

Page 001 to/à Page 008

Withheld pursuant to/removal as

NR

Ferbey, Stasia EAO:EX

From: Braun, Nathan EAO:EX
Sent: Friday, April 17, 2015 9:19 AM
To: 'James Witzke' (jamesw@gitxaalanation.com)
Cc: Dodd, Nikki EAO:EX
Subject: LNG Canada - Gitxaala SOC edits
Attachments: Part C_draft-20150413 - Gitxaala SOC edits.docx

Follow Up Flag: Follow up
Flag Status: Completed

Hello James,

Following from our discussions earlier this week, here are the edits we proposed in relation to Gitxaala's comments about EAO's SOC assessment. We have made these edits in consideration of the nature and extent of the effects of the proposed LNG Canada project.

We are still considering other comments from Gitxaala.

Please let me know if you have any further comments on the SOC assessment, and if you would like to meet to discuss.

Regards,
Nathan

Ferbey, Stasia EAO:EX

From: Braun, Nathan EAO:EX
Sent: Wednesday, April 8, 2015 4:46 PM
To: James Witzke; Hubert, Edwin EAO:EX
Cc: Dodd, Nikki EAO:EX
Subject: RE: Gitxaala Meeting

Thanks. We will book a room here at the EAO offices (836 Yates St) for the morning of April 13.

Nathan

From: James Witzke [<mailto:jamesw@gitxaalanation.com>]
Sent: Wednesday, April 8, 2015 4:30 PM
To: Braun, Nathan EAO:EX; Hubert, Edwin EAO:EX
Cc: Dodd, Nikki EAO:EX
Subject: RE: Gitxaala Meeting

Hi Nathan, we will come there as we are attending a meeting in Victoria the next day.

We would like to discuss the SoC for LNG Canada sometime in the next week or two (still working to see what timelines look like), but think a larger conversation needs to occur as well in the near future.



James Witzke
Environmental Assessment Coordinator
Gitxaala Environmental Monitoring

280-110 1st Ave W
Prince Rupert BC
V8J 1A8
W: 250-624-3339
C: 250-600-3622

From: Braun, Nathan EAO:EX [<mailto:Nathan.Braun@gov.bc.ca>]
Sent: April 8, 2015 4:11 PM
To: James Witzke; Hubert, Edwin EAO:EX
Cc: Dodd, Nikki EAO:EX
Subject: RE: Gitxaala Meeting

Hello James,

Monday at 9am works for us. Are you still planning to come to Victoria for this? We'd be happy to host you here.

When would you like to have the Strength of Claim meeting? Would it be in relation to LNG Canada, or more general?

Thanks,
Nathan

From: James Witzke [<mailto:jamesw@gitxaalanation.com>]

Sent: Wednesday, April 8, 2015 3:36 PM

To: Braun, Nathan EAO:EX; Hubert, Edwin EAO:EX

Subject: RE: Gitxaala Meeting

Hi Nathan,

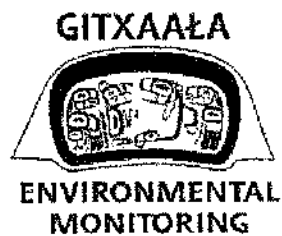
Can we arrange the meeting for 9 AM on the morning of the 13th then?

We would like to keep this meeting focused on the technical aspects of our review, but would also like to plan for a separate meeting to discuss Strength of Claim as well.

In attendance on Monday will be Myself, Samantha Lewis (GEMs new project coordinator), Germaine Conacher, Matt Hammond and Viginia Mathers.

At the second meeting, we will have Dr. Charles Menzies and Robert Janes present.

Thanks



James Witzke
Environmental Assessment Coordinator
Gitxaala Environmental Monitoring

280-110 1st Ave W
Prince Rupert BC
V8J 1A8
W: 250-624-3339
C: 250-600-3622

From: Braun, Nathan EAO:EX [<mailto:Nathan.Braun@gov.bc.ca>]
Sent: April 7, 2015 8:39 PM
To: 'James Witzke'; Hubert, Edwin EAO:EX
Subject: RE: Gitxaala Meeting

Hello James,

Unfortunately the afternoon of April 13th isn't great for me. Could the morning of April 13 or any time April 14 work for you?

Just to let you know, we are planning a workshop/meeting on the additional LNG Canada wake studies for April 15. The meeting will be in Vancouver (with a remote participation option). Edwin will be sending out an invitation tomorrow.

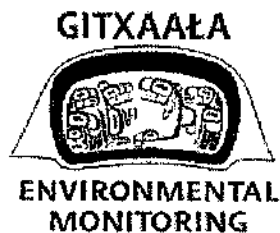
Nathan

From: James Witzke [<mailto:jamesw@gitxaalanation.com>]
Sent: Tuesday, April 7, 2015 4:07 PM
To: Braun, Nathan EAO:EX; Hubert, Edwin EAO:EX
Subject: Gitxaala Meeting

Good day.

Are the two of you available for a meeting on the afternoon of the 13th in Victoria? We would like to go over the draft referral material as well as discuss any outstanding issues from the EA application. We propose to have our comments on the referral package by the afternoon of the 9th or morning of the 10th for your review prior to our meeting.

Thanks



James Witzke
Environmental Assessment Coordinator
Gitxaala Environmental Monitoring

280-110 1st Ave W
Prince Rupert BC
V8J 1A8
W: 250-624-3339
C: 250-600-3622



File: 30050-20/ADIS-04-01

Ref: 104934

December 19, 2014

SENT VIA EMAIL

Deputy Chief Clarence Innis
and Councillors
Gitxaala Nation
PO Box 149
11 Ocean Drive
Kitkatla, BC V0V 1C0

Dear Chief Innis and Councillors:

Aurora Liquefied Natural Gas Ltd. (Proponent) proposes to construct and operate a liquefied natural gas export facility (proposed Project). As an initial step in the consultation process, the Environmental Assessment Office (EAO) has considered the potential impacts of the proposed Project on the rights and title (Aboriginal Interests) claimed by Gitxaala Nation.

Overview of the proposed Project

The Proponent is proposing to construct and operate a new facility to liquefy natural gas and enable its export to overseas markets. The proposed Project would be located on the southeast corner of Digby Island, 3 km southwest of Prince Rupert, BC, British Columbia (see Appendix A for a proposed Project map) and includes a liquefied natural gas (LNG) facility, a marine terminal, and related shipping activities from the marine terminal to the Pilot Boarding Station at Triple Island. The facility would have a storage capacity of up to 540,000 m³ and would produce up to 24 million tonnes per year of LNG. The marine terminal and LNG loading facility would be capable of accommodating up to three LNG carriers with a capacity up to 217,000 m³. The proposed Project will require approximately 160 to 320 annual LNG carrier visits.

The proposed Project is in the early stages of the environmental assessment (EA) process. The exact locations of related infrastructure (e.g. work camp) are not yet known. More information about the proposed Project (including specific locations of infrastructure) will be gathered through the course of the EA and will be included in the

.../2

Environmental
Assessment
Office

Mailing Address:
PO Box 9426 Stn Prov Govt
Victoria BC V8W 9V1

Location:
1st, 2nd & 4th Fl – 836 Yates
Street
Victoria BC V8W 1L8

Proponent's Application for an EA Certificate. Available details about the proposed Project are and will continue to be publically available on EAO's website at <http://www.eao.gov.bc.ca>.

Context of an Initial Assessment of Strength of Claims

A key objective of the EA process is to identify potential adverse effects of proposed projects and explore measures to avoid, mitigate or otherwise appropriately address such effects. EAO is committed to meeting its duty to consult and accommodate, as appropriate, with regards to the potential impacts of the proposed project on Gitxaala Nation's Aboriginal Interests. The scope of the required consultation and any accommodation is proportionate to both a preliminary assessment of strength of claims and a preliminary assessment of potential seriousness of impacts of the proposed Project on those claims. Please note that the EA process is not a rights determination process; rather, the purpose of these initial assessments is to inform consultation and accommodation regarding this proposed Project.

EAO is providing our initial assessments to Gitxaala Nation for your input. EAO's assessments and your input will be used to better understand the nature of the Aboriginal Interests that may be impacted by the proposed Project. The initial assessment, and any information you provide, may also be useful to other permitting agencies that may be required to issue authorizations associated with the proposed Project, such as the British Columbia Oil and Gas Commission.

The initial strength of claim assessment considered Aboriginal rights, including title, as defined by current case law, which may be impacted by the proposed Project. EAO acknowledges that for some First Nations, the specific locations where a First Nation exercised Aboriginal rights around the time of contact, or at 1846, do not include some locations that may be very important to those First Nations for current-day use for tradition purposes. The exercise of rights at these locations can be considered in the EA, as there are opportunities during the EA to identify impacts to such uses and to address such impacts through mitigation measures, as appropriate.

This initial assessment is specific to the areas of Gitxaala Nation's asserted traditional territory that are in proximity to the proposed Project. This assessment does not apply to other parts of Gitxaala Nation's territory. It is based on information currently available to government including information brought forward in other EA processes that are underway or completed (see list of references in Appendix B) and is subject to change should case law change or additional information become available, including any information you may provide. Please review these initial assessments and contact me if you have any comments or additional information that should be considered.

.../3

Initial Review of Gitxaala Nation's Claims of Aboriginal Interests in the Vicinity of the proposed Project

Based on current case law and a review of the currently available information regarding what was considered Gitxaala traditional territory at the time of contact and information indicating historic use, EAO's initial assessment is that Gitxaala Nation has a:

- Weak to moderate *prima facie* claim of Aboriginal rights to harvest resources with respect to any Gitxaala use of the coastal area, including the area of the proposed Project. The proposed Project is located outside of what was considered by ethnographers as within the pre-contact traditional territory of the Gitxaala Nation. While it is probable that Gitxaala Nation used campsites and harvested resources along the coast en route to or from the eulachon fishery on the Nass River each year, use of this area at the time of contact (1787) was likely conditional on the permission of, or kinship ties to, the Nine Allied Tsimshian Tribes.
- Weak *prima facie* claim of Aboriginal title within or near those portions of the proposed Project areas which overlap with the asserted traditional territory of Gitxaala Nation as the evidence available suggests Gitxaala use of these lands was for transitory purposes and was likely conditional on the permission of, or kinship ties to, the Nine Allied Tsimshian Tribes.

Potential Impacts of a LNG Facility to Gitxaala Nation's Aboriginal Interests

EAO's initial review of the proposed Project description and information for other similar projects suggests that the proposed Project may include the following:

- Construction and operation of a natural gas receiving and LNG production facility, including associated infrastructure (e.g. storage tanks for LNG);
- Construction and operation of a marine terminal, including jetties and vessel berths;
- Operation of LNG carriers and supporting marine traffic along a designated marine access route; and
- Related infrastructure, including temporary construction camps.

Potential impacts of the proposed Project to Aboriginal Interests include:

- The proposed facility, associated infrastructure and marine terminal may temporarily or permanently impact an Aboriginal Group's access to lands and waterways in these areas where fishing, hunting of marine mammals and gathering activities occur in the immediate vicinity;
- The proposed facility, associated infrastructure and marine terminal may impact the productive capacity of this area in relation to fish, animal or plant habitat;

.../4

- Shipping may affect marine resources, including Aboriginal Groups' access to lands and waterways where fishing, hunting of marine mammals and gathering activities occur; and
- Potential effects of air emissions from the facility on vegetation, terrestrial wildlife habitat and fresh water fish.

This list of potential impacts is not meant to be exhaustive and these potential impacts are based on a preliminary stage of information gathering that will continue throughout the EA process. It is important to recognize that the location of proposed Project infrastructure may also change. As part of the EA process, EAO is seeking your input to improve our understanding of the potential effects of the proposed Project on Gitxaala Nation's Aboriginal Interests.

Given the nature and location of the proposed Project, EAO is of the initial view that the potential impacts to Gitxaala Nation's Aboriginal Interests are likely to be minor. Please note that this initial assessment of impacts could change during the EA as more information becomes available.

Scope of Consultation for the Proposed Project

EAO's initial determination is that the Crown's duty to consult with Gitxaala Nation lies at the low end of the *Haida* spectrum for the proposed Project. This assessment may change as more information becomes available through the EA process. EAO's approach to date has been to meet or exceed this level of consultation.

Gitxaala will be included in Schedule B of the Section 11 Order for the proposed Project, providing for the following consultation opportunities:

- Participation in the Working Group;
- Meetings to identify and discuss Aboriginal Interests that may be affected by the proposed Project and potential measures to avoid, mitigate, address, or otherwise accommodate impacts;
- Review and comment on key documents, including draft Application Information Requirements, the Proponent's Application for an Environmental Assessment Certificate, and EAO's draft Assessment Report and Aboriginal Consultation Report; and
- Submission of a document outlining Gitxaala Nation's views on the Assessment Report to be included in the package of materials sent to Ministers if the proposed Project is referred for decision.

Funding:

EAO provides some funding to assist with First Nations participation in the EA process, particularly those aspects where EAO is engaged in direct discussion with First Nations.

.../5

At this time, I would like to offer Gitxaala Nation a grant in the amount of \$15,000 to assist with your participation of the EA review of the proposed Project.

This funding includes:

- \$5,000 from EAO for the Pre-Application Stage (to be distributed as soon as practicable after confirmation is received); and
- \$10,000 from EAO for the Application Stage (to be distributed after April 1, 2015, and may be flowed in instalments as funding permits).

This funding is intended to assist your First Nation with costs associated with participation in the substituted EA. This funding may be used for the following activities:

- Review of correspondence, including any ethnographic reports or preliminary strength of claim assessments EAO might make;
- Participation in the Working Group, including attendance at meetings and associated travel and related work;
- Review and comment on the draft Section 11 Order and the Application;
- Review and comment on the draft Application Information Requirements document, draft Assessment Report and EAO's Aboriginal consultation report; and
- Identification of respective Aboriginal interests that may be adversely affected by a proposed project and measures to avoid, mitigate, or otherwise address or accommodate potential adverse impacts on Aboriginal interests, as appropriate.

EAO requests that Gitxaala Nation confirm the acceptance of the grant in writing (letter or email) by no later than **January 15, 2015**. In the event that EAO does not receive a written confirmation by this date, EAO will assume that Gitxaala Nation has declined this funding.

In addition, as the proposed Project is undergoing a substituted EA, the Canadian Environmental Assessment Agency (the Agency) has committed to provide funding to support Gitxaala Nation's participation in certain eligible activities as part of a substituted EA, and EAO has committed to distribute that funding. A funding offer from the Agency will be communicated by EAO to Gitxaala Nation in a forthcoming letter.

Next steps:

I would like to set up a meeting with you to discuss these initial assessments and the EA, and propose the week of January 12, 2015. Please let me know if you and/or your representatives would be available that week for a meeting.

.../6

We look forward to hearing your views regarding this initial assessment and remain interested in understanding the nature of your Aboriginal Interests in the vicinity of the proposed Project, how the proposed Project may impact Gitxaala Nation, and any measures suggested to mitigate or avoid potential impacts.

EAO intends to share a summary of our initial conclusions on strength of claim with the Proponent for the proposed Project. These initial conclusions will inform the scope of consultation and any accommodation that may be required to address proposed Project impacts that are relevant to the Proponent fulfilling the delegated procedural aspect of consultation with Aboriginal Groups. If you have any concerns about that, please contact me by January 15, 2015. Otherwise, we would appreciate receiving any comments you have on these initial assessments by January 30, 2015.

EAO looks forward to consulting with Gitxaala Nation on the EA for the proposed Project. If Gitxaala Nation has any questions, requires further information or would like to arrange a meeting, please contact me at 250-638-5172 or by email at Tavis.McDonald@gov.bc.ca.

Yours truly,

Tavis McDonald

Enclosures:

Appendix A: Map of the proposed Project and Gitxaala Nation's asserted traditional territory

Appendix B: List of references

cc: James Witzke
Gitxaala Environmental Monitoring

Robert Janes
JFK Law

Linda Robertson, Manager, Skeena Region
Ministry of Aboriginal Relations and Reconciliation

Mark Lofthouse, Chief Negotiator
Ministry of Aboriginal Relations and Reconciliation

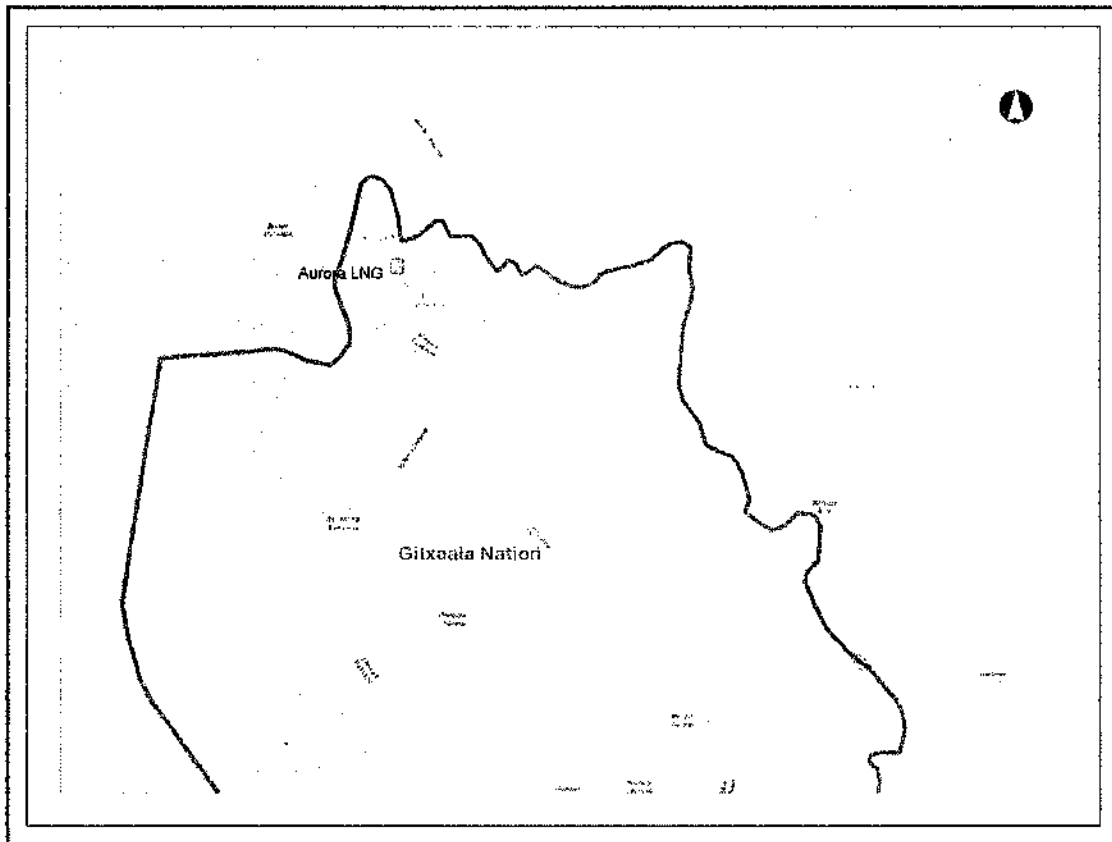
...17

Marc Steynen, First Nations Major Projects Liaison Advisor
BC Oil and Gas Commission

Vivian Au, Project Assessment Manager
Canadian Environmental Assessment Agency

Katherine Beavis
Transport Canada

APPENDIX A: Map of the proposed Project and Gitxaala Nation's asserted traditional territory boundary.



Appendix B: References reviewed as part of this initial assessment of Gitxaala Nation's strength of claims of Aboriginal Interests in the vicinity of the proposed Project.

Ministry of Attorney General (2011). Gitxaala First Nation: Review of Ethnographic and Historical Sources Relating to the Traditional Territories of the Gitxaala and Neighbouring First Nations (*shared with you in 2011*).

Ministry of Justice and Attorney General (2013). "Review of Supplementary Ethnographic Material provided by Gitxaala First Nation." Memoranda from Kecia Dusseault (Aboriginal Research Division) to Kenneth Howes (Environmental Assessment Office), dated October 9 and 17, 2013 (*shared with you on November 7, 2013*).

Ministry of Justice and Attorney General (2013). "Gitxaala Submission – Prince Rupert Area (March 2013)". Memorandum from Kecia Dusseault (Aboriginal Research Division) to Kenneth Howes (Environmental Assessment Office), dated December 19, 2013 (*shared with you on January 31, 2014*).

Gitxaala Nation (2013). Gitxaala Nation: Aboriginal Title to & Rights at the 'Fairview Port Lands' about *Sulga Kxeen, Ksba Ganaaw & Wil 'Yaga Loo*. Strength of Claim Submission including Oral History Evidence. March 8, 2013.

Menzies, Charles (2011). Gitxaala Use and Occupancy in the area of the proposed Northern Gateway Pipeline Tanker Routes.

Affidavits from the following witnesses respecting Gitxaala resource use, submitted to the Enbridge Northern Gateway Project Joint Review Panel:

- Gilbert Hill
- Greg McKay
- Muriel Milton
- Agnes Shaw
- Job (Fred) Spencer
- Annabelle Woods

Transcripts recording Gitxaala testimony at community hearings of the Enbridge Northern Gateway Project Joint Review Panel (March and April 2012).

Ministry of Justice and Attorney General. (2014). "Gitxaala Use of Campsites in Prince Rupert Harbour Area and coast Tsimshian Permissions". Memoranda from Kecia Dusseault (Aboriginal Research Division) to Cory Waters (Environmental Assessment Office), dated October 23, 2014 (*shared with you on October 24, 2014*).

Ministry of Justice and Attorney General. (2014). "Detailed Review of the Gitxaala Submission – Prince Rupert Harbour Area (March 2013)". Memoranda from Kecia Dusseault (Aboriginal Research Division) to Kenneth Howes (Environmental Assessment Office), dated October 28, 2014 (*shared with you on October 30, 2014*).

Environmental Assessment Office (EAO) (2014). Pacific Northwest LNG Project Assessment Report. (Available at www.eao.gov.bc.ca)



File: 30050-20/ADIS-04-01
30050-20/AGPO-04-01

Ref: 104850

November 27, 2014

James Witzke
Gitxaala Environmental Monitoring
Gitxaala Nation
PO Box 149
11 Ocean Drive
Kitkatla BC V0V 1C0

Dear Mr. Witzke:

Thank you for your letters on behalf of the Gitxaala Nation (Gitxaala) dated August 15, 2014, September 16, 2014 and October 24, 2014 regarding the draft section 11 Orders for the two projects proposed by Aurora Liquefied Natural Gas Ltd. (Proponent): Digby Island Project and Grassy Point Project. I would also like to thank you for taking the time to meet with me on November 19th to discuss Gitxaala's concerns. I apologize for the delay in responding to your letters but can assure you that the Environmental Assessment Office (EAO) appreciates Gitxaala's views on the environmental assessment (EA) process and your comments were considered prior to finalizing the section 11 Orders.

Below, in an abbreviated format, I have provided initial responses to your comments. The concerns identified by Gitxaala and our responses have benefited from our direct conversation I would be pleased to meet with you again at your convenience further discuss the responses below as well as how to ensure effective engagement going forward to ensure any issues or concerns Gitxaala has with the EA process are addressed in a timely manner.

Response on Comments received August 15, 2014:

Gitxaala's Input into the EA

- EAO encourages the Proponent to engage with Aboriginal Groups as early as possible to identify Aboriginal Interests that may be potentially affected by the proposed Project, applicable spatial and temporal parameters for measuring

.../2

**Environmental
Assessment
Office**

Mailing Address:
PO Box 9426 Stn Prov Govt
Victoria BC V8W 9V1

Location:
1st, 2nd & 4th Fl – 836 Yates
Street
Victoria BC V8W 1L8

Valued Components (VCs), standards and thresholds for determining the size and scope of potential adverse effects to VCs and measures to avoid or mitigate such potential adverse effects and/or otherwise accommodate such concerns, where appropriate.

- EAO welcomes further discussion on the particular field studies that Gitxaala is interested in being involved with and how EAO may assist in facilitating further discussions with the Proponent related to those interests, if necessary.
- EAO also encourages Gitxaala to communicate these interests directly to the Proponent to ensure that planned fieldwork opportunities can include Gitxaala, where appropriate (e.g. taking into consideration safety and other practical details).
- As outlined in the section 11 Orders there will be numerous opportunities for Gitxaala to participate in the EA process through the Working Group (WG). The WG is not the only forum for discussion of issues and Gitxaala will have specific and focused consultation opportunities with EAO and with the Proponent related to potential impacts on Gitxaala's Aboriginal Interests. We look forward to discussing with you how to ensure effective engagement and resolution of concerns and issues through the EA process.

Scope of the Assessment

- The Section 11 Order is a procedural order issued under the Environmental Assessment Act (Act), which outlines the procedural aspects and scope of the EA process, including consultation with Aboriginal Groups by both EAO and the Proponent. The Project Assessment Lead assumes the responsibility of administering the legal requirements of the Act. EAO will consider the adequacy of consultation undertaken throughout the assessment of the proposed Project and will make recommendations to Ministers in relation to the adequacy of consultation and accommodation.
- EAO acknowledges that Gitxaala has concerns with respect to the scope of assessment of impacts to Aboriginal Interests, including cumulative effects, and whether governance rights, culture and spiritual beliefs are included in the definition of "Aboriginal Interests".
- EAO is available to meet with Gitxaala and the Proponent to specifically discuss concerns related to the scope of the EA and the methodology used to assess potential impacts to Gitxaala's Aboriginal Interests.
- Thank you for providing a list of issues that Gitxaala would like to see included in the EA for the proposed Project. EAO and the Proponent will consider these issues during VC selection and during development of the Application Information Requirements.

.../3

Schedules for Aboriginal Groups

- To clarify, the aspects of consultation with respect to Schedule B and C Aboriginal Groups that are undertaken by EAO and the Proponent are identical, as outlined in sections 12.1 and 13.3 of the section 11 Orders for the proposed Projects, respectively.
- In response to the concerns raised relating to the existence of the two schedules and given that the approaches to consultation are identical, EAO will move those Aboriginal Group's identified on Schedule C to Schedule B. I will be issuing a Section 13 Order in the near future to make this change.

Need for a Public Hearing

- Public consultation will be in accordance with the *Public Consultation Policy* pursuant to the Act, and will be conducted as outlined in the section 11 Orders for the proposed Projects.
- EAO is available to meet with Gitxaala to specifically discuss opportunities for engagement with your community members through the EA process for the proposed Projects.

Coordination between CEAA and EAO Review

- The Federal Minister of the Environment has accepted the Province's request for substitution on August 21, 2014 for the proposed Aurora LNG Projects. The Canadian Environmental Assessment Agency has or will be notifying you of this decision.
- Under substitution, the British Columbia-led EA process will meet all of the requirements of a federal EA, as outlined in the Memorandum of Understanding between the Canadian Environmental Assessment Agency (the Agency) and the British Columbia Environmental Assessment Office (EAO) on Substitution of Environmental Assessment (2013), including sections 5 and 19 of CEAA 2012.

Specific Comments on Draft Orders

1. As mentioned above, all Aboriginal Groups on Schedule C will be added to Schedule B.
2. EAO acknowledges that for some Aboriginal Groups, the specific locations where an Aboriginal Group exercised Aboriginal rights around the time of contact, or at 1846, does not include some locations that may be very important to those Aboriginal Groups for current-day use for traditional purposes. The exercise of those current-day rights at these locations will be considered in the EA. There will be opportunities during the EA to identify impacts to such uses and to address such impacts through mitigation measures, as appropriate.

.../4

3. 'Residual Effects' are those effects remaining after the implementation of all mitigation measures and therefore are expected consequences of the reviewable project for the selected VCs. This definition is provided on page 25 of the Guideline for the Selection of Valued Components and Assessment of Potential Effects.
4. EAO has provided a definition of the five pillars to Gitxaala in Ken Howes' response to Bruce Watkinson, dated October 8, 2013, for the Pacific Northwest LNG Project.
5. The rationale for the spatial scope includes consideration of navigational hazards, which correspond to the point at which pilots will be required, and is largely influenced by Transport Canada and the legislative mandate of that federal agency as it relates to marine navigation. EAO will forward your concerns related to shipping to Transport Canada. Aspects of Gitxaala's concerns about the scope of marine vessel traffic may also be addressed in the TERMPOL process currently underway for adjacent projects already in the EA process.
6. An Application for an EA Certificate includes the characterization of seriousness of potential impacts (including cumulative effects) to Aboriginal Interests, before and after additional mitigation. Note that cumulative effects are only assessed if a residual effect has been identified for a particular valued component and is likely to interact spatially and temporally with cumulative effects from past, present and reasonably foreseeable projects.
7. Section 12.1.6 now reads: "At the request of any of these Aboriginal Groups, meet to discuss its Aboriginal Interests in relation to the proposed Project and measures to avoid, mitigate, or otherwise accommodate potential adverse impacts on Aboriginal Interests, as appropriate."
8. Section 13.3.2 now reads: "Must, in the Application, specify Aboriginal Interests identified by Aboriginal Groups listed in Schedule B and C, that may be potentially affected, and identify measures to avoid or mitigate such potential adverse effects and/or otherwise accommodate the concerns of Aboriginal Groups, as appropriate;
9. Please see section 13.2.2: (The Project Assessment Lead may direct the Proponent to conduct the following activities:) Implement additional measures for consultation and accommodation of any Aboriginal Groups where appropriate;
10. EAO is available to meet with Gitxaala and the Proponent to discuss timelines associated with your review of the draft Aboriginal Consultation Plan and draft Aboriginal Consultation Reports as outlined in the section 11 Orders for the proposed Projects.
11. "otherwise managed" may include accommodation, where appropriate.

Response on Comments received from Gitxaala on September 16, 2014:

Similar to other provincial agencies, EAO conducts consultation activities in accordance with the Interim Updated Procedures for Meeting Legal Obligations When Consultation First Nations and current case law. When appropriate, EAO works closely and shares information with other Provincial agencies, such as Ministry of Forests Lands and Natural Resources and Ministry of Aboriginal Relations and Reconciliation. Further, the British Columbia Oil and Gas Commission (OGC) will rely, in part, on the information developed and shared in the EA process to understand concerns raised by Aboriginal Groups and to determine whether any additional consultation activities are required to discharge OGC's consultation duties related to permitting and authorization decisions.

In accordance with the 2004 decision of the Supreme Court of Canada in *Haida*, the scope of consultation is to be informed by a preliminary assessment of the strength of claim and seriousness of impact. EAO will be providing a letter to Gitxaala shortly, which provides EAO's initial assessment of Gitxaala's claim to Aboriginal rights and title and the potential impacts of the proposed Projects on those Aboriginal Interests.

Following the issuance of the section 13 Order (mentioned above), Gitxaala will be included in Schedule B of the section 11 Orders for the proposed Projects, providing the following consultation opportunities:

- Participation in the Working Group;
- Meetings to identify and discuss Aboriginal Interests that may be affected by the proposed Project and potential measures to avoid, mitigate, address, or otherwise accommodate impacts;
- Review and comment on key documents, including draft Application Information Requirements, the Proponent's Application for an Environmental Assessment Certificate, and EAO's draft Assessment Report and Aboriginal Consultation Report; and
- Submission of a document outlining Gitxaala's views on the Assessment Report to be included in the package of materials sent to Ministers when the proposed Project is referred for decision.

EAO acknowledges that the duty to consult Aboriginal Groups rests with the Crown; however, EAO can delegate procedural aspects of consultation to proponents. As a result, the section 11 Orders for the proposed Projects specifies the procedural consultation requirements for the Proponent and requires the Proponent to report back to EAO regarding those delegated components. As outlined in the section 11 Orders, the Proponent must consult with Aboriginal Groups regarding the potential effects of the proposed Projects on their Aboriginal Interests and measures to avoid, mitigate or otherwise accommodate, when appropriate, such impacts. The Proponent must also

seek advice from Aboriginal Groups regarding an Aboriginal Consultation Plan that will guide consultation activities with that Aboriginal Group and the Proponent. In addition to Gitxaala's participation on the WG, there will be further specific and focused consultation opportunities with EAO and with the Proponent related to discussing and addressing potential impacts on Gitxaala's interests from the proposed Projects.

The conclusions that EAO reaches related to consultation and accommodation of Aboriginal Groups, including Gitxaala, regarding these proposed Projects, will be captured in the Consultation Reports prepared by EAO during the 180-day Application Review period. A draft of this Report, along with a copy of these draft Assessment Reports will be provided to Aboriginal Groups for comment prior to referral to the Ministers for their decision on the proposed Projects. Aboriginal Groups may also make direct submissions for consideration by the Ministers at the time of referral.

EAO will work with Gitxaala through the EA process, including any meetings with us that you request, in order to understand the potential impacts to Gitxaala Aboriginal Interests (including cumulative impacts), and to discuss appropriate measures to avoid, minimize, mitigate or otherwise accommodate any project impacts on Aboriginal Interests as appropriate.

Consultation Limited to Legislated EA Process

EAO acknowledges Gitxaala's concern that EAO's approach to consultation as outlined in the section 11 Orders for the proposed Projects will not be sufficient to determine the severity of potential adverse impacts to Gitxaala from the proposed Projects. EAO is available to meet with Gitxaala to discuss how our consultation approach can ensure that this concern is addressed.

EAO acknowledges that, for some circumstances, current assessment methodologies and the feasibility of finding ways to measure potential adverse project effects on socio-cultural and ecological aspects that support Aboriginal Interests can be challenging. EAO is available to meet with Gitxaala to discuss how the EA for the proposed Projects can adequately and meaningfully assess potential impacts to Gitxaala's Aboriginal Interests and identify appropriate means of mitigation, and where appropriate accommodation.

Gitxaala's Inclusion on Schedule C of the Section 11 Orders

Please see above, Aboriginal Groups identified in Schedule C will be moved into Schedule B.

Selection of Valued Components

Thank you for providing comments made by the Joint Review Panel for the Site C Clean

Energy Project. As mentioned above, EAO is available to meet with Gitxaala and the Proponent to specifically discuss concerns related to VC selection. EAO encourages the Proponent to engage with Aboriginal Groups as early as possible to identify Aboriginal Interests that may be potentially affected by the proposed Projects, and measures to avoid or mitigate such potential adverse effects and/or otherwise accommodate such concerns, where appropriate.

Assessment of Cumulative Effects under Substituted Reviews

All the *Canadian Environmental Assessment Act*, 2012 requirements will be satisfied under the substituted EA process, including Section 19(1). See the section 11 Orders, Section 3: Scope of Assessment;

- 3.2** Pursuant to the *Canadian Environmental Assessment Act*, 2012, the scope of the environmental assessment must take into account the factors under section 19(1) of the *Canadian Environmental Assessment Act*, 2012, including, but not limited to, any environmental effects as defined by section 5 of that Act.

EAO will work with Gitxaala to address any concerns related to the assessment of cumulative effects on Gitxaala's Aboriginal Interests, as appropriate.

Participant Funding

EAO provides some funding to assist with participation of Aboriginal Groups in the EA process, particularly those aspects where EAO is engaged in direct discussion with Aboriginal Groups. Further, as the proposed Projects are undergoing substituted EAs, the Canadian Environmental Assessment Agency has committed to provide funding to support Gitxaala's participation in certain eligible activities as part of a substituted EA, and EAO has committed to distribute that funding. More information about the capacity funding available to support Gitxaala's participation in the EA for the proposed Projects will be forthcoming.

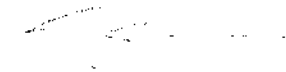
Response to Comments received from Gitxaala October 24, 2014 letter:

Thank you for providing me with the Strength of Claim Submissions dated March 8, 2013 as well as the material contained in the October 24, 2014 letter. EAO is currently reviewing the material you provided in conducting an initial assessment of the Strength of Claim, as well as other readily available information, including material provided to EAO in relation to other LNG projects. Once complete EAO would like to meet to discuss the work we undertook in making this initial assessment. An initial determination of Strength of Claim for the Aurora LNG Digby Island project will be sent under a separate letter.

.../8

In closing, EAO looks forward to consulting with Gitxaala on the EA for these proposed Projects. We are available to meet at your convenience to discuss the EA process and consultation approach for this proposed Project. If Gitxaala has any questions, requires further information or would like to meet to discuss the EA, please contact me at my office in Terrace at 250-638-5172 or Tavis.McDonald@gov.bc.ca.

Yours truly,



Tavis McDonald
Project Assessment Lead

cc: Robert Janes
JFK Law Corp.

Virginia Mathers
JFK Law Corp.

Darcy Janko, Manager – Environment/Regulatory
Shell Canada

Vivian Au, Project Manager
Canadian Environmental Assessment Agency

Tanya Martin, Aboriginal Relations Advisor
Transport Canada

Jack Smith, Director Environmental Assessment
Prince Rupert Port Authority

Robert Leece, Senior Negotiator
Ministry of Aboriginal Relations and Reconciliation

Cam Bentley, Manager First Nations Consultation
Ministry of Forests, Lands and Natural Resource Operations

Amy Avila, Director Major Projects
Oil and Gas Commission



File: 30050-20/PNWL-04-01
30050-20/PRGT-04-01
30050-20/WCGT-04-01

Ref: 104725

October 24, 2014

SENT VIA EMAIL

Clarence Innis
Acting Chief
Gitxaala Nation
PO Box 149
Kitkatla BC V0V 1C0
clarence.innis@gitxaalanation.com

James Witzke
Environmental Assessment Coordinator
Gitxaala Nation
280-110 1st Avenue W
Prince Rupert BC V8J 1A8
jamesw@gitxaalanation.com

Dear Acting Chief Innis and Mr. Witzke:

I write to provide response to your letter of October 14, 2014 on Westcoast Connector Gas Transmission (WCGT) Pipeline project sent to Nathan Braun, and your April 10, 2014 letter sent to me, which provide a detailed response to the Environmental Assessment Office's (EAO) initial assessment of the strength of Gitxaala First Nation's (Gitxaala) claims to Aboriginal rights and title (Aboriginal Interests) to areas within Gitxaala asserted traditional territory that overlap with proposed natural gas pipeline and facilities projects currently undergoing environmental assessment (EA). I am advised that a number of these concerns articulated in your letters were also discussed in a meeting on October 23, 2014 with Ken Howes in Prince Rupert. I would also like to take this opportunity to respond to separate letters sent from James Witzke on October 21, 2014 requesting strength of claim analyses for each of the three proposed Projects listed below.

I apologize for the delay in responding to the April 10, 2014 letter but can assure you that the content of that letter, along with the July 2014 Gitxaala Use Study, was

.../2

**Environmental
Assessment
Office**

Mailing Address:
PO Box 9426 Stn Prov Govt
Victoria BC V8W 9V1

Location:
1st & 2nd Fl – 836 Yates Street
Victoria BC V8W 1L8

considered by EAO in developing the Gitxaala-specific sections in the draft Assessment Reports for the following proposed Projects:

- WCGT – shared with you October 1, 2014 (see section 7.3.1),
- Prince Rupert Gas Transmission (PRGT) Project – shared with you October 15, 2014 (see section 7.4.1), and
- Pacific Northwest LNG (PNWLNG) facility project – shared with you October 14, 2014 (see section 7.3).

In this letter, I set out in more detail EAO's responses to specific concerns raised in your April 10, 2014 and October 14, 2014 letters.

Your letters describe your concern that the draft preliminary assessments referenced in EAO's draft Assessment Reports for the proposed WCGT, PRGT and PNWLNG facility Projects do not properly consider Gitxaala's strength of claims to the Prince Rupert area in particular. You also reiterate Gitxaala's views that EAO's initial assessment of the duty to consult, which is based on initial assessments of both strength of claim and potential project impacts, was premature and incorrect. EAO respectfully disagrees.

Our preliminary analysis shared with you was appropriately based on known, available and existing ethnohistoric and ethnographic information, and invited more information from Gitxaala to inform our views which you have also provided and EAO considered. Because EAO's initial assessment of strength of claim and the duty to consult occurred early in the EA processes, in order to inform depth of consultation on the proposed Projects, as stated in my letter of January 31, 2014, EAO was of the view that the initial assessments may change as more information becomes available through the EA process.

However, regardless of EAO's assessment of the strength of Gitxaala Aboriginal rights and title claims, Gitxaala has been provided with all consultation opportunities provided to all Aboriginal Groups listed in Schedule B throughout the EA of the proposed WCGT, PRGT and PNWLNG Projects, which included the following steps reflecting a deeper level of consultation in the *Haida* consultation spectrum¹:

- contacted at the outset of the EA for each of the projects and offered membership on the Working Group;
- invited to all Working Group meetings;
- requested to provide input on the draft Orders pursuant to s. 11 of the *BC Environmental Assessment Act* which defined the scope of the project and the Application Information Requirements;

.../3

¹ *Upper Nicola Indian Band v. British Columbia (Minister of Environment)*, 2011 BCSC 388 at para. 129.

- invited to participate in screening the formal applications for compliance with the Application Information Requirements;
- requested to review and provide input on the development of an Issues Tracking Table which captures comments and issues raised by Aboriginal Groups throughout the consultation process, and the responses to those comments and measures taken to address the concerns raised; and
- requested to review and provide input on a draft Assessment Reports, which includes a section describing the consultation and accommodation of Aboriginal Groups including Gitxaala, including project mitigations and conditions proposed to address concerns raised by Aboriginal Groups, including addressing potential impacts on Aboriginal Interests.

With respect to project impacts, a key objective of the EA process is to determine, through detailed study and analysis, the potential adverse effects of the project on Aboriginal Interests and other Valued Components. If information gathered during an EA, including information provided by Gitxaala First Nation to EAO, indicates that potential impacts to Gitxaala Aboriginal Interests were more serious than the Province's initial assessment indicated, the assessment of the duty to consult and accommodate would have been re-considered in light of this new information. However, as noted above, Gitxaala was already being consulted at the deeper consultation level for the proposed WCGT, PRGT and PNWLNG projects.

You provided a general overview of Gitxaala laws (*ayaawx*), society, culture, governance and perspective on Gitxaala interconnectedness including the spiritual and supernatural connection with the lands and waters in your territory, described as context before presenting Gitxaala concerns relating to the Prince Rupert Harbour projects and the proposed LNG Canada project. EAO appreciates that Gitxaala is not a signatory to a modern treaty, and that the marine resources existing within Gitxaala traditional territory are significant to the Gitxaala way of life, past and present. This context has informed how EAO has approached consultation with Gitxaala regarding potential impacts of projects on Gitxaala Aboriginal Interests – resulting in Gitxaala being provided with consultation levels at a deeper level.

The EA process provides substantive opportunity to consider the potential effects of the proposed projects, and their interaction with Gitxaala Aboriginal Interests. This opportunity relies on Gitxaala to bring forward information for consideration during the EA, as was your stated intent in your April 10, 2014 letter. On September 24, 2014, EAO received three subsequent documents for each project - Gitxaala Use Study; Gitxaala Valued Components Report; and Gitxaala Nation Socioeconomic Report (dated July, 2014) which was provided to Ken Howes for PNWLNG and to Nathan Braun for the two pipeline Projects. I understand that the consideration and integration of these materials continues and that updated draft Assessment Reports reflecting this ongoing review will be provided to Gitxaala in the coming days directly from Ken Howes or Nathan Braun relating to their respective Projects.

.../4

Gitxaala assert that Gitxaala possess exclusive, unceded control to Gitxaala territory, which includes water (including the marine environment) and land areas. EAO acknowledges Gitxaala's assertion for control in its territory, and recognizes that the honour of the Crown requires that prior to final claims resolution, the Crown must consult and accommodate, as appropriate, in relation to decisions that may adversely impact those claims. Thus, EAO views the role of the Crown in the context of fulfilling the duty to consult regarding proposed projects, as aimed at determining the adverse effects on Gitxaala Aboriginal Interests, including understanding the interaction of the proposed projects, particularly on the marine environment, and appropriately accommodating potential impacts.

Strength of claim to specific areas

Thank you for the information on Gitxaala's views relating to the strength of Gitxaala Aboriginal rights and title claims to specific areas. As captured in the draft Assessment Reports for the proposed WCGT, PRGT and PNWLNG projects, EAO has reconsidered its assessment of Gitxaala Aboriginal Interests in light of the recent *Tsilhqot'in* decision, the information provided in your letter of April 10, 2014, and the July 2014 Gitxaala Use Study Prepared for Port Edward Area LNG Projects submitted to EAO, as well as review of the information in the enclosed report entitled "LNG Marine Route: Review of Historical and Ethnographic Sources", as follows:

- For clarity, EAO agrees that Gitxaala has a strong *prima facie* claim to Aboriginal rights to fish, hunt, trap and gather marine and terrestrial resources on Porcher Island, based on evidence of harvesting activities in a number of areas of the island around the time of contact;
- Regarding a Gitxaala village site on the Nass River, and Gitxaala's assertion of strong Aboriginal title on the Nass, EAO agrees that there is evidence supporting the existence of a former Gitxaala village site on the Nass River. This has been articulated in the draft Assessment Reports provided to you for both WCGT and PRGT projects. EAO currently understands that the site is on the north shore of Nass Bay and notes that the proposed pipeline Projects are routed on the south shore. EAO would welcome further information from Gitxaala First Nation regarding your Aboriginal title claim in this area, including the specific location of this village site and use of surrounding area.
- With respect to the reserves allocated to Gitxaala First Nation, although the depth of evidence is somewhat variable with respect to these sites, EAO agrees that there is evidence to support strong *prima facie* Gitxaala Aboriginal title claims to the village/habitation sites corresponding with the five reserves at the south of Pitt Island, Tsimtack IR7, Toowitz IR8, Citeyats IR9, Clowel IR13, and

.../5

Sheganny IR14, and the reserves at Tsimlairen IR15 and Kitsementagan IR19/19A, and likely surrounding areas used regularly and exclusively at 1846 for traditional resource harvesting activities (e.g. hunting, trapping, fishing, camping, gathering places).

- Regarding Campania Island, there is information indicating that the west side of this island was used by Gitxaala for resource gathering, including hunting and fishing, around the time of contact, which would support strong Aboriginal rights claims to harvest resources in that area. With respect to Aristazabal Islands, there is conflicting information about whether this was considered to be within the traditional territory of Gitxaala or Kitasoo at the time of contact; Kitasoo are noted to have two reserves on this island. We have no information indicating sufficient or exclusive occupation of that area by Gitxaala at 1846. EAO would welcome further information from Gitxaala First Nation regarding your Aboriginal title claims in this area.
- With respect to Knackown in Kingkown Inlet (formerly named Bonilla Arm), there is evidence indicating a Gitxaala historical village and that it was an important resource gathering site at pre-contact and 1846. This supports a strong *prima face* claim to Aboriginal title and strong *prima face* Aboriginal rights to hunt, fish and gather.
- With respect to Bear Bay, this is an ungazetted location and we would appreciate further information regarding this location.
- EAO has considered the information provided by Gitxaala regarding its historic use of the Prince Rupert Harbour and surrounding area, including use of camps at Kennedy Island (en route to and from the Nass eulachon fishery), Coast Island (off Ridley Island) and Inverness Cannery Site (a fishing camp) – and considered it along with other available information, including the extensive body of ethnohistoric information regarding the Tsimshian. As described in Section 2 of the draft Assessment Report, Part C for PNWLNG the historical record for the Tsimshian is particularly rich, in large part due to their location relative to the early fur trade. EAO relied quite extensively on the materials contained the Barbeau and Beynon collections, along with the research and publications of many other authors including Susan Marsden, Majorie Halpin, Margaret Seguin, Andrew Martindale and John Cove – many of the same key ethno-historic references used in the Gitxaala Traditional Use Studies report.
- You raise concerns and have requested more information relating to EAO's statements that areas in the vicinity of the Prince Rupert Harbour may have required permission. Please see Attachment 1: Memo from Kecia Dusseault to Cory Waters dated October 23, 2014 entitled: "Gitxaala Use of Campsites in Prince Rupert Harbour Area and Coast Tsimshian Permissions." The statements in the Gitxaala Use report regarding these areas are based on information previously submitted by Gitxaala to the Province, and which the Province

.../6

reviewed in detail last year. The results of that review are summarized in memos which Gitxaala has previously received (see below for further clarification of BC's review of Gitxaala materials).

- In critically analysing all available information, EAO has not changed its view that the Coast Tsimshian tribes controlled use of these areas requiring permission of non-members around 1846.

In your letter, you noted that the Gitxaala view their Aboriginal title to extend to the waters within their traditional territory. It is unclear, based on current case law, how the current test for Aboriginal title applies to submerged lands such as water ways.

Gitxaala also assert joint Aboriginal title in the Prince Rupert Harbour area. Although there is some information indicating that Gitxaala may have shared exclusive occupation to a village site in the Nass River with the nine Coast Tsimshian tribes, subsequent to when Nisga'a started to making use of a site previously used by Gitxaala, there is no such information available to EAO at this time indicating shared exclusive occupation between Gitxaala and the nine surviving Coast Tsimshian tribes in the Prince Rupert Harbour area at around 1846. We welcome any information from Gitxaala regarding any such historic shared, exclusive occupation of any areas in the Prince Rupert area.

Thank you for the Paper provided yesterday to Ken Howes, title "Tsimshian Internal Relations Reconsidered (Part 1)" by Dunn, John A. dated May 1976. On review of this paper including the map on page 7, it would appear that the information relates exclusively to linguistic discussion, and it is unclear how this information supports the inclusion of Gitxaala in the Coast Tsimshian considerations relating to rights and title assessments in the area of the Prince Rupert Harbour at the time of contact and 1846.

Strength of Claim methodology and information considered

Your April 10, 2014 letter makes several incorrect statements criticizing the nature of the Province's review of Gitxaala information. I would like to clarify any misunderstanding on this point, particularly the incorrect assertion that the Province has ignored the Gitxaala submission of March 8, 2013, and the incorrect statement that the Province has relied on materials that "are rife with assumptions and hypotheses that have no supporting evidence and are detrimental to Gitxaala" (p.14 of your letter). The Province carefully and diligently considers all materials that Gitxaala has submitted to us, and makes reasonable efforts to approach the analysis objectively, honourably, and thoroughly. This does not mean that the Province will ultimately agree with Gitxaala's conclusions regarding the evidence. In my letter of March 12, 2014, I provided

.../7

information regarding how the materials provided to EAO by Gitxaala First Nation were reviewed, along with copies of the memos summarizing these reviews. For clarity:

- The seven affidavits and six volumes of transcriptions of Gitxaala testimony at the Northern Gateway Joint Review Panel, which were provided to EAO in a letter of July 18, 2013, were reviewed in detail. A summary of conclusions of the review was provided in a memorandum to Kenneth Howes (EAO) by Kecia Dusseault dated 9 October 2013 entitled "Review of Supplementary Ethnographic Material provided by Gitxaala".
- The report by Dr Charles Menzies entitled "Gitxaala Use and Occupancy in the Area of Proposed Northern Gateway..." (18 December 2011) provided by Gitxaala to EAO on July 18, 2013 was also reviewed. The summary of this review was provided in a memorandum to Kenneth Howes (EAO) by Kecia Dusseault dated 17 October 2013 entitled "Review of Supplementary Ethnographic Material provided by Gitxaala".
- The Fairview Port Lands submission provided by Gitxaala to EAO on October 31, 2013, which included a report submitted by Gitxaala FN entitled "Gitxaala Nation: Aboriginal Title to & Rights at the 'Fairview Port Lands' ... including Oral History Evidence. March 8, 2013," as well as 12 statutory declarations and a CD of ethnohistorical sources, was also reviewed in detail. The Province's review of this information was summarized in a memorandum to Kenneth Howes (EAO) by Kecia Dusseault entitled "Gitxaala Submission – Prince Rupert Area (8 March 2013)," dated 19 December 2013, provided to Gitxaala First Nation with my letter of March 12, 2014.

Please note that the information provided on October 31, 2013 to EAO was the same information provided to Mr. Lofthouse in Mr. Robbins' letter of December 20, 2013. With respect to a direct response to Mr. Robbins' letter, a response from the Ministry of Aboriginal Relations and Reconciliation should be forthcoming shortly. However, your statements that "Mr. Robbins' letter and the submissions therein have not been acknowledged or substantively addressed by the Province" and "the EAO itself completely ignores the Gitxaala submission of March 8, 2013, and all evidence, regardless of the source of evidence, that supports Gitxaala's position that it used and occupied relevant areas" are untrue.

Having said this, I understand in the meeting yesterday with Gitxaala, Ken Howes committed to reviewing the information contained in these affidavits. EAO has requested further review of those submissions, and we will share details of how the affidavit information was considered and expect to provide this information to you in advance of our October 30, 2014 meeting in Vancouver.

.../8

On p. 26 of your letter, you list other sources of information filed by Gitxaala in the JRP Process. Most of the information that you listed was reviewed by the Province in the development of the recently completed Ministry of Justice report entitled "LNG Marine Route: Review of Historical and Ethnographic Sources" (enclosed), or in subsequent reviews of materials provided by Gitxaala to EAO.

I believe that the misunderstanding regarding EAO's use of the information provided by Gitxaala may stem in part from a misunderstanding regarding the criteria the Province considers in undertaking strength of claim assessments. As I stated in my letter of March 11, 2014, these criteria are defined in case law as follows:

- Aboriginal rights depend upon the practise, customs, and traditions that are integral to the distinctive culture of an Aboriginal group *at the time of European contact*. With respect to traditional resource harvesting practices, these are site-specific such that they can only be exercised today on specific tracts of land where the Aboriginal group practiced that activity prior to contact.
- Aboriginal title is based on *occupation at 1846*.

As articulated in the draft Assessment Reports shared with you for the proposed WCGT, PRGT and PNWLNG projects, EAO reconsidered its initial assessment of the strength of claim to Aboriginal title following the release of the Supreme Court of Canada decision in *Tsilhqot'in Nation v. BC* on June 26, 2014, which clarified the test for Aboriginal title relating to the elements of sufficient and exclusive occupation as at 1846.

In our assessment of Gitxaala materials, EAO considered the evidence provided in light of the criteria set out in current case law, and in the context of other available materials. For example, EAO's assertion that we were not aware of evidence that Gitxaala occupied or made use of any sites in the Prince Rupert Harbour area at 1846 that would support a claim to Aboriginal title applies to occupation at 1846. The example quoted on p. 15 of your letter regarding the migration from Temlaxham or Temlaxam describes an event that occurred thousands of years ago; although Ts'ibasaa may have stopped temporarily at a site near modern-day Prince Rupert, he ultimately settled and took territory on Pitt Island. The Ts'ibasaa example is not evidence of a Gitxaala presence at Metlakatla or at Prince Rupert Harbour at contact (understood to be 1787) or at 1846. In fact, despite a very thorough review of readily available source materials (including all of the sources cited in the Menzies report) the Province has been unable to find evidence of a Gitxaala presence at Metlakatla or Prince Rupert Harbour at contact or at 1846, apart from evidence that Gitxaala made use of campsites in this coastal area en route to the Nass fishery. We have also considered available information, based on numerous sources, indicating that use of the area around Prince Rupert Harbour would have likely required the permission of the Coast Tsimshian tribes, a factor we consider to decrease the strength of a Gitxaala claim to Aboriginal rights to that area. It would not be

.../9

reasonable to rely on Beynon's report of camps in the vicinity of Prince Rupert that are not attributed to specific tribes to support Gitxaala claims to such camps, as these sites could instead be attributed to non-Gitxaala tribes known to use the area at that time. Again, please see the enclosed memo for more information relating to this analysis (dated October 24, 2014, from Kecia Dusseault to Cory Waters, Attachment #1).

On p.15 of your letter, you challenge the insertion of the term "[Coast Tsimshian]" into a citation from Barbeau File 418.2, arguing that this insertion is 'remarkably misleading to the disadvantage of the Gitxaala'. It is true that the source did not explicitly state "Coast Tsimshian," but it was implied by the immediate context of the statement: a Gits'iis informant discussing the territories and villages of the nine tribes around Metlakatla. After listing more than a dozen Coast Tsimshian village sites, Herbert Wallace stated that the Gitxaala "had no village" at Metlakatla, then he indicated that the "site of Prince Rupert is an old site" which the Gitwilyots took from the Tlingit, and then he noted that the "adjacent coast up to Nass and down to Skeena was used in common by all the tribes." Except for the statement dismissing the Gitxaala presence at Metlakatla, all of this information concerns the Coast Tsimshian tribes. After discussing the area around Metlakatla, Barbeau's questioning then leads, geographically, southwest to the neighbourhood of Stephens Island, where Wallace identified a "Gitxaala village on one of the islands [Barbeau identified "Map 2, Site 23," which was not available for review]." He noted that Gitxaala "claimed Pitt and Banks and neighbouring islands for hunting and fishing grounds. The Gitxaala never went to the Skeena; but they went to the Nass and had territory (fishing there)." The informant then offers a lengthy catalogue of Coast Tsimshian sites on the Skeena River, without mentioning Gitxaala again. In other words, references to Gitxaala are incidental, and while "all the tribes" may arguably refer to Gitxaala, contextual details suggest this is not the case. The reference to "Coast Tsimshian" was inserted for clarity, not for the "sole purpose of demonstrating that Gitxaala was meant to be excluded".

October 21, 2014 request for Strength of Claim Assessment information

I would like to respond to the three separate requests received by EAO from Mr. James Witzke in separate correspondence to both Nathan Braun and Ken Howes at EAO, seeking:

"copies of all communications between the EAO and [each proponent] or any other party regarding Gitxaala's strength of claim to Aboriginal rights and title. Please also provide a record of any communications relating to the strength of claim of other Aboriginal groups in the Prince Rupert Harbour area, such as Metlakatla and Lax Kw'alaams, including any direction provided to [each proponent] or any other party by the EAO about the priority of any Aboriginal group's claim to the Prince Rupert Harbour area."

.../10

As described in my March 12, 2014 letter to you, EAO provided a summary of the preliminary strength of claims assessment to proponents in order to inform their delegated procedural aspects of consultation.

The following summary information was provided to each proponent:

- A cover letter or email explaining the information being provided
- An excel file containing the summary information
- A bibliography listing of readily available information sources that have informed the preliminary strength of claims.

I attach the cover letters for each of the projects requested and a Gitxaala strength of claim summary table. As you will see, we directed Proponents not to share this information with other parties, including Aboriginal Groups. I have also included the bibliography provided to PNW LNG which lists the same resources as the pipeline projects for Tsimshian First Nations. With respect to EAO's strength of claim assessments of other Aboriginal Groups, I would point Gitxaala to the draft Assessment Reports which contain in section 7 of Part C, EAO's preliminary assessment of the strength of claims for all potentially affected Aboriginal Groups consulted on each of the proposed Projects.

Potential impacts of proposed LNG Canada project (April 10, 2014)

EAO's initial assessment identified that the impacts of the proposed LNG Canada project to Gitxaala First Nation interests are likely to be minor, based on

- the relatively low volume of shipping traffic expected from the LNG Canada terminal (one ship every one or two days);
- the knowledge that the existing compliance-based marine safety and pollution prevention regime under the *Canada Shipping Act*, the *Canada Marine Act*, and the *Pilotage Act*, along with TERMPOLs which are voluntary, project-based reviews of marine safety which proponents can request, serve to minimize the risk of accidents and prevent pollution from shipping activity; and
- preliminary information indicating that ship wake is likely to be within the range of natural variability for wave amplitude and frequency.

As discussed above, it is a key objective of the EA process to determine, through detailed study and analysis, the potential adverse effects of the project on Aboriginal Interests. The initial assessments of strength of claim and impacts to Aboriginal Interests were designed to identify the appropriate depth of consultation with individual First Nations, which may change based on new information. I thank you for the information you provided on the potential impacts to Gitxaala Aboriginal Interests relating to governance, title sites, and harvesting – which EAO has considered, and would welcome receiving any the further detailed information you may have regarding potential impacts to Gitxaala governance, harvesting rights, cultural identity, and sacred places, for incorporation into the EA for the proposed LNG Canada project. EAO can

.../11

alternatively consider the information provided for the other proposed Projects and its potential applicability to the LNG Canada Project. Please advise if Gitxaala have concerns with this approach, or if new information specific to LNG Canada will be forthcoming.

EAO will work with Gitxaala through the EA process, including through any meetings with us that you request, in order to understand the potential impacts to Gitxaala Aboriginal Interests, and to discuss appropriate measures to avoid, minimize, mitigate or otherwise accommodate any project impacts on Aboriginal Interests as appropriate.

On p. 22 of your letter, you note a concern that the EAO assessment of impact to Gitxaala's harvesting rights appears to be limited to an assessment of effects to biophysical elements. The EA review is not limited to the biophysical environment, and can consider more broadly how the project may impact Aboriginal Interests.

In closing, I would like to again re-iterate the purpose of the preliminary assessments of strength of claim. As I noted in my letter of March 11, 2014,

...as with any provincial consultation process regarding a proposed Crown activity or decision that may adversely affect Aboriginal Interests, the EA process is not a rights determining process. Instead, a key objective of the EA process is to identify potential adverse effects of proposed projects and explore measures to avoid, mitigate or otherwise appropriately address such effects... The scope of the required consultation with Gitxaala First Nation and any accommodation is proportionate to both a preliminary assessment of strength of claims and a preliminary assessment of potential seriousness of impacts of the project on those claims. (p.6)

These preliminary assessments are conducted, as directed by the 2004 decision of the Supreme Court of Canada in *Haida*, in order to inform the scope of the duty to consult, such that EAO may initiate engagement with potentially affected First Nations appropriately. Communication of these assessments with potentially affected First Nations was undertaken in order to provide transparency regarding EAO's consultation process, and so that affected First Nations could respond to the assessments with further information if necessary.

In Gitxaala's case, the initial assessments resulted in EAO placing Gitxaala on EAO's deeper level for consultation for the proposed projects (Schedule B, or C for LNG Canada shipping). As discussed earlier, Gitxaala has been provided, and continues to be provide with numerous opportunities for the exchange of information required to undertake a detailed assessment of potential impacts to Gitxaala Aboriginal Interests, prior to the completion of the project EAs. We continue to encourage you to participate directly in these opportunities.

.../12

EAO will continue to engage with Gitxaala throughout the EA processes for the proposed natural gas projects, and looks forward to receiving the any further information regarding Gitxaala Aboriginal Interests to the project areas, and potential impacts to these interests, that you mention in your letter.

I thank Gitxaala for meeting yesterday with Ken Howes. I look forward to the scheduled meeting in Vancouver on October 30, 2014 with Gitxaala to further discuss Gitxaala's interests and concerns. Please be advised that Nathan Braun and I will be attending from EAO, and will be joined by our legal advisor Debbie Chan and Senior Research Officer Kecia Dusseault.

Yours truly,



Cory Waters
First Nations Lead, LNG Projects

Enclosures (6):

Attachment #1 - Ministry of Justice, October 23, 2014. Memo from Kecia Dusseault, Senior Research Officer, Aboriginal Research Division to Cory Waters, First Nations Lead, LNG Projects, Environmental Assessment Office. "Gitxaala Use of Campsites in Prince Rupert Harbour Area and Coast Tsimshian Permissions."

Attachment #2 - Letter to PNW LNG_initial SoC_9April2014

Attachment #3 - May 20, 2014 e-mail from Nathan Braun to Peter Spicker, "Summary of Initial Strength of Claim Assessment for the proposed WCGT Project"

Attachment #4 - May 20, 2014 e-mail from Nathan Braun to Marilyn Carpenter, "Summary of Initial Strength of Claim Assessment for the proposed PRGT Project"

Attachment #5 - Prince Rupert Gas Transmission Ethnohistorical Bibliographies

Attachment #6 - SOC Summary shared with proponents

.../13

cc: Robert Janes
Janes Freedman Kyle Law Corporation
rjanes@jfkllaw.ca

Virginia Mathers
Janes Freedman Kyle Law Corporation
vmathers@jfkllaw.ca

David Robbins
Woodward and Company
drobbins@woodwardandcompany.com

Linda Robertson, Manager, Skeena Region
Ministry of Aboriginal Relations and Reconciliation

Mark Lofthouse, Chief Negotiator
Ministry of Aboriginal Relations and Reconciliation

Marc Steynen, First Nations Major Projects Liaison Advisor
BC Oil and Gas Commission

Katherine Beavis, Senior Consultant, Aboriginal Relations
Transport Canada

Jillian Smith, Project Assessment Manager (Prince Rupert LNG)
Canadian Environmental Assessment Agency

Catherine Ponsford, Project Assessment Manager (Pacific Northwest LNG)
Canadian Environmental Assessment Agency

Candace Anderson, Crown Consultation Coordinator (Pacific Northwest LNG)
Canadian Environmental Assessment Agency



Ref: 104634

File: 30050-20/PRGT-04-01

October 7, 2014

SENT VIA EMAIL

James Witzke
Gitxaala Nation
PO Box 149
Kitkatla, BC V0V 1C0
jamesw@gitxaalanation.com

Dear Mr. Witzke:

Thank you for your letter of September 24, 2014 regarding the proposed Prince Rupert Gas Transmission Project (proposed Project). I am writing to respond to the concerns raised in your letter.

Your letter of September 24, 2014 notes that the federal review of the proposed Pacific NorthWest LNG Project has requested additional information from Pacific NorthWest LNG Ltd. on issues of concern to Gitxaala Nation (Gitxaala), particularly in relation to Aboriginal rights and title, and asked whether Environmental Assessment Office (EAO) will require the same information for the proposed Project.

During the course of the Application Review Stage for the proposed Project, EAO identified a number of issues which required clarification and additional information, in addition to EAO's requirement that Prince Rupert Gas Transmission Ltd. (Proponent) respond to comments from Working Group members. Some of EAO's information requests included:

- Further reporting on Proponent's consultation with Aboriginal Groups and consideration of any new traditional use information;
- Further information on social and economic effects;
- A detailed cumulative effects assessment of the impacts of sediment dispersion and deposition in the area around Prince Rupert and Lelu Island; and,
- Conceptual fish habitat offsetting plans.

.../2

**Environmental
Assessment
Office**

Mailing Address:
PO Box 9426 Stn Prov Govt
Victoria BC V8W 9V1

Location:
1st & 2nd Fl – 836 Yates Street
Victoria BC V8W 1L8

The above and the Proponent's responses to other supplemental information requests are all considered along with the environmental assessment Application.

EAO will be sharing the draft referral package for the proposed Project with Working Group members later this month. The draft referral package includes draft Assessment Report, including the Aboriginal Consultation Report, the draft Table of Conditions and the draft Certified Project Description. EAO will be considering the Gitxaala Use Study and Socio-Economic Report in the development of this material. I encourage Gitxaala to provide any further comments or concerns on the draft referral package.

If you have any further questions or concerns please contact me at Nathan.Braun@gov.bc.ca or 250-387-0233.

Yours truly,



Nathan Braun
Project Assessment Manager

cc: Virginia Mathers
Janes Freedman Kyle Law Corporation
vmathers@jfkllaw.ca

Lisa Nye
Prince Rupert Gas Transmission Ltd.
lisa_nye@transcanada.com

Page 045 to/à Page 070

Withheld pursuant to/removed as

NR

Ferbey, Stasia EAO:EX

From: Waters, Cory EAO:EX
Sent: Monday, April 13, 2015 10:03 AM
To: 'Virginia Mathers'
Cc: James Witzke; Moore, Sean EAO:EX; Braun, Nathan EAO:EX; Bailey, Scott EAO:EX; Cope, Brad JAG:EX
Subject: RE: Documents for strength of claim assessment for Gitxaala Nation

Greetings Virginia,

Thank you for providing the priority source materials listing. I have received response providing more details relating to each of the source materials to the specific references. I am advised that we are either constrained in providing any of these materials in select cases due to copyright, or that access should not be challenging to locate as they are publicly (and in some cases more readily) available either through UBC library access or directly online sources. Where the latter is concerned, more specific references to locations including hyperlinks are provided below.

Regarding the request for researcher notes, these materials are not able to be shared and those notes culminate in the memos and reports already provided to Gitxaala.

EAO acknowledged at the Victoria meeting I attended that the SOC-related content from the environmental assessment reports completed in October and November 2014 may not have adequately been reflected in the Aurora initial SOC letter provided, and that we would review those 2014 materials to more adequately reflect them in the forthcoming initial SOC letters anticipated for Grassy Point and WCC facility projects. As stated in our meetings, the intention of our sharing of the initial strength of claim overviews by the Province are to inform the depth of consultation relating to projects. Gitxaala is already being consulted more deeply through inclusion in working group processes and through other government-to-government meetings and discussions outside those working group meetings on the facility projects. EAO would be pleased to continue to meet with Gitxaala Nation on these projects going forward, and EAO will continue to consider any suggestions or concerns raised by Gitxaala Nation throughout our ongoing project reviews. Regarding the proposed researcher meeting request, we would ask that specific topics be suggested or concerns be provided by Gitxaala relating to BC's initial strength of claim (SOC) discussions or views in order to understand if there is further evolution to those views that were previously shared with BC during the two meetings held in October, 2014 for which transcripts were provided by your office in the separate submissions provided to Ministers by Gitxaala Nation, or in light of the anticipated initial SOC letters that are being prepared on the proposed Grassy Point and WCC facility projects.

I hope the following item-specific responses relating to the source information will assist Gitxaala Nation obtaining the copies that you seek.

Barbeau, Marius and William Beynon

- 1915-1957 Northwest coast files. Marius Barbeau Collection, Canadian Museum of Civilization, Quebec. (Files cited as: BF 14.2; BF 26.2; BF 40.1-12; BF 42.1-3)

Beynon, William

- 1953 Notebooks 1953, Vols. III, IV, V. Canadian Museum of Civilization, Barbeau Northwest Coast Files, BF 129.1; BF 130.1; BF 131.1.

Response: Sharing copies of the Barbeau Files owned by CMC invokes copyright issues. Scans can be ordered for a nominal cost and are typically provided within a few weeks; whereas if those costs are prohibitive it is suggested that the microfilm is readily available through interlibrary loan privileges at no cost.

Boas, Franz

- 1889 First general report on the Indians of British Columbia. In Fifth report of the Committee: appointed for the purpose of investigating and publishing reports on the physical characters, languages, and industrial and social condition of the northwestern tribes of the Dominion of Canada. British Association for the Advancement of Science, Newcastle-upon-Tyne meeting, 1889. London: Offices of the Association.

Response: This Boas document is available, in its entirety, online and accessible through a UBC Library account. Following are clips taken from the UBC Library Catalogue.



Fifth report of the committee appointed for the purpose of investigating and publishing reports on the physical characters, industrial and social condition of the north-western tribes of the Dominion of Canada

by Boas, Franz, Hale, Horatio
1889

eBook: Full Text Online



Fifth report of the committee appointed for the purpose of investigating and publishing reports on the physical characters, industrial and social condition of the north-western tribes of the Dominion of Canada

by Canadian Libraries; British Association for the Advancement of Science; Committee on North-Western Tribes of the Dominion of Canada; Boas, Franz; 1889

eBook: Full Text Online

Hudson's Bay Company

- 1832- 1866 Fort Simpson (Nass) Post Journals, 1832-1866. HBC Archives HBCA B.201/a/1-9,

Response: As with the Barbeau Files, these documents are owned by the Hudson's Bay Company Archives in Winnipeg, MA, and sharing copies invokes copyright issues. As with the Barbeau Files, any member of the public is free to order (personally or through interlibrary loan) copies of the microfilm reels for research purposes; it would require several days to scan this volume of material. The website is at http://www.gov.mb.ca/cgi-bin/print_hit_bold.pl/chc/archives/hbca/resource/index.html and the Fort Simpson (Nass) materials are catalogued as follows

FORT SIMPSON (NASS) (BRITISH COLUMBIA)			
Post Number: B.201			
Shelf space occupied: 26 cm			
Years covered by records: 1831-1926			
Document Reference No.	Document Type	Years	Reel No.
B.201/a/1-7	Post Journals NOTE: Vols. 5 & 8 contain <u>accounts</u> .	1832-1853	1M141
B.201/a/8-9		1855-1866	1M142
B.201/a/10		1899	1M1024
B.201/c/1	Correspondence Inward	1841-1842	1M381
B.201/c/2		1888-1900	1M398
B.201/e/1-5	Reports on Districts	1888-1900	1M1259
B.201/z/1	Miscellaneous Items	1831-1841	1M1671
B.201/z/2-3		1877-1926	1M1671
E.243/17-18	Private Records associated with this post are available. Please <u>contact us</u> for more information.	1851-1865	Not filmed

Matthews, Rev. J.H.

- 1916 Letter to the Secretary of the Royal Commission on Indian Affairs, March 2, 1916.

Response: This source was used in the LNG Marine Route EHR (2013), which was shared with Gitxaala. Matthews' letter was first mentioned at p. 14 of that report and the letter was quoted in its entirety on that page at footnote 14. As the citation indicates, the letter as quoted was the version published in the Royal Commission testimony of the 'Bella Coola' agency (all the Royal Commission testimonies, etc. are available online) but the report's bibliography also provides a BC Archives catalogue number, in case one wants to see the original: BCArchives, ADD, MS-1056, Box 1, F. 3.

Footnote 15 points out that Matthews' letter was accompanied by a map that was not available for review; as a result, the report relied on Seguin (2004) and her version of Matthews' map [Map W in the LNG Marine Route EHR]. Since that time, ARD has found scanned images of the actual Matthews map (and another copy of his letter, in its entirety) at a publicly available location online: Campbell, Kenneth. "Gitga'at Evidence Project. Report One." Unpublished report prepared for Hartley Bay Band Council and Gitga'at Lands and Resources Stewardship Society. March 2011. http://www.gitgaat-resources.ca/document_uploads/campbell_2011.pdf Accessed March 2015.

Powell, Jay

- 2006a By punt to the Kitlope. Prepared for the Royal British Columbia Museum Living Landscapes project, March 2006.
- 2006b Traditional Haisla ownership, use and occupancy of the stewardship areas along the Alcan and BC Hydro transmission lines in Haisla traditional territory. Prepared for the Kitimaat Village Council Environment Department, October 2006. Submission of the intervenor, Haisla Nation. British Columbia Utilities Commission Hearing. British Columbia Hydro and Power Authority F2007-2007 Revenue Requirements Application Project No. 3698416.

Response: These are both available online, and the websites are hyperlinked in bibliographies shared and captured below:

Powell, Jay. "By Punt to the Kitlope." Living Landscapes. Royal British Columbia Museum. March 2006. www.livinglandscapes.bc.ca/northwest/kitlope/index.html Accessed June 2013.

Powell, Jay. "Traditional Haisla Ownership, Use and Occupancy of the Stewardship Areas along the Alcan and BC Hydro Transmission Lines in Haisla Traditional Territory. October 2006." In Exhibit C27-4, Submission of the Haisla Nation. British Columbia Utilities Commission, BC Hydro & Power Authority Application for Revenue Requirements, BCH-F2007108 RRA – Project No. 3698416. www.bcuc.com/Documents/Proceedings/2006/DOC_12824_C27-4_Evidence-HaislaNation.pdf Accessed June 2013.

Robinson, Gordon

- 1956 Tales of Kitimaat: a selection of legends, folk stories, and customs of the Haisla people, a branch of the Kwakiutl Indian language group who live on the west coast of British Columbia. Kitimat: Northern Sentinel Press.

Response: This reference is available at the UBC Koerner Library at Call Number E99.H23R6 1961

Royal Commission on Indian Affairs for the Province of British Columbia (RCIABC)

- 1913a Transcript of further examination of Indian Agent Ivan Fougner, September 10, 1913.
- 1913b Transcript of examination of A. M. Tyson, Inspector of Indian Agencies, November 12, 1913.
- 1916a Report of the Royal Commission on Indian Affairs for the Province of British Columbia. Victoria, Acme Press.
- 1916b Transcript of George Robinson examination at Kitimat.

Response: These citations are hyperlinked in the bibliographies to the websites where they are available. All the minutes of decisions, testimonies of First Nations and Indian Agents, and final reports are available courtesy of the Union of BC Indian Chiefs Digital Collections:

<http://www.ubcic.bc.ca/Resources/Digital/index.htm#axzz3VzPONDxK>

We appreciate the requests received from Gitxaala, and hope this response and information is helpful.

Sincerely,

Cory Waters
First Nations Lead
BC Environmental Assessment Office
phone: (250) 387-0236
cell: (250) 812-4751

From: Virginia Mathers [mailto:VMathers@jfkllaw.ca]
Sent: Tuesday, March 31, 2015 10:17 AM
To: Waters, Cory EAO:EX
Cc: James Witzke; Moore, Sean EAO:EX
Subject: RE: Documents for strength of claim assessment for Gitxaala Nation

Hi Cory,

Here are the sources that Dr. Menzies is having difficulty getting copies of in relation to the Province's strength of claim assessment for Gitxaala.

These sources are either challenging or expensive to locate.

Barbeau, Marius and William Beynon

- 1915-1957 Northwest coast files. Marius Barbeau Collection, Canadian Museum of Civilization, Quebec. (Files cited as: BF 14.2; BF 26.2; BF 40.1-12; BF 42.1-3)

Beynon, William

- 1953 Notebooks 1953, Vols. III, IV, V. Canadian Museum of Civilization, Barbeau Northwest Coast Files, BF 129.1; BF 130.1; BF 131.1.

Boas, Franz

- 1889 First general report on the Indians of British Columbia. In Fifth report of the Committee: appointed for the purpose of investigating and publishing reports on the physical characters, languages, and industrial and social condition of the northwestern tribes of the Dominion of Canada. British Association for the Advancement of Science, Newcastle-upon-Tyne meeting, 1889. London: Offices of the Association.

Hudson's Bay Company

- 1832- 1866 Fort Simpson (Nass) Post Journals, 1832-1866. HBC Archives HBCA B.201/a/1-9,

Matthews, Rev. J.H.

- 1916 Letter to the Secretary of the Royal Commission on Indian Affairs, March 2, 1916.

Powell, Jay

- 2006a By punt to the Kitlope. Prepared for the Royal British Columbia Museum Living Landscapes project, March 2006.
- 2006b Traditional Haisla ownership, use and occupancy of the stewardship areas along the Alcan and BC Hydro transmission lines in Haisla traditional territory. Prepared for the Kitimaat Village Council Environment Department, October 2006. Submission of the intervenor, Haisla Nation. British Columbia Utilities Commission Hearing. British Columbia Hydro and Power Authority F2007-2007 Revenue Requirements Application Project No. 3698416.

Robinson, Gordon

- 1956 Tales of Kitimaat: a selection of legends, folk stories, and customs of the Haisla people, a branch of the Kwakiutl Indian language group who live on the west coast of British Columbia. Kitimaat: Northern Sentinel Press.

Royal Commission on Indian Affairs for the Province of British Columbia (RCIABC)

- 1913a Transcript of further examination of Indian Agent Ivan Fougner, September 10, 1913.
- 1913b Transcript of examination of A. M. Tyson, Inspector of Indian Agencies, November 12, 1913.

- 1916a Report of the Royal Commission on Indian Affairs for the Province of British Columbia. Victoria, Acme Press.
- 1916b Transcript of George Robinson examination at Kitimat.

Please let us know when these sources can be provided. As discussed at our last meeting, it would also be very useful for Dr. Menzies to have the research notes prepared by the Aboriginal Research Division in relation to the Province's assessment.

Dr. Menzies would also still like to discuss the ARD's findings with Ms. Dusseault as suggested at our last meeting.

Many thanks,

Virginia C. Mathers
JFK Law Corporation
604 687 0549 ext. 104
vmathers@jfkclaw.ca

-----Original Message-----

From: Waters, Cory EAO:EX [<mailto:Cory.Waters@gov.bc.ca>]
Sent: Wednesday, March 18, 2015 12:32 PM
To: Virginia Mathers
Cc: James Witzke; Moore, Sean EAO:EX
Subject: Re: Documents for strength of claim assessment for Gitxaala Nation

Hi Virginia thank you for your follow up.

Aboriginal Research Division has requested to understand if there are specific resources Dr. Menzies is having difficulty locating or obtaining. It would enable ARD to better provide guidance or consider requests for specific, hard-to-find or obtain documents.

Appreciated.

Sent from my iPhone

On Mar 18, 2015, at 11:14 AM, Virginia Mathers <VMathers@jfkclaw.ca<<mailto:VMathers@jfkclaw.ca>>> wrote:

Hi Cory,

Is there any update on setting up a call to discuss the Strength of Claim materials?

Thanks,

Virginia C. Mathers
JFK Law Corporation
604 687 0549 ext. 104
vmathers@jfkclaw.ca<<mailto:vmathers@jfkclaw.ca>>

From: Virginia Mathers
Sent: Friday, March 06, 2015 4:40 PM
To: 'Waters, Cory EAO:EX'
Cc: 'James Witzke'; 'Sean.Moore@gov.bc.ca'<<mailto:Sean.Moore@gov.bc.ca>>
Subject: RE: Documents for strength of claim assessment for Gitxaala Nation

Hi Cory,

Are you able to provide an update on setting up a call with Kecia to discuss the Gitxaala's strength of claim assessment?

Thanks,

Virginia C. Mathers
JFK Law Corporation
604 687 0549 ext. 104
vmathers@jfkclaw.ca<mailto:vmathers@jfkclaw.ca>

From: Virginia Mathers
Sent: Tuesday, February 24, 2015 4:38 PM
To: Waters, