properly assessed the impacts of the proposed project on the Wet'suwet'en without having taken into consideration how it would impact each of the key components of Wet'suwet'en society; the entire Wet'suwet'en territory, each of the 38 house territories, the functioning of each of the 12 houses, and the responsibilities entrusted to each of the 13 Hereditary Chiefs and their complex interrelationships.

The Wet'suwet'en people claim Aboriginal rights to and within Wet'suwet'en territory, foremost, we claim Aboriginal title to Wet'suwet'en territory. Unlike other Aboriginal rights defined in terms of activities such as fishing, hunting, and gathering, Aboriginal title is the right to the land itself.

As Aboriginal people's title right to the land and thus to use the land is subject to an inherent and overarching limit, this is, that lands held pursuant to Aboriginal title cannot be used in the manner that is irreconcilable with the nature of the claimants' attachment to those lands.

Wet'suwet'en title's inherent limit is articulated in the law to ensure that the special bond between the group and the land in question and thus the groups identity can be transmitted to future generations.

Indeed, the Supreme Court of Canada, in considering the significance of this kind of evidence, recognized that it supports the Wet'suwet'en claim to aboriginal title as stated over 15 years ago in 1997:

157 A consideration of the aboriginal perspective may also lead to the conclusion that trespass by other aboriginal groups does not undermine, and that presence of those groups by permission may reinforce, the exclusive occupation of the aboriginal group asserting title. **For example, the aboriginal group asserting the claim to aboriginal title may have trespass laws which are proof of exclusive occupation, such that the presence of trespassers does not count as evidence against exclusivity.** As well, aboriginal laws under which permission may be granted to other aboriginal groups to use or reside even temporarily on land would reinforce the finding of exclusive occupation. Indeed, if that permission were the subject of treaties between the aboriginal nations in question, those treaties would also form part of the aboriginal perspective.¹

The Office of the Wet'suwet'en has multiple concerns grounded in maintaining Aboriginal Rights and Title regarding the Coastal GasLink (CGL) pipeline project. These concerns arise from BC EAO's and CGL's concepts that do not support or align with OW's aboriginal interests. These concerns mainly include, but are not limited to:

- Lack of sufficient and adequate baseline data;

¹ *Delgamuukw v The Queen* [1997] SCC, para. 157(emphasis added).

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- Lack of adequate impact assessment methodology;
- Cumulative effects to the biophysical environment;
- Cumulative effects to the human environment including cultural and community well-being;
- Adverse effects to Wet'suwet'en health and socio-economic conditions;
- Continued erosion of lands and resources for traditional purposes;
- Potential loss of durable and sustainable future on Wet'suwet'en territories;
- Less secure future with the likelihood of significant adverse impacts.

The assessment and management of cumulative impacts resulting from the proposed Coastal GasLink being constructed and operated continues to be a central issue of debate. Much concern is centered on a mix of environmental, cultural, and social factors about what the project will bring and how the project may impact Wet'suwet'en territories and Houses closely tied to those territories.

The situation is complex due to current politics promoting unsustainable development, global energy supply and demand, current environmental conditions on Wet'suwet'en territory, changing climate projections, and cultural considerations and aspirations converging into an unprecedented position. As well, there are:

- An unprecedented weakening of environmental laws by Canada and BC;
- Unfulfilled commitments by Canada and BC to recognize and reconcile with the Wet'suwet'en;
- Wet'suwet'en obstructing the proponent's activities at Talbits Kwa;
- A lack of government mechanisms anticipating and responding to the pace and scale of development; and,
- A lack of government will and ability to monitor and apply mitigation measures to specific projects;
- The current trend to convert uneconomical natural gas pipelines into oil pipelines.

In essence, there is major conflict with Wet'suwet'en visions of sustainable land and resource use, cultural strengthening, and cultural continuity efforts. Key Wet'suwet'en sustainability objectives include ensuring net gains to the physical and human environments as a bridge to a desirable and durable future. Five key sustainability issues identified include:

- Cumulative effects to the biophysical environment;
- Cumulative effects to the human environment including cultural and community well-being;
- Potential loss of durable and sustainable future on Wet'suwet'en territories based on aboriginal rights and title;
- Lack of associated revenues from current industrial potentially useful as a bridge to more sustainable futures for the Wet'suwet'en;
- Management of current cumulative impacts (effecting territorial access, wildlife, fish, plants, etc).

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The lack of information being given in the Coastal GasLink Conditions supplied by the British Columbia Environmental Assessment Office is an injustice to the Wet'suwet'en people. Linkages cannot be made to specific Plans where the data related referencing in the Conditions would be enforceable. Missing Valued Ecosystem Component (VEC) linkages to the Conditions do not allow for Environmental assurances.

The 2nd document supplied by the Office of the Wet'suwet'en speaks towards the status of Wet'suwet'en territories and Fish and Fish Habitat. The BC EAO supplied Conditions for Coastal GasLink's Project does not speak of Fish and Fish Habitat, nor any Groundwater issues.

How can the Wet'suwet'en have any assurance of the protection of our values, when the supplied "Conditions" do not acknowledge Wet'suwet'en Title, Rights, and associated interests of our territories.

The British Columbia Environmental Assessment Office cannot submit these Conditions as written, due to the lack of substance within the Conditions themselves and due process not being followed. The Office of the Wet'suwet'en request for the Environmental Assessment Process, and the subsequent set of Conditions for the Coastal GasLink Pipeline Application be rejected as stands.

It is clear that the significance and magnitude of the potential effects for this proposed project are not founded due to the weakness and rigor of the information presented. The Wet'suwet'en have offered the province on numerous occasions to help remedy this matter to no avail.

BC EAO needs to abide by their legal obligations in regards to consultation. The Wet'suwet'en have yet to review a Strength of Claim assessment which should guide the level of consultation and information made available for discussions and decision making. A letter was sent to Cory Waters on January 24, 2014 by the Office of the Wet'suwet'en stating that the province did not utilize all available information in the draft Strength of Claim and provided direction as to where the additional foundational information can be sourced, yet no action was taken.

It is premature to proceed this the draft conditions prior to the province fulfilling it's legal obligation with the Wet'suwet'en.

Missiyh,



Mike Ridsdale
EA Coordinator
Office of the Wet'suwet'en

CC:

Honourable Minister Richard Coleman
Honourable Minister John Rustad
Honourable Minister Mary Polack

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