Chawathil First Nation's Statement to the Governor in Council

We are the members of Chawathil First Nation, which is part of the Tait tribe. We are Stó:lō people. Our homeland is centred on Hope, BC, where the Coquihalla River joins the Fraser. We have lived here for generations beyond counting and we exclusively controlled our lands when Europeans arrived and claimed sovereignty for themselves.

You have before you the weighty decision of whether to approve an expansion to the Trans Mountain pipeline system. The existing and proposed pipeline routes lie mere metres from our three historical village sites in Hope. As our evidence before the NEB demonstrates, those villages are well-documented. Indeed, in 1860 (that is, after the assertion of European sovereignty in 1846) Governor Douglas instructed that reserves be set aside for each village, and we have filed a specific claim in respect of the failures to do so.

We refer to this evidence because there can be no serious doubt that we have Aboriginal title over at least the Crown land in and around Hope, including a portion of the pipeline corridor. We have therefore expected that the decision as to whether or not to approve the CPCN would be based on extensive direct consultation, opportunity for real participation before the NEB, and an assessment of whether crossing our title lands would be justified. To our great disappointment, none of that has occurred.

We therefore write to you to urge you not to proceed with a decision at this point. More time is needed for consultation, for consideration of our Aboriginal rights and title, and for allowing us to help frame mitigating conditions. There is nothing sacred about the December 19 deadline. You set that date (without input from us) and you have full power to change it. Further, you have the power to refer certain matters back to the NEB. We are urging you to use your powers to create more space to ensure the impacts on our Aboriginal rights and title are properly considered and mitigated.

Refer back to the NEB under s. 53

Canada is relying, to the extent it can, on the NEB process to fulfill its duty to consult us, but that system is broken. (Canada appears to agree, given that it is currently embarking on a major overhaul of it, but unfortunately for us that overhaul will come too late for this project.) We will focus on just two of the failings of the NEB process.

The first is that the NEB process is prohibitively expensive for First Nations. It is a quasi-judicial, adversarial, highly formal and procedurally-intensive process that necessitates legal representation. The amount of documentation – dealing with highly technical material – is absurd: the original application alone was 15,000 pages, and probably there were as many as 175,000 pages ultimately filed in the review.

To participate in the NEB process we were provided (along with Cheam First Nation, with whom we jointly participated before the NEB) approximately $38,000. In the context of the NEB review of a project of this magnitude, that amount of capacity funding is outrageously inadequate. This proposed pipeline would trespass on our Aboriginal title lands and pose serious risks to the lands and river that have always sustained us. We needed to be meaningfully involved in the key aspects of the NEB review, which means we needed legal representation and technical advice and evidence to review the application and the more important of the subsequent filings, to prepare our own filings, and to advise us on the risks

and potential conditions for mitigating them. The capacity funding we were provided did not allow for anything approaching the necessary level of participation. Chawathil is wealthy in our culture and connection to our lands, but not in terms of our budgets. We spent what we could of our own monies to participate, but we could not afford to make up the bulk of the shortfall. The result is that – like most First Nations – we were denied a real opportunity to meaningfully participate in the NEB review.

A second concern is that the NEB refused to consider the evidence of our Aboriginal rights and title. Given the extensive evidence we possess, we sought to demonstrate that we have Aboriginal title over portions of the pipeline that run through our territory. The NEB is expressly a "court of record" and has full statutory powers to determine that issue for the purposes of its review, but it refused to exercise those powers. It simply turned a blind eye to the overwhelming evidence that we do in fact possess Aboriginal title over part of the pipeline corridor.

We do not believe it is honourable for Canada to rely so extensively on the NEB process in its consultation with us. We were largely shut out of that process, and the NEB failed to take account of our Aboriginal rights and title.

We therefore urge you to refer the application back to the NEB under s. 53 of the Act. The process need not start over; a considerably shorter supplementary NEB process would suffice. But at minimum the NEB must review our evidence of Aboriginal title and determine whether it has been proven for the purposes of the review, and we must be accorded sufficient funding so that, with the assistance of technical experts, we may make submissions on conditions to mitigate the impacts on our rights and title.

Consult directly with First Nations

There also needs to be substantially more nation-to-nation consultation between Canada and First Nations. As set out in the June 15, 2016 letter to the Prime Minister, to which Chawathil is a signatory, Canada still has much work to do if it truly wishes to fulfill its duty to consult First Nations.

Just one of the many areas in which the duty to consult and accommodate remains unfulfilled is the concept of an Indigenous led independent safety and environmental oversight body, which we raised as a possible accommodation in that June 15 letter. As set out in the Consultation and Accommodation Report before you, Canada has taken up that idea as a possible accommodation. To date, however, there has been just one one-day meeting between Canada and First Nations with respect to this potential accommodation. That meeting, on November 2, 2016 in Kamloops, was arranged so hastily we were unable to attend, but we understand that some good work was done by the participants. Clearly, however, it is just the start of a much longer conversation that must include all affected First Nations and must occur *prior* to Cabinet making its decision on the CPCN. Committing to "collaborating" with First Nations to design and implement an oversight body *after* the approval of the CPCN will neither succeed nor be consistent with the honour of the Crown.

We therefore urge you to create the space for consultation and consideration of Aboriginal rights and title before you make a substantive decision on the CPCN. The stakes are too high not to get the process right.