



Blueberry River First Nations

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June 17, 2014

BY EMAIL: Nathan.Braun@gov.bc.ca

Nathan Braun, Project Assessment Manager
British Columbia Environmental Assessment Office
PO Box 9426 Stn Prov Govt
Victoria, BC V8W 9V1

Dear Mr. Braun,

Re: Westcoast Connector Gas Transmission Project (the "Project") Application Review

We write to provide Blueberry River First Nations' ("BRFN") comments with respect to our review of the Environmental Assessment Certificate Application (the "Application") for the proposed Project.

For the reasons set out in more detail below, the Application fails to adequately or accurately describe and determine the potential effects of the proposed Project, particularly as they relate to BRFN's territory, treaty rights and interests. We have, to the extent possible, outlined these concerns in detail in the enclosed comment worksheet and report titled *Review of the Approach to Cumulative Effects Assessment in Spectra Energy's Environmental Assessment Certificate Application for the Westcoast Connector Gas Transmission Project*. In this letter we highlight our most significant concerns with respect to the Application, however due to the volume of material reviewed in a short period of time, this letter does not include all of our concerns with the Application.

BRFN is gravely concerned that Spectra Energy's ("Spectra") Application will not enable the Environmental Assessment Office ("EAO") to correctly identify and evaluate the potential adverse effects of the proposed Project on environmental, economic, social, heritage and health values or on BRFN rights and interests, as indicated by Spectra. BRFN is particularly concerned by Spectra's conclusions that the Project will have no significant impacts on the current use of land and resources for traditional purposes, wildlife and wildlife habitat, or terrestrial vegetation. However, as outlined below, the most critical gap in the Application is that it is not possible to draw conclusions about the significance of the Project's cumulative effects on lands and resources of importance to BRFN based on the cumulative effects assessment ("CEA") undertaken in the

Application. As a result, it is not possible for the Crown to rely on the EA process for the Project to assess the full scope of impacts on BRFN rights and interests unless BRFN's concerns regarding CEA are addressed.

Consultation

Engagement with the Crown to date with respect to the Project has been limited to providing comment through the environmental assessment ("EA") process. To date, there has been no substantive integration of our comments, indicating this process will not enable the Crown to fulfill its duty to consult BRFN, particularly with respect to the cumulative effects of the Project on our lands, treaty rights and interests.

On September 13, 2013 BRFN wrote to the EAO expressing a number of high level concerns with respect to the draft Application Information Requirements ("AIRs") for the Project. The EAO's October 11, 2013 response to our concerns was wholly insufficient, and failed to meaningfully engage with our concerns or integrate them into the final AIR. BRFN's interests and perspectives were not reflected in the building blocks of this EA - the selection of Valued Components ("VCs"), Key Indicators ("KIs"), and spatial boundaries or thresholds for determining the significance of Project effects. The deficiencies in the AIR led to a deficient and inadequate Application.

In the Spring of 2014 BRFN evaluated the Application against the AIR. We outlined our concerns with the sufficiency of the information contained in the Application in our April 11, 2014 letter to the EAO, and enclosed comment worksheet. In this letter BRFN noted a number of serious shortcomings which required revision. Unfortunately, seven working days later the EAO formally accepted the Application for detailed review without providing any response to our comments. BRFN has received no response from the Spectra or the EAO on these Application evaluation comments.

Since our April 11, 2014 letter to the EAO, no further engagement with the Spectra has occurred, and any engagement to date has been very preliminary in nature, not at all constituting meaningful consultation. No studies with respect to impacts of the Project on BRFN rights or interests have been undertaken and Spectra has failed to address our concerns regarding biophysical field studies and the purported collection of traditional ecological knowledge ("TEK"), and lack of TEK in the Application.

Application Review

The Application, and Spectra's approach to EA contained therein, fails to adequately and accurately indicate and describe the potential effects of the proposed Project on BRFN lands, treaty rights or interests due to (1) total lack of Project specific information regarding BRFN treaty

rights and interests; (2) failure to adequately assess specific impacts on the lands, waters and ecosystems on which our rights depend; and (3) an approach to CEA which fails to determine the Project's cumulative effects on lands and resources of importance to BRFN. Each of these is outlined in detail below.

A lack of Project specific information regarding BRFN treaty rights and interests

The information contained in the Application regarding BRFN's traditional use practices is wholly inadequate to ground an assessment of the effects of the Project on BRFN rights and interests. As a result, BRFN is deeply troubled by the conclusion that there are no identified potential effects of the Project on BRFN habitation, hunting, fishing, trapping or gathering practices.

