



Blueberry River First Nations

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October 28, 2014

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Dear Ministers:

**Re: Westcoast Connector Gas Transmission Environmental Assessment (“EA”)
Blueberry River First Nations (“BRFN”) Separate Submission**

This letter and the attached documents constitute BRFN’s separate submission to the Ministers regarding the proposed Westcoast Connector Gas Transmission pipeline project (“Project”), the inadequate EA of the Project and the lack of meaningful consultation with BRFN on the proposed Project. This separate submission expresses BRFN’s rejection of the conclusions of the BC EA Office (“EAO”) with respect to the Project, and our significant concerns with the conduct of both the EA, and the consultation, associated with the Project. In summary, BRFN does not agree with the EAO’s conclusions that the Project will only result in negligible or minor impacts to our treaty rights; these conclusions cannot be reasonably arrived at given the numerous flaws in the conduct of the Project’s EA. Further, the Crown has not meaningfully consulted with BRFN on the Project to date.

No Meaningful Consultation

Given the numerous fundamental flaws in the Project’s EA, on both the consultation and assessment fronts, the Provincial Crown has not discharged its legal obligations to consult with BRFN and accommodate our rights and interests as they have the potential to be infringed by the Project, as set out in the law¹. As such, no approval of the Project should issue at this time. Aside from the EA process, there has been no engagement by the Provincial Crown in consultation with BRFN on the Project or on the larger LNG development proposed in BC, including on the very

¹ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at paras. 35, 39, 47; *Mikisew Cree First Nation v. Canada (Minister of Canada Heritage)*, [2005] 3 SCR 388 [*Mikisew*]; *West Moberly First Nations v. British Columbia (Chief Inspector of Mines)*, 2011 BCCA 247 [*West Moberly*].

significant development that will be induced in our territory as a result of the construction and operation of LNG facilities on BC's Coast, serviced by pipelines from BRFN's territory.

BRFN's numerous and significant concerns with the EA of this Project, and with the lack of consultation with BRFN on the Project, have been set out in detail in several pieces of correspondence provided to the EAO and in a letter dated September 22, 2014 to yourselves as the Ministers responsible for the Project's approval. Enclosed is both a list of this correspondence and a zip-file with all of this correspondence in it, for your convenient reference. While the EAO has provided opportunities to comment on various documents (e.g., Application, Draft Assessment Report) during the Project's EA, and BRFN has taken those opportunities up, as is demonstrated by the letters provided, the vast majority of our comments have not been responded to and have not made any real difference in this EA. To the contrary, these have been no more than opportunities to blow off steam,² and very few of BRFN's comments have been integrated into the proponent's plans for the Project or into the EAO's assessments or conclusions, with the result that legal requirements for consultation and accommodation with BRFN have not been met.³

Given the correspondence and comments on the Project and its EA that have been provided by BRFN to date, we will not repeat much of the relevant detail contained therein in this letter, but provide here only a partial list of some examples of the inadequate and ineffective consultation with BRFN on the Project to illustrate the problem.

- **Our treaty rights have been misunderstood and mischaracterized.**

The Project proponent and the EAO failed to adequately scope BRFN's treaty rights; this is a necessary and foundational step to proper consultation and assessment of impacts.⁴ The EAO has adopted an inappropriately narrow scope of BRFN's rights for two reasons. First, the EAO's assessment of impacts on our treaty rights is based on the written text of Treaty 8, and ignores the fact that our traditional mode of life (protected under Treaty 8⁵) encompasses much more than the rights to hunt, trap, fish and gather. Second, the EAO has failed to consider the current scope of our treaty rights, which has been significantly curtailed by extensive industrial development, approved by the Crown, in our territory. Improperly scoping our treaty rights in this EA constitutes a failure in consultation.

A critical aspect of the scope of our treaty rights is the extent to which BRFN retains a meaningful opportunity to practice these rights in the areas impacted by the proposed Project. Due to extensive oil and gas development in our territory, the ability of our members to meaningfully practice their traditional mode of life has been severely curtailed.

² *Mikisew*, at para. 54.

³ *Halfway River First Nation v. British Columbia (Ministry of Forests)*, 1999 BCCA 470 at para. 160 [*Halfway River*].

⁴ *Halfway River*, at para. 180.

⁵ *Report of Commissioners for Treaty No. 8, West Moberly*, at paras. 130, 137, leave to appeal refused.

Our members refrain from hunting caribou due to conservation concerns, and their ability to harvest healthy moose and other wildlife is becoming increasingly difficult as our lands are fragmented and polluted by industrial development at an unprecedented rate. In many parts of our territory, including those impacted by the proposed Project, we are reaching a critical threshold at which our lands have been taken up by other uses and our members are being deprived of the opportunity to meaningfully practice their treaty rights.

- **The EAO has relied entirely on incomplete and inaccurate traditional land use data provided by the Proponent.**

Initially, the EAO chose to rely on traditional land use sites of BRFN treaty rights practices along the pipeline route provided by the Proponent, without identifying the shortcomings of the incidental data relied on, or considering the 204 traditional use values within 5 km of the pipeline footprint and 650 traditional use values within 25 km of the pipeline footprint identified by BRFN in a letter dated August 8, 2014 to the EAO (and cc'd to the Proponent) and on a map enclosed with the letter. BRFN then commissioned a desktop review of BRFN traditional land use data in the Project area, which was provided to the EAO (and the proponent) with a letter dated October 15, 2014, entitled: “Draft Blueberry River First Nations Knowledge and Use Desktop Review for Spectra Energy Corp.’s Westcoast Connector Gas Transmission Project” (the “Review”). The Review confirms, and provides further detail, on use values previously provided to the EAO, including the following:

- Within the Project footprint, BRFN members report 65 site-specific use values, including a ceremony place and scared sweat lodge, sites for processing elk and moose meat, camp sites, blueberry and huckleberry patches, valued wildlife habitat for moose, elk, caribou, deer, sheep, goat, bear, birds, marten, fisher and other furbearers, and mineral licks used by moose and elk. Members also reported harvesting game, furbearers, fish and berries in this area.
- Within 5 km of the Project footprint (the “LSA”), BRFN members report 210 site-specific use values. In addition to the above, these include cultural gathering places, culture camps, multiple campsites, additional areas for harvesting game, furbearers, fish and berries, and sites for collecting culturally important vegetation including cambium, pine cones, rotten wood and medicinal plants. BRFN transportation trails and waterways are also located in the LSA, in addition to additional wildlife and fish habitat for a number of species including moose, elk, caribou, deer, sheep, goat, black and grizzly bear, lynx, marten, beaver, fisher, rainbow and bull trout, grayling and whitefish.

- Within 25 km (approximately one days walk) of the Project footprint (the “RSA”), members report 650 site-specific use values. In addition to those reported in the Project footprint and LSA, these include additional ceremony places such as sweat lodges and a Sun Dance site, teaching areas, spirit places, medicinal plant and fungus collecting areas, a burial site, wildlife habitat (including wildlife corridor and moose calving area), sand dunes, fishing sites for 10 different species, berry picking locations for 8 varieties of berries, and hunting and trapping areas for 16 animal species.

In addition to the site-specific use values outlined above, the Review found that BRFN members are avoiding areas that will be impacted by the proposed Project, due to existing development in the northern portions of the Project closest to (and in) the core of BRFN’s territory. Finding locations for the meaningful practice of BRFN treaty rights is increasingly difficult, raising concerns about the impacts further development (including the proposed Project) will have on cultural continuity and the ability of members to meaningfully practice their treaty rights.

Due to the fact that the Review is a desktop review, rather than a Project-specific knowledge and use study, only incidental data is captured. As a result, the Review contains only a small portion of BRFN knowledge, use and occupancy in the study area because key knowledge holders may not have been interviewed and participants in any of the studies reviewed would not have been canvassed regarding areas impacted by the Project.

While the EAO has acknowledged the Review and its content in their First Nations Consultation Report, the EAO has largely rejected the traditional land use evidence in the Review because the use sites have been randomized by 250 m and buffered by 1 km (as is typical in TLU reports given the sensitive and confidential nature of the information); the Review does not indicate the frequency of use; and the categories of data provided in the Review (cultural/spiritual, environmental, habitation, subsistence, transportation) do not directly correspond with the EAO’s categories of hunting, trapping, fishing and gathering which is contrary to the law on Treaty 8. On this basis, the EAO had concluded that BRFN’s Review does not assist in determining the degree of impact of the proposed Project on our rights. As a result, the EAO’s conclusions that the proposed Project will have negligible impacts on our treaty rights remain unchanged. This is deeply disappointing to BRFN, particularly given we have taken steps to identify our concerns with the EAO’s approach to assessing Project impacts on our rights and interests and provided additional information about our treaty rights practices to facilitate the EAO’s assessment of Project impacts. Rather than take steps to substantially address our concerns, the EAO has done what it has repeatedly done throughout this EA - acknowledge that we have provided comments and new information, but entirely dismiss our information and comments.

In summary, the Project's EA has not incorporated any specific data relating to BRFN's extensive use of the area that will be impacted by the Project.

- **The EAO has failed to assess Project impacts on our treaty rights.**

Instead of assessing Project impacts on our unique treaty rights, grounded in our current rights practices and the lands in which we practice those rights, the EAO has used assessments on "Aboriginal interests" and biophysical VCs as proxies for impact on our rights. Neither of these approaches results in an assessment of the impacts of the proposed Project on the exercise of BRFN treaty rights.

Rather than consider the impacts of the proposed Project on our rights, the EAO has assessed Project impacts on "Aboriginal Interests", and then used its conclusions about impacts on these generic impacts as a proxy for impacts to our unique rights. This is an oversimplified and offensive approach to assessing impacts on BRFN. For example, it ignores the cumulative effects reality that is specific to BRFN and the corresponding reality that BRFN's ability to meaningfully practice our treaty rights may not be possible in areas impacted by the proposed Project and presumes that 24 impacted aboriginal groups share the same interests. This is simply not the case.

The EAO conflates impacts on biophysical VCs, such as wildlife and wildlife habitat, with impacts on BRFN treaty rights. For example, the EAO cites its "analysis of potential residual and cumulative effects on wildlife, wildlife habitat, current and traditional land use" in its reasons for concluding that the proposed Project may only result in "minor impacts" on BRFN's right to hunt. As a result, the EAO has not considered the indirect effects on BRFN interests resulting from residual effects on biophysical VCs. For example, impacts beyond those occurring directly in the Project footprint, including changes in the economy, family structure, sensory disturbances of wildlife, real or perceived risk of contamination of country foods (game species), and an increase in non-BRFN hunters in the Project area, are not considered. As outlined further below, even if the use of biophysical VCs was a defensible approach for assessing impacts on BRFN rights (which we deny), the failings in the EA for the project render conclusions with respect to impacts on biophysical VCs highly problematic and unreasonable.

- **There has been no written response to our concerns.**

Consultation is a process through which the Crown and First Nations are meant to talk together to reach mutual understanding with the objective of addressing the First Nations' concerns. This has not occurred. BRFN received no written responses from the EAO to the letters and comments on the documents we provided during the substantive review phase of this EA. As a result, we were never provided any rationale as to why the vast

majority of our comments were not addressed. Often we were not even informed which of our comments were and were not responded to; we were required to glean this from our review of numerous slightly revised documents which constituted hundreds of pages with no track changes incorporated to guide this review. During Application review for the Project, BRFN identified 98 concerns with the Application; however, the proponent provided only eight sufficient responses and failed to address the remaining 90 of BRFN concerns (see BRFN letter dated August 8, 2014, to the EAO).

- **No dialogue with respect to cumulative effects assessment.**

Throughout the EA for this Project, BRFN repeatedly raised our critical concerns with the EAO's approach to cumulative effects assessment ("CEA"), particularly with respect to the cumulative impacts of the Project on our treaty rights (see our letters of May 5, June 17, August 8 and October 15, 2014). BRFN's concerns with CEA are outlined in further detail below. However, we wish to highlight that despite our repeated concerns, and the commissioning of report by Dr. Bram Noble, a leading North American specialist on cumulative effects, entitled "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) (the "Noble Report") which we hoped would facilitate meaningful dialogue, neither the EAO nor the Proponent have responded to our concerns or to the Noble Report. This is deeply troubling to BRFN, particularly given we explicitly requested a response to the Noble Report in our August 8, 2014 letter and have never received one.

- **The EA for the Project has also provided for inadequate consultation due to numerous process problems.**

- The overall review timeframe for the Project has been too short, apparently driven by the Province's LNG development aspirations, as opposed to the goals of fulsome, effective assessment and meaningful consultation. An example of the insufficiency of the overall EA timeline for this Project is the provision of nine working days to review 780 pages of the draft Assessment Report, First Nations Consultation Report, Table of Conditions and Project Description, when the original schedule for this EA provided six weeks for the same review. Consistently, insufficient time was provided to review the hundreds, and sometimes thousands, of pages of documents that were provided, and to prepare comments on these documents with BRFN leadership, lands staff, members, and advisors input. The EAO often did not meet its own set timelines for the delivery of material (e.g., an unexplained three week delay in the provision of the draft Assessment Report and associated materials with little, if any, notice provided to First Nations).

- The timelines for responses set unilaterally by the EAO at various stages in the process did not account for the unique circumstances of First Nations who must consult with members who hold collective rights, and work with technical consultants and legal and other advisers who are not in-house. The enormous burden placed on BRFN by the Crown to participate in the various regulatory processes associated with LNG development (BRFN is currently dealing with three pipeline EAs, three pipelines in the National Energy Board process, and numerous other pipelines and related development referrals from the Oil & Gas Commission) has not been taken into account in review timelines. BRFN has been subject to simultaneous application reviews; this is obviously problematic and unacceptable, particularly given the near total lack of financial support the Crown provides for this review and the lack of capacity in First Nations' (including BRFN) lands departments, and generally, to deal with the onslaught of development affecting our lands and rights.
- BRFN asked in writing for the EA clock to be stopped in order to ensure information about the practice of our treaty rights was collected and incorporated into the assessment of the Project, among other things.⁶ BRFN has never received a response to this correspondence.
- Working Group ("WG") meetings did not constitute consultation with BRFN due to the ineffective structure of the meetings. Examples of problems with the meetings include the following: Agendas for the WG meetings were set unilaterally by the EAO; no opportunity for meaningful dialogue on unresolved issues was facilitated nor was it possible, given the number of First Nations and other WG members present; and the meetings were rushed (e.g., in one instance held one business day after the proponent provided responses to Application comments) and dominated by presentations from the proponents, which largely consisted of defending their projects, their Applications and their responses to some of the concerns that had been raised.⁷ While BRFN's technical representatives attended these meetings on our behalf, it was only to ensure BRFN's concerns were articulated to the extent possible, and to gather further information regarding what was proposed in our territory. However, as we anticipated, no meaningful opportunities for consultation were provided at these meetings due to the concerns noted here, among others.
- Meetings between BRFN and the EAO held July 3 and October 9, 2014 were ineffective, as the EAO failed to approach these meetings with an open mind, and

⁶ See our letter dated August 8, 2014.

⁷ See, for example, our letters of August 15 and 29, 2014.

instead defended the adequacy of their process, demonstrating no flexibility to address BRFN's outstanding concerns.

Environmental Assessment Failures

Detailed information on the numerous significant issues arising in the Project's EA that contribute to a wholly inadequate assessment of the Project's impacts has been set out in the correspondence provided by BRFN to date, see in particular the letters dated April 11, May 5, June 17, August 8, August 15, September 22 and October 15, 2014. Provided here are only a few examples of these issues to demonstrate how the EAO's assessment of the Project has failed.

The EA of the proposed Project's impacts on the lands, waters and ecosystems that we depend on for the continued practice of our rights is methodologically flawed and unsupportable. Noted here are a few examples of how the EAO's assessment of the Project has failed to be effective:

- Insufficient or no baseline information has been provided to support an assessment of Project impacts on numerous VCs including fish and fish habitat, terrestrial vegetation, wildlife and wildlife habitat, heritage and the current use of lands and resources for traditional purposes. This is contrary to the EAO's guidelines regarding the assessment of effects on VCs⁸ and the Application Information Requirements for the Project⁹. Of particular note, the current decline in moose populations in our territory has not been reflected in the EA for this Project; this is a key species for BRFN treaty rights practices (in part because of the dramatic decline of caribou), and a glaring omission. Similarly missing is adequate baseline data on plants of traditional importance to BRFN. We fail to understand how any conclusions can be drawn as to Project effects when the current state of these VCs has not been properly studied or assessed. Other information required to undertake an adequate assessment of the Project's impacts is also missing, e.g., ancillary developments and BRFN TEK. The EAO has tacitly acknowledged this lack of baseline data by requiring additional studies for a number of VCs post-approval. This is, however, wholly insufficient, and cannot remedy the failure to assess Project impacts based on the current baseline in this EA.
- The effects of constructing two pipelines have not been adequately considered in this Project's EA. The EAO's analysis fails to assess the prolonged duration of the impacts of potential back to back, or overlapping, construction periods.
- Significance thresholds were developed without input from key stakeholders, including BRFN. The result is that impacts were not assessed in consideration of BRFN needs. For example, in determining the significance of Project impacts on wildlife and wildlife habitat,

⁸ EAO, "Guideline for the Selection of Valued Components and Assessment of Potential Effects, at pages 18-19.

⁹ Approved Application Information Requirements for the proposed Westcoast Connector Gas Transmission Project (September 20, 2013), at section 3.2 "Baseline Information", pages 15-17.

there was no analysis of whether the Project would result in a decline in wildlife population or habitat such that BRFN members would not have the ability to meaningfully practice our treaty rights.

- The EAO had deferred some mitigation to the permitting phase, for example for fish and fish habitat, without considering the success of the proposed mitigation. In other cases, the EAO has relied on generic project-wide mitigation which does not address ecosystem specific vulnerabilities. Due to these failings, proposed mitigation measures cannot be relied on to make conclusions about Project impacts. For example, the EAO has failed to require a specific mitigation plan for moose, despite recent declines in moose populations in our territory.
- The EAO has concluded that the proposed Project will have significant adverse effects on caribou herds, including those located in BRFN's territory, but found impacts to our treaty right to hunt will be minimal; this is a clear error. Any significant impact to caribou necessarily results in a significant effect to BRFN treaty rights to hunt and practice our traditional mode of life, of which caribou was a staple.
- The failure to assess impacts to VCs on biologically meaningful or treaty rights appropriate scales (i.e., the assessment was based on the whole length of the project) is a methodological flaw that undermines the EAO's conclusions with respect to a number of VCs. The result is the underestimation of Project impacts in BRFN territory, and on our treaty rights. For example, the EAO has concluded that the proposed Project will not have significant adverse effects on grizzly bears, but the realities facing this species across the length of the pipeline varies dramatically. In BRFN territory, the density of motorized access in grizzly bear habitat already exceeds acceptable levels, resulting in a high risk of grizzly bear mortality and displacement under current conditions, which will be exacerbated by the proposed Project.¹⁰ This is a significant adverse effect. In other areas of the pipeline route, a number of grizzly bear population units have very low motorized access densities. The assessment approach taken by the EAO means that impacts on vulnerable and secure populations have been "balanced out", in effect, across the whole Project corridor, enabling the EAO to justify a finding that the Project will not have significant impacts on grizzly bears.¹¹ This approach ignores the critical impact the Project may have on already vulnerable and high risk populations such as those in BRFN territory; this is a critical assessment flaw.
- The EAO has failed to assess the significance of adverse residual and cumulative effects on the current use of lands and resources for traditional purposes ("CULRTP"). This is a glaring oversight, particularly given an assessment of CULRTP was required in the

¹⁰ Draft Assessment Report, provided for working group review, at pg. 133-135.

¹¹ *Ibid*; Part C, provided for working group review, at pg. 39.

Application Information Requirements approved by the EAO.¹² The EAO's Part C assessment fails to replace an assessment of CULRTP.

- The EAO's assessment of health effects fails to consider critical aspects of BRFN health, including potential Project impacts on country foods, which BRFN members rely on as part of their traditional mode of life in order to maintain their health and wellbeing. This is a critical oversight as BRFN members are concerned about the impact of the Project on the availability of country foods and the contamination risks posed by the proposed Project on these foods. These are critical issues that must be addressed in any meaningful assessment of the proposed Project vis a vis BRFN's rights and interests.
- Relying on generic project-wide mitigation which does not address BRFN specific issues or BRFN rights and which therefore cannot be relied on to make conclusions about Project impacts on BRFN, is a serious concern with this EA. Many mitigation measures are so vague as to be unenforceable which calls into question whether there will be adequate or any mitigation of Project effects, which in turn calls into question the EAO's conclusions on Project impacts. No project conditions are set out which address BRFN specific values or provide for the avoidance or mitigation of impacts to BRFN (e.g., no specific mitigation plan for moose; no planned involvement of BRFN in the development of the moose monitoring plan; no planned involvement of BRFN in the development of management plans for wildlife or wildlife habitat; no treaty rights or country food consumption monitoring; no cumulative effects assessment or management conditions; no BRFN specific economic issues are addressed in conditions).

Ineffective Cumulative Effects Assessment

The cumulative impacts of extensive development in BRFN territory, particularly oil and gas development in the last 10 to 15 years, are devastating our territory and our ability to meaningfully practice our treaty rights as promised under Treaty 8. This is a critical situation, particularly given the multiple gas pipelines proposed in our territory which promise to induce far greater development of our lands. The EAO's failure to acknowledge these concerns, and the failure of the EA for this Project to address them, is not consistent with the honour of the Crown, and is a critical flaw in this EA. Due to the inadequate CEA for this Project, the EAO has failed to properly assess the environmental impacts of the Project and has failed to assess Project impacts on BRFN treaty rights. The Crown has also failed to consult otherwise with BRFN on the cumulative effects of this Project, and LNG development generally, on BRFN. The "taking up" of BRFN's lands under Treaty 8 has already exceeded a reasonable limit, putting our treaty rights at risk, and the Crown in the position of breaching its treaty promises to us. This is a situation that calls for the Crown's immediate attention.

¹² Approved Application Information Requirements for the proposed Westcoast Connector Gas Transmission Project (September 30, 2013), at Section 6.1.4, pg. 83-85.

The EAO has purported to determine the effects of the proposed Project on the environment and on our treaty rights with a Project-based approach to CEA. This is insufficient. A regional approach, that considers the induced development of the proposed Project,¹³ among other factors, is required. Cumulative effects of the Project on BRFN must also include relevant portions of BRFN's territory (i.e. impacted watersheds) rather than the small portions of BRFN's territory covered by the LSA and RSA for most VCs. This is necessary to ensure that BRFN's treaty rights are not subject to the "death by a 1000 cuts" the law warns against.¹⁴ As set out in the Noble Report:

[i]t is not possible to draw conclusions about the significance of the project's cumulative effects on lands and resources of importance to the BRFN without considering the full extent of past, present and future disturbances on BRFN traditional lands.¹⁵

Another critical flaw in the CEA has been limiting the scope of the futures component of CEA to exclude the potential upstream impacts of hydraulic fracturing and natural gas exploration, among others, on BRFN.¹⁶

As a result of the EAO's approach to CEA for this Project, the EAO has ignored the fact that BRFN interests have already been substantially affected by industrial development and "any further development must be considered cumulatively significant and adversely affecting BRFN's ability to use land and resources for traditional purposes."¹⁷ For example, a 2012 study concluded that, as of 2011, 66% of the land in the core of BRFN territory was disturbed, and the existing linear disturbance density of 1.58 km/km² was so significant that traditional wildlife could cease to be viable¹⁸. It is clearly unacceptable that existing impacts on BRFN's interests have not been adequately assessed in this Project's EA; it is also contrary to law,¹⁹ and has meant that key (or any) discussions about accommodating Project impacts have not taken place. For example, there have been no discussions with the Crown about the few remaining areas in our territory that have the capacity to support our treaty rights practices, and the steps necessary to protect them. Our members consistently report that they are having difficulty exercising their rights (e.g., finding game to hunt); this is an untenable situation for our people, which is the result of Crown-authorized industrial and other development activities in our territory. This situation must be proactively addressed by the Crown; the CEA in the Project's EA fails to do so.

¹³ 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) [the Noble Report], at pg. 21

¹⁴ *Halalt First Nations v. British Columbia (Environment)*, 2011 BCSC 945, at para. 628.

¹⁵ Noble Report, at pg. 21.

¹⁶ Noble Report, at pg. 21.

¹⁷ Noble Report, at pg. 21.

¹⁸ MSES, "Effects of Industrial Disturbance on the Traditional Resources of Blueberry River First Nations" (August 2012).

¹⁹ *West Moberly*, at para. 119.

The failure to assess or address the potential adverse effects of the Project on BRFN is unacceptable and not in keeping with the honour of the Crown, particularly given the level of risk to the ongoing practice of our treaty rights that already exists. In addition to the recommendations set out in the Noble Report, we refer you to the attached September 9, 2014 Briefing Note for the Premier, “Cumulative Effects on Blueberry Territory – Treaty Rights at Risk”. This report contains BRFN’s views as to what the Province must do to undertake effective CEA vis a vis BRFN’s rights. Effectively assessing and managing the effects of the cumulative impacts of Crown-authorized development on BRFN requires the Crown’s immediate attention.

Failure to Assess Induced Development

Very significant levels of induced development will result from the construction and operation of LNG facilities and pipelines in BC, and much of this induced development to procure the natural gas to feed these pipelines and facilities will occur in BRFN territory. This issue of induced development has been raised by First Nations (including BRFN) with the Provincial Crown in numerous venues, including LNG project EAs, for at least the last year and a half. Assessing this induced development is a necessary component of a proper CEA for the Project (and other LNG projects). For the first time, on September 22, 2014, just days and weeks before several LNG project EAs are effectively ending (including for this Project), the Province has responded to these concerns and has prepared an LNG Forecast (the “Forecast”). The Forecast was prepared by the Ministry of Natural Gas Development (“MNGD”) and the Oil and Gas Commission (the “OGC”) and is based on the assumption that up to five “major export facilities” would proceed.²⁰ The Forecast is only five pages long, representing an extremely superficial analysis of the induced development issue. BRFN rejects outright the information and conclusions set out in the Forecast. In our view, this Forecast reflects a bad faith, self-serving effort on the part of the Province to downplay the extent of the induced development that could result from the LNG development the Province is actively pursuing.

The following is a partial list of the issues BRFN has identified with the Forecast. (Note that this is not based on a technical analysis of the Forecast as we do not have the in-house technical capacity to respond at a technical level and, further (as pointed out below), none of the background information or analysis necessary to undertake such an analysis has been provided by the Province.)

- There was no First Nations’ input sought in the developing the Forecast;
- It is impossible to assess the validity of the Forecast as none of the underlying data, assumptions and methodology have been provided by the Province;

²⁰ September 22, 2014 letter from Cory Waters to LNG Project First Nation Working Group members, enclosing “Fact Sheet – LNG Forecast Scenario”.

- No sources for the information contained in the Forecast are listed;
- The information and conclusions in the Forecast are entirely contrary to BRFN's observations on the ground in our territory;
- The information and conclusions in the Forecast (3.6% existing disturbance) run contrary to the information and conclusions set out in several independent studies undertaken in the northeast regarding existing development impacts (50-70% existing disturbance);
- No rationale is provided as to why only a 10-year time-frame has been assessed when it is anticipated that many decades of development will result from the construction and operation of an LNG export system;
- The Forecast does not address linear disturbance, one of the most significant effects of this development, at all or the fragmentation, compromised ecosystem function and edge effects that result from this linear disturbance; and
- Supporting evidence for conclusions drawn in the Forecast is entirely lacking.

BRFN requests that the Provincial Crown immediately provide all of the background data, and the assumptions and methodologies utilized in the Forecast analysis, in a good faith gesture that will enable BRFN to properly assess the Forecast and the results set out therein. At this time, the Forecast has been provided far too late to play any role in the LNG project EAs, and, given the obvious significant limitations in the analysis, cannot be used in any way to support the future consultation and assessment efforts of the Crown. We call on the Provincial Crown to work with us to develop the terms of reference for, and undertake, fulsome induced development analysis for the purposes of meaningfully assessing and consulting on the potential impacts of the significant adverse impacts on BRFN from the LNG development proposed in BC.

Conclusion

BRFN's input in this EA has not resulted in changes to the EA or the Project. BRFN's treaty rights were not properly scoped for the purposes of assessment and BRFN-specific information has not been incorporated into the Project's assessment. The EAO has failed to do any assessment of Project impacts on the exercise of BRFN's rights, instead coming to purported conclusions about Project impacts using biophysical VCs and generic "Aboriginal Interests" as a proxy for our unique and territory specific rights. Key BRFN issues, including regarding cumulative effects and induced development, have not been addressed by the Crown in this EA or otherwise. Numerous methodological flaws have resulted in fundamental flaws in the assessment of the Project's environmental effects. As a result of the above-noted, and other, reasons, BRFN

rejects the EAO's conclusions with respect to the Project. It is our view that we cannot know the extent of the adverse impacts of this Project on BRFN due to a deficient assessment.

Given the failure of the EAO/Crown to properly ascertain the scope of our treaty rights as they are engaged by the proposed Project, and the failure to properly assess the potential impacts of the Project on those rights, there has been no meaningful consultation on the potential infringements to BRFN's rights that this Project represents, and no discussions about ways to avoid, mitigate or accommodate those infringements. Due to these serious failings, among others, the Crown is in breach of its constitutional duties to BRFN.

BRFN requests that you, as the Ministers responsible for the EA of this Project, decline to issue an EA certificate for the Project on two grounds: a failure in consultation with BRFN on our treaty rights, and a failure to adequately assess the Project's impacts on the environment and on BRFN's rights and interests. It is your constitutional duty to assess whether the Crown's legal duties of consultation and accommodation have been discharged, before a decision on the Project is rendered. You have the obligation and the authority to deny the approval that is sought if these obligations have not been met, as is the case here. BRFN also requests that the Provincial Crown engage with us in a meaningful consultation on this Project and the other LNG projects proposed in our region, including on effective CEA.

BRFN is available at any time to discuss these matters and looks forward to your prompt response.

Respectfully,

Chief Marvin Yahey
Blueberry River First Nations

Encl.

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