

In the matter of the
ENVIRONMENTAL ASSESSMENT ACT
S.B.C. 2002, c. 43
(the 'Act')

and

in the matter of an
APPLICATION
for an
ENVIRONMENTAL ASSESSMENT CERTIFICATE
(the 'Application')

by

PACIFIC TRAIL PIPELINES LIMITED PARTNERSHIP
(the "Proponent")

for the

KITIMAT – SUMMIT LAKE PIPELINE LOOPING PROJECT
(the 'Project')

May 12, 2008

Executive Director's Recommendations and Reasons for Recommendations

In accordance with the provisions of subsections 17(2)(b) and (c) of the *Environmental Assessment Act*, the Executive Director of the Environmental Assessment Office makes the recommendations contained in this submission, for the reasons indicated, in connection with the Application by Pacific Trail Pipelines Limited Partnership for an Environmental Assessment Certificate for the Kitimat – Summit Lake Pipeline Looping Project.

A. ISSUE

Decision by Ministers on the Application for an Environmental Assessment (EA) Certificate by Pacific Trail Pipelines Limited Partnership for the proposed Kitimat – Summit Lake (KSL) Pipeline Looping Project.

B. BACKGROUND

1. Proponent and Project Description

- The Proponent applied for an EA Certificate to construct and operate a 463 kilometre long, 914 millimetre (36 inch) diameter buried pipe, between Kitimat and Summit Lake including installation of one new compressor station along the proposed pipeline system, as a loop to the existing Pacific Northern Gas Ltd. natural gas pipeline and to convey natural gas from the proposed Kitimat Liquid Natural Gas (KLNG) Project. (The KLNG Project received an EA Certificate in June 2006.).
- The Project constitutes a reviewable project pursuant to Part 4 of the *Reviewable Project Regulations* because it includes a new transmission pipeline facility with a diameter of >323.9 millimetre and a length of \geq 40 kilometre.
- Pacific Trail Pipelines Limited Partnership (PTP) is the Proponent and will own and operate the Project. Pacific Northern Gas Limited (PNG) was the original Proponent for the Project. In July 2006 PNG and Galveston LNG Inc, parent company of the Proponent for the KLNG Project, formed a new limited partnership, PTP, which became Proponent for the Project. PTP is a 50-50 partnership between PNG and Galveston LNG Inc.
- Project capital costs are estimated at \$1.1 billion, of which approximately \$750 million will be for installation of the pipeline and related facilities. Approximately 1,200 - 1,500 jobs will be created over a twenty-four month right-of-way clearing and pipeline construction phase. Few if any permanent jobs will be created to operate the Project. Construction is scheduled to begin in the third quarter of 2010.
- The Project involves 589 watercourse pipeline and access road crossings, 109 of which have been determined to be fish-bearing, and many of which contain salmon. A further 39 watercourse crossings are being assessed further to confirm if they are fish-bearing.
- The Project will be constructed in a new pipeline right-of-way between Kitimat and Endako (kilo post 0 to approximately kilo post 300), however parts of this will abut existing logging road or other right-of-ways. From Endako to Summit Lake (approximately kilo post 300 to kilo post 463) the Project will overlap or abut the existing PNG pipeline right-of-way for most of the route. The permanent statutory right-of-way for the KSL pipeline will be 18 metres in width. During construction, a right-of-way of 28 to 35 metres wide will typically be required.
- The Project requires the following provincial approvals and authorizations. approval under the *Water Act* for water withdrawal and for works in and about a stream; approval for timber harvesting and disposal under the *Forests Act*; approval under the *Heritage Conservation Act* for various activities; Statutory Right-of-Way Agreements under the *Land Act*; road use permits under the *Forests Act* and the *Highways Act*; and, a Certificate of Public Convenience and Necessity pursuant to the *B.C. Utilities Commission Act*.. Under the *Oil and Gas Commission Act*, the Oil and Gas Commission is responsible for issuing all provincial approvals related to the Project, with the exception of a Certificate of Public Convenience and Necessity pursuant to the *B.C. Utilities Commission Act*.
- The Project potentially impacts matters regulated by the federal government, including: salmon and salmon habitat; migratory birds; *Species at Risk Act* listed species (especially White Sturgeon – *Species at Risk Act*, Schedule 1); and navigable waters. The Project requires federal approvals under the section 35(2) of the *Fisheries Act*, and section 5(1) of the *Navigable Waters Protection Act*.

2. Environmental Assessment Process

- The Proponent submitted the Application on July 25, 2007. Following an evaluation by the Environmental Assessment Office (EAO), the Application was rejected for review on August 24, 2007, on the grounds that it did not contain all of the information required by the Approved Terms of Reference. On August 31, 2007, the Proponent resubmitted the Application which was accepted for review by the EAO on September 21, 2007 and the Proponent was directed to distribute copies of the Application to the Working Group.
- The formal assessment of the Application commenced on October 11, 2007. A 45-day public comment period on the Application was held from October 17 to November 30, 2007. Open houses were held in Smithers, Terrace, Kitimat, Burns Lake, Vanderhoof, Prince George and Summit Lake between October 22 and November 2, 2007.
- The Application was assessed by a Working Group, led by the EAO. Representatives of the following provincial and federal agencies, local governments and First Nations were invited to participate and were kept informed about the Project review throughout the assessment process:
 - Provincial Agencies: Ministry of Environment, Ministry of Forests and Range, Ministry of Energy, Mines and Petroleum Resources, Ministry of Tourism, Sport and the Arts (Archaeology Branch), Ministry of Aboriginal Relations and Reconciliation, Ministry of Agriculture and Lands, Integrated Land Management Bureau, Ministry of Economic Development, Ministry of Community Services, Oil and Gas Commission, Agriculture Land Commission, Northern Health Authority;
 - Federal Agencies: Canadian Environmental Assessment Agency, Fisheries and Oceans Canada, Transport Canada, Environment Canada, Natural Resources Canada, Health Canada, Indian and Northern Affairs;
 - Local Governments: Regional District of Kitimat-Stikine, Regional District of Bulkley-Nechako, Regional District of Fraser-Fort George, District of Kitimat, Town of Smithers, Village of Telkwa, Village of Granisle, District of Houston, Village of Burns Lake, District of Vanderhoof, District of Fort St. James; and,
 - First Nations: Haisla Nation; Kitselas First Nation; Lax Kw'alaams Indian Band; Metlakatla Indian Band; Wet'suwet'en Hereditary Chiefs, as represented by the Office of the Wet'suwet'en; Skin Tye First Nation; Nee Tahi Buhn Indian Band; Lheidli-T'enneh Indian Band; McLeod Lake Indian Band; West Moberly First Nations; Halfway River First Nation; the Treaty 8 Tribal Association; and the Carrier Sekani Tribal Council, representing the Wet'suwet'en First Nation (Broman Lake Band), Burns Lake Indian Band, Saik'uz First Nation, Nadleh Whut'en Indian Band, Nak'azdli Indian Band and Stellat'en First Nation.
- Working Group meetings were held in October and December 2007 and in January and March 2008. A field visit was organized for the Working Group in October 2007. A sub-committee reviewed fisheries issues in greater detail in January 2007.
- On March 31, 2008, the 180-day time limit for completion of the review of the Application was suspended for 24 days, at the Proponent's request, to allow the Proponent to provide additional information to complete the review. On April 18, 2008, the Proponent requested an additional 10-day suspension of the Application review timeline to May 4, 2008. This moved the date for completing the Application review from April 8 to May 12, 2008.
- The assessment of the Application was completed on May 12, 2008 which was within the 180-day time limit mandated under section 3 of the Prescribed Time Limits Regulation.
- In accordance with section 4 of the Prescribed Time Limits Regulation, Ministers have 45 days or until June 26, 2008 to make a decision on the Application, unless an extension is ordered in accordance with section 24(4) of *the Act*.

3. Federal Process

- The Project EA was initially conducted as a harmonized provincial-federal review, but the review process became de-harmonized when federal Responsible Authority staff recommend that the federal review be carried out as a Comprehensive Study under *Canadian Environmental Assessment Act (CEAA)*. This change was made in light of a federal court decision that a Comprehensive Study is required when a component of a Project is on the *Comprehensive Study List Regulations* of the CEAA. As the extent of new right-of-way in the KSL Project exceeds the threshold in the Regulations, the decision to proceed to a Comprehensive Study was made. Recent steps in the federal review include:
 - on November 3, 2006, Fisheries and Oceans Canada and Transport Canada, determined that the Project triggered the CEAA, and that they were Responsible Authorities for the Project assessment. The Federal Notice of Commencement on the Canadian Environmental Assessment Registry website initiated the review as a Screening under the CEAA;
 - on January 30, 2008, at approximately day 110 of the 180-day provincial EA review period, federal Responsible Authority staff advised the EAO and the Proponent that, in light of the Federal Court decision in the *Red Chris* case, they would recommend that the federal review of the Project be carried out as a Comprehensive Study. They indicated that a Comprehensive Study will add additional requirements to the federal assessment, including requirements to consult the public; and,
 - on April 18, 2008, the Federal Notice of Commencement on the Canadian Environmental Assessment Registry website was amended to a Comprehensive Study and the Responsible Authorities formally commenced the process to determine whether the federal assessment of the Project will be carried out as a Comprehensive Study or will go to a Review Panel.
- De-harmonizing the provincial and federal Project EAs means the provincial and federal EA processes for the Project will be completed on significantly different timelines, with potentially different scopes, and a separate provincial Assessment Report and federal Comprehensive Study Report. The CEA Agency believes the Comprehensive Study process requirements will be completed by the fall of 2008 and a federal decision would follow completion of these requirements.