First, the list of factors considered as comprising BRFN traditional land and resource use is inadequate. This list was developed unilaterally without BRFN consultation. As a result, the list of hunting, trapping, fishing and plant gathering fails to capture the full extent of BRFN's treaty rights and interests, which includes a right to practice the BRFN traditional mode of life for generations to come (*R v. Badger*, [1996] 1 SCR 771, at para 52, 55; Laird, Ross and McKenna, Report of Commissioners for Treaty No. 8, 1899). This traditional mode of life includes, but is not limited to, hunting, trapping, fishing and plant gathering. Further, the Application relies entirely on the text of Treaty 8 to characterize BRFN treaty rights, despite courts' explicit direction that the oral promises of Treaty 8 are of great significance to its interpretation (*Badger, supra*).

Second, the Application contains no traditional land use or traditional ecological knowledge from BRFN, and instead relies heavily on information available through desk-top research for geographically distinct Projects – the Site C Dam and Coastal GasLink pipeline Project, both of which are proposed for the Peace Valley. As a result, the studies undertaken for these projects, and considered in the Application, do not directly consider BRFN's practices and interests in the lands directly impacted by this Project, particularly the area to the North of the Peace River and Williston Reservoir which the Project transects. This is clearly unacceptable.

Impacts on lands, waters and ecosystems on which our rights depend

The Project's impact on the lands, water and ecosystems on which our treaty rights depend is of critical importance to BRFN. The proposed Project crosses a significant portion of our territory – including over 50 rivers and streams – and will impact fish, fish habitat, wildlife, wildlife habitat, and the land and waters on which the practice of our treaty rights depends. As a result, BRFN is gravely concerned with the significant lack of baseline data with respect to fish and fish habitat, terrestrial vegetation, wetlands, wildlife and wildlife habitat, transportation and access, current use of lands and resources, and health (particularly with respect to country foods), amongst others. Given the Application is lacking much of this key baseline information, critical Project and cumulative effects are not adequately characterized by the Spectra.

BRFN is also concerned by the failure of the Application to consider First Nations', including BRFN's, conservation objectives for maintaining and restoring preferred wildlife species (including grizzly bear, caribou, moose and furbearers) in BRFN preferred harvesting areas impacted by the Project. This is an important factor in determining what changes would constitute significant Project effects which has not been incorporated into assessment thresholds. This consideration is particularly important in the context of cumulative effect and the increased fragmentation of BRFN territory (see, for example, Lee and Hanneman 2012; MSES 2012). For, example, given current conditions for caribou are already impacted in BRFN preferred hunting areas, to the extent that BRFN members voluntarily refrain from hunting caribou for conservation purposes, any incremental impact on caribou herds by the Project should be considered a significant impact. This is not contemplated in the Application.

Inadequate approach to cumulative effects assessment

Key to the ongoing practice of BRFN treaty rights, and key to the Crown both keeping its solemn treaty promises to BRFN that we can continue to practice our way of life, and properly assessing and consulting on potential impacts to our treaty rights from proposed developments, including the WCGT Project, is the proper assessment of cumulative effects. Our territory and our interests have already been significantly adversely impacted by development authorized by the Crown, which undermines and puts at risk our treaty rights. In the context of existing and proposed levels of development in BRFN Territory, and the cumulative effects of this development on the lands, waters and resources we depend on for the practice of our treaty rights, it is critical that the EAO ensure the potential cumulative effects to our rights and interests from the Project are fully and properly assessed and, ultimately, mitigated. To fail to do so puts BRFN's future and the Crown's treaty promises at risk.

Attached is a report "*Review of the Approach to Cumulative Effects Assessment in Spectra Energy's Environmental Assessment Certificate Application for the Westcoast Connector Gas Transmission Project*" (May 2014) prepared for BRFN by Dr. Bram Noble of the University of Saskatchewan, a leading Canadian authority on cumulative effects assessment ("CEA"). This report critiques the project-based approach to CEA promoted by the EAO and undertaken by Spectra in its Application, and the assessment completed in the Application itself. The report concludes that no adequate CEA is undertaken in the Application with respect to BRFN's interests and sets out a number of recommendations as to how proper CEA can be conducted.

BRFN calls on the EAO to 1) ensure Crown obligations to properly consult with and accommodate BRFN, and 2) ensure the Crown's treaty promises to BRFN are upheld by, in part, undertaking a proper CEA of the effects of the WCGT Project on our rights and interests, based on the recommendations in Dr. Noble's report. CEA is the critical issue respecting this Project and its potential for adverse effects on BRFN's rights and interests; however, the CEA in the Application is inadequate.

Dr. Noble's conclusions regarding the CEA set out in the Project's Application include the following:

- a project-based approach to CEA is inadequate;
- the spatial effects assessment boundaries are deficient per BRFN's interests as they do not permit conclusions about the nature and significance of the potential cumulative effects of the Project on BRFN and thus to the VC "current use of land and resources for traditional purposes";
- the baseline assessment is insufficient respecting both
 - 1) establishing predictions of future effects under different scenarios and assumptions about growth in combination with the Project's effects, and
 - 2) the significance of the effects of past disturbances, at the appropriate spatial scale, on BRFN's interests due to long-term resource development in the region; and
- the scope and scale of the CEA is inadequate because the full range of disturbances to lands and resources of interest to the BRFN that may interact with the Project are not considered in the CEA.

As a result, the cumulative effects of the Project to terrestrial vegetation, fish habitat, and wildlife, and therefore, to BRFN's current use of land and resources for traditional purposes, are not adequately assessed in the Project's Application.

Ensuring an Adequate CEA of Project Effects on BRFN

Addressing the following recommendations from Dr. Noble's report is required to provide an acceptable CEA regarding the Project's effects on BRFN:

- Develop an appropriate baseline assessment of the legacy of past and current disturbances on BRFN's ability to practice our treaty rights;
- Develop thresholds respecting maximum allowance levels of change for BRFN interests;
- Expand the scope of the assessment boundaries for VCs relating to BRFN's current use of land and resources for traditional purposes;
- Establish past to present rates and spatial patterns of disturbances within the assessment boundaries for VCs relating to BRFN's current use of land and resources for traditional purposes and project those rates and patterns forward under different scenarios about industrial development in the region; and
- Include future industrial disturbance scenarios associated with well development and associated infrastructure and access roads in the CEA.

BRFN is prepared to engage with the EAO and the Proponent to ensure these recommendations are fully understood and appropriately responded to.

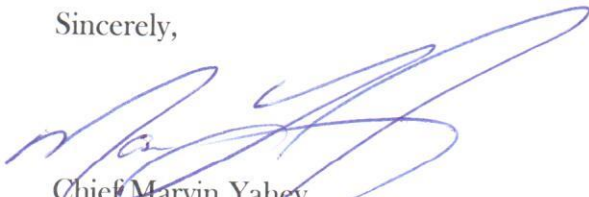
Specific Comments on the Application

BRFN has included a number of specific comments with respect to the adequacy of the Application in the comment worksheet provided by the EAO. It must be noted that the CEA issues are of paramount importance and are captured in the enclosed Report, Noble, B., *“Review of the Approach to Cumulative Effects Assessment in Spectra Energy’s Environmental Assessment Certificate Application for the Westcoast Connector Gas Transmission Project”* (May 2014), rather than outlined in the comment worksheet. It is essential that BRFN concerns with respect to the CEA of Project impacts on BRFN rights and interests be addressed as it will make little difference if minor comments on the Application are addressed and CEA is not.

Conclusion

BRFN is prepared to engage with the EAO on this proposed Project to ensure our concerns and recommendations are fully understood and appropriately responded to. Without meaningful consultation with BRFN on, and the accommodation of, our comments on the Project Application, a failure of the Crown to discharge its legal duties to BRFN regarding this Project will result.

Sincerely,



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Blueberry River First Nations

cc. Alanya Smith
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Encl. BRFN WCGT Application Review Worksheet

Noble, B. (May 2014) *Review of the Approach to Cumulative Effects Assessment in Spectra Energy's Environmental Assessment Certificate Application for the Westcoast Connector Gas Transmission Project.*

Lee, P. & Hanneman, M. (2012) *Atlas of land cover, industrial uses and industrial-caused land changes in the Peace Region of British Columbia.* Global Forest Watch Report #4 International Year of Sustainable Energy for All.

MSES (Management and Solutions in Environmental Science). (2012) *Effects of Industrial Disturbance on the Traditional Resources of BRFN.* Calgary, AB.

Salmo Consulting Inc., Diversified Environmental Services, Gaia Consulting Inc., Forem Technologies, AXYS Environmental Consulting Ltd (2013) *Cumulative effects indicators, thresholds and case studies.* Final Report. Cumulative effects management for northeast BC, Volume 2. Appendix 2 - Blueberry Cumulative Effects Case Study.