C. DISCUSSION

1. Potential Adverse Effects and Mitigation

- The Project crosses numerous ecosystems and physiographic regions and passes through or nearby multiple First Nation territories and communities. As a result, a wide range of issues were identified in the Application and these were then discussed in greater detail during the Application Review period. Many issues were addressed satisfactorily in the Application. The following identifies examples of the key issues involving potential adverse effects of the Project that were raised during the EA and that led to revised or new mitigation measures or commitments to address them:
 - Geophysical environment
 - slope stability, especially in upper Kitimat, Clore, Gosnell and Morice Valleys; and,
 - erosion and control of sedimentation.
 - Aquatic environment and fisheries
 - construction impacts on salmon and salmon habitat, especially in the Kitimat, Morice, Burnie and Salmon Rivers and Gosnell, Chist and Hunter Creeks;
 - construction impacts on Dolly Varden, bull trout, coastal cutthroat trout and their habitats;

- water quality monitoring;
- fisheries stream assessments; and,
- hydrostatic testing program.
- Terrestrial environment and wildlife
 - construction effects on grizzly bear, mountain goat, moose, northern goshawk, and trumpeter swan habitat;
 - wildlife movement corridors; and,
 - Habitat restoration and compensation for lost habitat.
- Species and Ecosystems at Risk
 - construction effects on White Sturgeon and their habitat, in the Stuart River; and,
 - rare plants and plant communities.
- Land and resource use
 - increased public access into previously inaccessible areas.
- First Nations Community and Land Use
 - routing of the pipeline;
 - loss of use or benefit of a resource;
 - access management; and,
 - additional fish and wildlife studies.
- The Application Review phase of the EA process was structured to identify issues with potential for significant adverse effects that may not have been addressed adequately by the mitigation measures and commitments made in the Project Application. The process sought to engage interested parties in further discussion on these issues in order to amend existing, or identify new, mitigation measures and commitments to respond to the concerns raised.
- Issues identified by the Working group were thoroughly reviewed in Working Group meetings and separately with key parties. Numerous new mitigation measures and commitments were made by the Proponent in response. These issues and the new or amended commitments created are summarized in the Working Group Issues Tracking Table (Appendix D of the EAO Assessment Report); the full Compendium of Proponent Commitments is contained in Appendix E of the Assessment Report, and attached to the EA Certificate as Schedule B.
- Issues identified specifically by First Nations are described more fully in the following section.
- Examples of the means used to address some of the key issues through mitigation measures and commitments made by the Proponent are shown in Table 1; a more complete discussion can be found in the Assessment Report.

Table 1: Examples of Key Issues, Mitigation Measures and Commitments

Issue / Effect	Resolution / Mitigation Measures	Residual Effects / Significance	Party Responsible
Geophysical Environment			
<p><u>Slope Stability / Erosion Control and Sedimentation:</u> Further assessment of the erosion potential of soils is required, given the occurrence of steep slopes, large logged off areas, terrain instabilities and the potential for natural hazards.</p>	<p>The Proponent has committed to:</p> <ul style="list-style-type: none"> • undertake additional terrain stability investigations as part of project design following certification. If areas of instability are identified, they will be subject to further geotechnical investigations which may lead to engineering design solutions or local route adjustments; • additional precautions (specified in Commitments Table) in known areas of debris flows; • review draft environmental management plans with other interested parties; • discharge all sediment-laden water to be pumped from a watercourse onto stable vegetation a minimum of 5 metres from any flowing watercourse and discharge points will be monitored; • regular inspections of areas susceptible to erosion during construction and monitoring of the right-of-way and access roads after construction; and, • implement adequate erosion controls on upslope areas to prevent release of harmful concentrations of suspended sediment. 	<p>No residual effects are anticipated with use of all mitigation measures.</p>	<p>Proponent</p>
Aquatic Environment and Fisheries			
<p><u>Construction Impacts on Salmon and Salmon Habitat</u> <u>Construction Impacts on Dolly Varden, bull trout, coastal cutthroat trout and their habitats</u></p> <p>Disturbance of instream fish habitat is likely to occur where instream crossing methods are used at fish-bearing streams.</p>	<p>The Proponent has committed to undertake mitigative measures to address potential loss or degradation of instream fish habitat, including:</p> <ul style="list-style-type: none"> • use horizontal directional drilling as the primary crossing method at key specified river crossings; • minimize the number of watercourse crossings by adopting environmental objectives during route selection. Where feasible avoid important instream habitats; • undertake surveys of specific sites with Dolly Varden to assess whether mature individuals are present and likely to spawn, and to use mitigation measures to encourage fish to select other sites; • work with the Ministry of Environment (MOE) and others to evaluate potential life stage sites with respect to short and long term access risks and develop strategies to limit access; • submit a draft Access Management Plan with MOE and others for review; • select vehicle and pipeline crossing methods that reduce direct and indirect effects on productive fish habitat; 	<p>Residual effects will be addressed by habitat compensation measures, developed with Department of Fisheries and Oceans.</p>	<p>Proponent Department of Fisheries and Oceans MOE</p>

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	<ul style="list-style-type: none"> adhere to instream work windows and minimize instream work period; and, implement adequate erosion control on upslope areas and non-fish-bearing watercourses, to prevent release of harmful concentrations of suspended sediment to fish-bearing waters. 		
<p>Mortality to fish may occur as a result of blasting, hydrocarbon spills, entrainment at water intakes, instream construction activities, and increased fishing pressure</p>	<p>The Proponent has committed to undertake mitigative measures to address potential effects to fish mortality, including:</p> <ul style="list-style-type: none"> use of isolation techniques on pipeline watercourse crossings; adhering to instream work windows and minimize instream work period; and, salvage fish from instream construction areas prior to dewatering, trenching and other construction activities. 	<p>Any residual effects that may occur are deemed to be less than significant.</p>	<p>Proponent</p>
<p><u>Water Quality Monitoring:</u> Concerns about impacts to water quality in the Morice Water Management Area, that may lead to impacts to fish and fish habitat.</p>	<p>The Proponent has committed to:</p> <ul style="list-style-type: none"> engage the Office of the Wet'suwet'en in the development of a water sampling program and to develop an appropriate reference state sampling program; and, design water quality monitoring to include multiple samples for larger streams and a range of sample sites. 	<p>Any residual effects that may occur are deemed to be less than significant.</p>	<p>Proponent</p>
<p><u>Fisheries Stream Assessments</u> Concerns about some fish studies being done during low water year resulting in incorrect data, and about insufficient full life cycle fisheries data in certain watercourses.</p>	<p>The Proponent has committed to:</p> <ul style="list-style-type: none"> revisit crossing sites in the Gosnell Creek and Upper Morice River to determine if fish may be present under normal flow conditions; re-sample Welch Creek when fish are most likely to be present and modify the in-stream work window and crossing method as appropriate; review data from other crossing sites to determine if a similar re-assessment should be done; amend crossing methods where indicated by new data; and, undertake additional studies on areas of high value / high risk and incorporate traditional knowledge where applicable. 	<p>Any residual effects that may occur are deemed to be less than significant.</p> <p>If residual effects occur they will be addressed by habitat compensation measures developed with Department of Fisheries and Oceans.</p>	<p>Proponent Department of Fisheries and Oceans MOE</p>
<p><u>Hydrostatic Testing Program</u> Concerns about the volume of water extracted and how/where it will be</p>	<p>The Proponent has committed to:</p> <ul style="list-style-type: none"> develop a hydrostatic test plan that sets specifications to manage discharge water quality and temperature; address erosion and mass wasting concerns; limit withdrawal to no more than 10% of flow and ensure there is enough 	<p>Any residual effects that may occur are deemed to be less than significant.</p>	<p>Proponent MOE Oil and Gas Commission</p>

Table 1: Examples of Key Issues, Mitigation Measures and Commitments

Issue / Effect	Resolution / Mitigation Measures	Residual Effects / Significance	Party Responsible
discharged following use.	flow to accommodate a 10% withdrawal; <ul style="list-style-type: none"> review the hydrostatic test plan with MOE, Oil and Gas Commission and others; and, address the risks to juvenile fish, sensitive periods that are to be avoided, and locations for withdrawal in the hydrostatic test plan. 		
Terrestrial Environment and Wildlife			
<p><u>Effects on Various Species and Movement Corridors</u></p> <p><u>Habitat Restoration and Compensation for Lost Habitat</u></p> <p>Direct and indirect effects to wildlife and wildlife habitat including important seasonal habitats (e.g. reproductive areas), specific habitat features (e.g. dens and mineral licks), and where protective or thermal cover is cleared in wildlife movement corridors.</p>	<p>The Proponent has committed to undertake mitigative measures to address potential effects to wildlife and wildlife habitat, including:</p> <ul style="list-style-type: none"> pipeline routing, clearing and construction scheduling will reduce the potential impacts to wildlife and wildlife habitat; conduct a pre-construction “route walk” by a wildlife specialist prior to clearing and construction to identify sites, movement corridors, etc; record site-specific wildlife habitat features (e.g. wildlife trees, stick nests etc) in select locations; where appropriate, salvage cut deciduous tree debris for redistribution on alignment post-construction as coarse woody debris; a range of specific measures to respond to concerns regarding grizzly bear, mountain goats, northern goshawk; participating in a Wildlife/Wildlife Habitat sub-committee to develop compensation and mitigative strategies and more; and, undertake additional studies with involvement of First Nations and others. 	Any residual effects that may occur are deemed to be less than significant.	Proponent MOE First Nations
Species and Ecosystems at Risk			
<p><u>Construction Effects on White Sturgeon in the Stuart River.</u></p> <p><u>Rare Plants and Communities</u></p>	<p>The Proponent has committed to:</p> <ul style="list-style-type: none"> horizontal directional drilling as the primary crossing method of the Stuart River; if drilling proves infeasible, to consider an aerial crossing if that is determined acceptable to the local community; and, identify rare plants and communities at the site level and minimize impacts; modifications to the project footprint will be considered to avoid or reduce impact. 	Any residual effects that may occur are deemed to be less than significant.	Proponent Department of Fisheries and Oceans MOE
Land and Resource Use			
<p><u>Increased Public Access into Previously Inaccessible Areas</u></p> <p>Increased access may increase</p>	<p>The Proponent has committed to:</p> <ul style="list-style-type: none"> implement an Access Management Plan with control measures (e.g. berms etc. at strategic points) to minimize unauthorized motorized access; provide funding to monitor unauthorized motorized use in identified land management 	Any residual effects that may occur are deemed to be less than significant.	Proponent MOE

Table 1: Examples of Key Issues, Mitigation Measures and Commitments

Issue / Effect	Resolution / Mitigation Measures	Residual Effects / Significance	Party Responsible
pressures on fish and wildlife or other resources.	zones and to assess efficacy of control strategies; • address streams deemed to be of high fisheries values in the Access Management Plan and work with MOE and others to identify locations requiring access management; and, • block off access by recreational vehicles where highly erodible and sediment producing soils are encountered (specific sites are known).		
First Nations Community and Land Use (See Next Section: First Nations' Interests)			

- Having regard to all of the information contained in the Proponent Documents and Correspondence (Appendix A of the Assessment Report) and in the EAO Assessment Report, the EAO concludes that there are no residual or outstanding significant adverse effects as a result of the Project being designed, constructed, operated and maintained as described in these documents. This conclusion takes into account the position of federal agencies as discussed in section 5 below.

2. Employment and Economy

- As noted in the Background section, project capital costs are estimated at \$1.1 billion (2006 dollars), of which approximately \$750 million will be for installation of the pipeline and related facilities. Approximately 1,200 - 1,500 jobs will be created over a 24 month (approximate) clearing and construction phase. Few if any permanent jobs will be created to operate the Project.
- The Proponent has committed to communicate with communities and Chambers of Commerce 6 to 12 months ahead of construction regarding potential service and supply opportunities and may undertake regional business registration / procurement meetings in communities across the corridor. They are also committed to a procurement program that actively promotes local opportunities, including Aboriginal businesses.
- The proponent will communicate with local employment offices, First Nations and regional employment agencies to identify workforce needs and potential opportunities for employment.

3. First Nations' Interests

FIRST NATIONS CONSULTATION

- Seventeen First Nations were directly consulted at different stages in the review regarding the potential for impacts to their interests and rights. The EAO made a decision at the outset of the EA process to use an approach of "deep consultation" (with respect to the *Haida* spectrum of consultation) with all of these First Nations in order to develop and implement measures to avoid or minimize impacts to Aboriginal rights or Treaty rights.
- First Nations consulted include: Haisla Nation; Kitselas First Nation; Lax Kw'alaams Indian Band; Metlakatla Indian Band; Wet'suwet'en Hereditary Chiefs, as represented by the Office of the Wet'suwet'en; Skin Tyee First Nation; Nee Tahi Buhn Indian Band; Lheidli-T'enneh Indian Band; McLeod Lake Indian Band; West Moberly First Nations; Halfway River First

Nation; the Treaty 8 Tribal Association; and the Carrier Sekani Tribal Council, representing the Wet'suwet'en First Nation (Broman Lake Band), Burns Lake Indian Band, Saik'uz First Nation, Nadleh Whut'en Indian Band, Nak'azdli Indian Band and Stellat'en First Nation.

- The section 11 order issued under the *EA Act* directed the Proponent to carry out certain aspects of consultation with all First Nations and to report on those efforts. The EAO determined that the Proponent carried out a satisfactory First Nation consultation program during both the Pre-Application and Application Review stages.
- The EAO offered capacity funding to all First Nations during both the Pre-Application and Application Review stages of the EA process.
- Six First Nations, represented by the Carrier Sekani Tribal Council, chose not to participate in the EA review based on principled opposition to the EA process as a mechanism for consultation and accommodation. The EAO consulted with the Carrier Sekani Tribal Council during Pre-Application to respond to their concerns but was unable to satisfactorily address every process issue with them. As a result, the Carrier Sekani Tribal Council chose to work directly with the Proponent in reviewing the Application and, according to the Proponents April 2008 summary of consultations, Carrier Sekani First Nations interests were expected to be addressed satisfactorily and no amendments to the Application were required. The Carrier Sekani Tribal Council chose not to provide comment on those assertions pending final resolution of consultations with the Proponent and with the Province on an economic benefits agreement (see below).
- The Project only marginally affected the asserted territory or Treaty lands of another five First Nations (i.e. approximately 12 to 15 kilometres of the 463 kilometre Project traversed the periphery of their territory). These First Nations include Lax Kw'alaams Indian Band and Metlakatla Indian Band (in the Kitimat Valley) and the Treaty 8 signatories McLeod Lake Indian Band, West Moberly First Nations, and Halfway River First Nation (near Summit Lake). Notwithstanding this limited extent of the project in these territories, a full assessment was given to any issues raised (e.g. potential for impacts at river crossings, in wetlands or near cultural heritage sites).
- All issues identified by these five First Nations were addressed such that the EAO believes there is no significant impact on each First Nation's ability to continue to exercise their Aboriginal rights or Treaty rights. The individual First Nation consultation sections of the Assessment Report describe how this conclusion was reached for each First Nation in greater detail.
- The Project crossed extensive portions of the remaining six First Nations territories and these First Nations raised varying levels of concern about the risk of adverse impacts.

Haisla Nation

- The Haisla Nation was an active participant in the EA process and raised multiple concerns about the risk of adverse impacts from the Project in the Kitimat valley. Key concerns included: the Proponents choice of pipeline route through the upper Kitimat Valley that is already heavily impacted by past development activities; terrain and soil stability; impacts to fish and fish habitat in the Kitimat River system; impacts to wildlife and wildlife habitat in the Kitimat valley; access management; impacts to cultural heritage sites; cumulative impacts; insufficient information on fish to properly plan for construction activities; and the need for detailed environmental protection plans and monitoring, with Haisla involvement.
- All of the above issues were discussed at length during Working Group meetings and reviewed through correspondence. Numerous new or revised commitments were created by the Proponent to address these concerns, including undertaking more detailed, additional terrain stability studies, baseline fish/fish habitat studies, and greater involvement of the Haisla Nation in planning and monitoring and future studies. The Proponent provided rationales for the selection of the Project alignment in the Kitimat Valley and made some small re-alignments to the route in the upper Kitimat valley to address wildlife habitat

concerns. Commitments were also made to specific stream crossing methods that would minimize risk of impacts to fish and wildlife.

- The EAO consulted directly with Haisla Nation leadership on four occasions regarding the Project and the potential for impacts to Haisla Nation aboriginal rights.
- On April 18, 2008 the Haisla Nation wrote to the EAO conveying support for the Project receiving its Provincial EA Certificate, subject to a specific condition that is now accepted by the Proponent as a commitment, and subject to addressing federal government issues in the federal EA process.

Kitselas First Nation

- The Kitselas First Nation was an active participant in the EA process and raised concerns similar to the Haisla Nation as they pertain to the upper Kitimat Valley and the Clore River valley on the east side of the Coast Mountains. Kitselas focused on impacts to ungulates (moose and mountain goat) and their habitat; grizzly bears and their habitat, recognition of proposed wildlife habitat areas; access management; and the need for additional wildlife studies, detailed site assessments and monitoring, all with Kitselas involvement.
- All of the above issues were discussed at length during Working Group meetings and reviewed through correspondence. Numerous new or revised commitments were created by the Proponent to address these concerns, including undertaking additional terrain studies, additional fish and wildlife studies with the involvement of Kitselas staff, engaging Kitselas in a pre-construction "route walk" and greater involvement of Kitselas in future planning and monitoring. The Proponent provided rationales for the selection of the Project alignment in the Kitimat Valley and made some small re-alignments to the route in the upper Kitimat valley to address wildlife habitat concerns expressed by Kitselas. Commitments were also made to specific stream crossing methods that would minimize risk of impacts to fish and wildlife.
- Kitselas informed the EAO that they would continue to evaluate the Project from an "impacts and benefits" perspective; that they would participate in economic benefits discussions that were underway with the Proponent and the Province; and that their final endorsement of the Project rests on both a resource stewardship component and the "impacts and benefits" component.
- The EAO consulted directly with senior Kitselas land and resource management on three occasions regarding the Project and the potential for impacts to Kitselas First Nation aboriginal rights. The EAO now understands that the Kitselas First Nation is supportive of the Project moving forward, subject to their ongoing involvement and evaluation as noted above.

Wet'suwet'en Nation (as represented by the Office of the Wet'suwet'en)

- The Office of the Wet'suwet'en was an active participant in the EA process as well. In May 2006, the Office of the Wet'suwet'en wrote to the EAO about the proposed route for the Project and stated that the Wet'suwet'en do not support the development of a pipeline through the culturally important areas in the Morice Lake / Gosnell Creek area.
- The Wet'suwet'en Hereditary Chiefs sought to have the Morice Lake / Gosnell Creek area fully protected as part of the Morice Land and Resource Management Plan; however they ultimately negotiated an agreement with the Integrated Land Management Bureau to designate these lands as the Morice Watershed Management Area. The management direction for this Area recognizes the importance of water quality to Wet'suwet'en culture and livelihood and to aquatic ecosystems, particularly salmon and salmon habitat. A water monitoring framework is being implemented to establish baseline conditions and track future water quality in the Morice Watershed Management Area.
- The Office of the Wet'suwet'en raised numerous concerns about the risk of adverse impacts from the Project, with a particular emphasis on the Morice and Gosnell valleys. Key areas of concern included: the Proponents choice of pipeline route; terrain and soil stability; impacts

to fish and fish habitat in the Morice River system; impacts to wildlife and wildlife habitat in the Morice and Gosnell valleys; contamination of country foods; crossings of the Morice and Clore Rivers and Gosnell Creek; access management; invasive weeds encroaching in the right-of-way; impacts to cultural heritage sites; noise impacts; cumulative impacts; insufficient information on fish to properly plan for construction activities; and the need for detailed environmental protection plans and monitoring, with Wet'suwet'en involvement.

- All of the above issues were discussed at length during Working Group meetings and with federal and provincial agencies, and were reviewed through correspondence. Numerous new or revised commitments were created by the Proponent to address these concerns, including undertaking more detailed, additional terrain stability studies, baseline fish/fish habitat studies, and greater involvement of the Office of the Wet'suwet'en in planning and monitoring and future studies. The Proponent provided rationales for the selection of the Project alignment in the Morice and Gosnell Valleys; the Proponent also discussed a significant realignment of the Project that would avoid approximately 30 kilometres of the Morice Valley and has made a commitment to evaluate that further to determine if it further reduces impacts for the Office of the Wet'suwet'en. Commitments were also made to specific stream crossing methods that would minimize risk of impacts to fish and wildlife, to analyze country foods and to address noise concerns at the compressor station.
- The Proponent arranged for two helicopter trips and a field trip to review alternate routes with Wet'suwet'en leadership and staff and engaged in discussions on the proposed alignment.
- The EAO consulted directly with senior officials in the Office of the Wet'suwet'en on five occasions regarding the Project and the potential for impacts to Wet'suwet'en aboriginal rights; the latter two meetings in April 2008 included representatives from the Integrated Land Management Bureau and the MOE to specifically discuss the management objectives and water monitoring plan for the Morice Watershed Management Area.
- The Office of the Wet'suwet'en have taken a position that no level of risk of impact is acceptable to water quality, and hence to fish and fish habitat, in the Morice Watershed Management Area and therefore they remain opposed to the Project being approved as proposed. On May 12, 2008 the Office of the Wet'suwet'en wrote to the Minister of Environment to formally submit their strong opposition to the KSL pipeline route as currently proposed (see attached letter). The letter reiterates their concerns regarding the potential impacts of the Project, their assertion of Aboriginal rights and title and that additional post-certification diligence is needed to ensure impacts and effects are prevented or avoided. All of these issues have been considered in the Assessment Report.
- The EAO, together with other provincial officials, have attempted to explore with the Office of the Wet'suwet'en whether the implementation plan for water monitoring in the Morice Watershed Management Area and the multiple mitigation measures and commitments made by the Proponent, can address Office of the Wet'suwet'en concerns.
- The EAO recognizes that the Project creates some risk of impacts to water quality, and therefore to fish and fish habitat, in the Morice Watershed Management Area. However, the EAO believes, based in part on expert advice from members of the Working Group, that the mitigation measures and commitments from the Proponent will minimize impacts and will not lead to significant residual effects to the Wet'suwet'en people exercising their asserted Aboriginal rights.

Skin Tyee First Nation and Nee Tahi Buhn Indian Band

- The Skin Tyee First Nation and the Nee Tahi Buhn Indian Band did not participate actively in the Working Group meetings but were kept fully informed of progress of the EA. Many of the issues raised are similar and include: impacts to wildlife and fish and their habitats; impacts to plant gathering sites; impacts to cultural heritage sites and trails; impacts to traplines; and safety concerns.

- All of these issues have been addressed at Working Group meetings as they have been raised by most other First Nations as well. These discussions led to new and revised commitments, such as those noted above under other First Nations.
- The EAO sponsored a community meeting of the Skin Tyee First Nation with federal and provincial agencies to discuss the Project and the potential for impacts to Skin Tyee aboriginal rights. The EAO met directly with leadership and senior officials from Nee Tahí Buhn Indian Band on three occasions regarding the Project and the potential for impacts to Nee Tahí Buhn aboriginal rights. In April 2008 the Chief Councillor for the Nee Tahí Buhn conveyed to the EAO his support for the proposed Project route alignment.

Lheidli-T'enneh Indian Band

- The Lheidli-T'enneh Indian Band did not participate in the Working Group meetings but were kept fully informed of progress of the EA. The issues raised by Lheidli-T'enneh were similar to those identified above, but with specific references to locations in their territory. All of these issues have been addressed in a manner similar to those noted above.
- The EAO met with Lheidli-T'enneh representatives on three occasions regarding the Project and the potential for impacts to Lheidli-T'enneh aboriginal rights.
- The EAO has assessed how the Project might impact on the asserted aboriginal rights or treaty rights of all 17 First Nations. A draft consultation report for each First Nation, outlining this assessment, was shared with each First Nation with a request for review and comments. Any comments received were considered by EAO and incorporated, to the extent possible, in the final consultation report; all reports were then compiled into Part D of the Assessment Report.
- In the review of the proposed Project, the EAO has considered each First Nation's assertion of Aboriginal rights and the information available to support the strength of that assertion, or the Treaty Rights held by Treaty 8 First Nations, within and adjacent to the proposed Project corridor. The EAO has also considered the potential for impacts from the proposed Project on the ability of First Nations to reasonably exercise those rights, based on the Project being implemented as designed and in accordance with all avoidance and mitigation measures and commitments made by the Proponent.
- The EAO and the Proponent have been engaged in consultations with the First Nations throughout the EA to jointly discuss the potential for impacts and to develop measures to mitigate or otherwise accommodate First Nation Aboriginal rights or Treaty rights. The First Nations have had an opportunity to review and comment on the EAO Assessment Report and to specify the nature and scope of their rights from their point of view.
- Having regard to all of the above, the EAO concludes that the process of consultation has been carried out in good faith, and that it was appropriate and reasonable in the circumstances. The EAO also concludes that the potential for effects on asserted Aboriginal rights, or Treaty rights, has been mitigated or otherwise accommodated to an appropriate level such that they will not significantly impact a First Nation exercising their rights. In concluding this the EAO recognizes, that if the Project receives an EA Certificate, then additional detailed studies and programs are yet to be carried out and subsequent evaluations of risk of impacts will be undertaken, notably during the federal comprehensive study under CEAA and prior to any authorizations issued by Fisheries and Oceans Canada and the BC Oil and Gas Commission. The EAO believes the review process has reasonably balanced Aboriginal concerns of potential for impacts on asserted rights with other societal values.

FIRST NATION ECONOMIC BENEFITS DISCUSSIONS

- The province has been engaged in a discussion with all 17 First Nations regarding an economic benefits agreement related to the KSL Pipeline Looping Project. These discussions have been carried out completely independent of the EA review and the EAO has not been involved in them.
- The Ministry of Energy, Mines and Petroleum Resources (MEMPR) has sought and received a mandate to negotiate on behalf of the province. The MEMPR representative and the EAO have maintained regular contact to exchange updates on their respective roles relating to the Project.
- All First Nations have been given an opportunity to participate in those discussions and in any economic benefits agreement that evolves from them.
- A First Nations group, referred to as the First Nations Trade and Commerce Group, was formed to facilitate engagement of all First Nations in these discussions.
- These discussions are ongoing at this time. Some First Nations have taken a position that they cannot comment on their final opinion on the EA until such time as these separate discussions have concluded.

4. Public Consultation

- The Proponent carried out a public consultation program for both the Pre-Application and Application Review stages that met the requirements of the EAO.
- Seven open houses were held by the Proponent during the 45-day public review period on the Application. The EAO attended each open house and received a total of 11 public comments.
- Comments from the public on the Project were generally favourable, but concerns were raised about potential Project effects, including effects on: water quality and fish, especially in the Upper Kitimat Valley, wildlife, especially grizzly bear near the Kitimat River, angling guiding in the Zymoetz watershed, access control for livestock near Ormond Creek, and greenhouse gas emissions. These issues were recorded in a public issues tracking table and considered by the Working Group. Existing and new Proponent commitments address all public issues.

5. Position of Federal Agencies

- The CEA Agency believes the Comprehensive Study process requirements will be completed by the fall of 2008 and a federal decision would follow completion of these requirements.
- Key issues to be assessed in the federal EA are potential Project effects on salmon and salmon habitat, migratory birds, species at risk (especially White Sturgeon), navigation, cumulative environmental effects, effects of the environment on the Project and alternative means of carrying out the Project. The latter could lead to a more detailed assessment of the relative merits of alternative pipeline routes, particularly through the Coast Mountains and Morice watershed.
- Considerable effort was made throughout the EA to review the risk of impacts to federal *Fisheries Act* responsibilities. Meetings specific to fisheries issues were held at various stages of the provincial EA process and the risks of impacts at all stream crossings were reviewed. The Department of Fisheries and Oceans has indicated they are satisfied with the choice of primary crossing method for each stream crossing and stressed that any decision to use a secondary method for any crossing would require revisiting the issue with Department of Fisheries and Oceans. The Proponent developed a matrix outlining how such decisions would be made, including referrals to Department of Fisheries and Oceans.

- The EAO and the Proponent worked closely with Department of Fisheries and Oceans during the latter part of the EA review to develop responses, satisfactory to Department of Fisheries and Oceans, on all federal issues related to the aquatic environment, fisheries and species at risk for White Sturgeon in the Working Group Issues Tracking Table. A number of new mitigation measures and commitments were made at this time to address any remaining issues, including a commitment to use horizontal directional drilling as the primary crossing method at three Salmon River crossings. The Proponent will conduct additional work during the Comprehensive Study review and on further development of the Conceptual Habitat Compensation Plan required by Department of Fisheries and Oceans.
- The Responsible Authorities identified that the cumulative effects assessment and methodology is still undergoing review by the federal agencies and indicated that further discussions may occur during the Comprehensive Study review on this topic.
- Responsible Authority staff have not identified any unacceptable Proponent responses to the issues that they raised during the EA; however, some federal issues may be reviewed in more detail during the Comprehensive Study.
- The Responsible Authorities have not yet made a determination on the likelihood of significant adverse environmental effects arising from the project after mitigation. The federal process will continue with a comprehensive study review under CEAA.

D. CONCLUSIONS

The Environmental Assessment Office is satisfied that:

- the Assessment process has adequately identified and addressed the potential adverse environmental, economic, social, heritage and health effects of the Project, having regard to the conditions, and the mitigation measures set out in the Schedule to the draft Environmental Assessment Certificate;
- public consultation, and the distribution of information about the Project, has been adequately carried out by the Proponent consistent with the *EA Act*; and,
- the Crown has fulfilled its obligations for consultation and accommodation to First Nations relating to the issuance of an Environmental Assessment Certificate for the Project.

RECOMMENDATION:

The Executive Director recommends that an Environmental Assessment Certificate be issued to Pacific Trail Pipelines Limited Partnership (Proponent) for the proposed Kitimat – Summit Lake Pipeline Looping Project, subject to the Proponent's written agreement to comply with all commitments included in the draft Environmental Assessment Certificate and Schedules.

Submitted by:



Robin Junger
Associate Deputy Minister / Executive Director
Environmental Assessment Office

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RODA, JUNIOR
ASSOCIATE VICE PRESIDENT & GENERAL MANAGER
INTERNATIONAL AND DOMESTIC COUNCIL

DATE OF YEAR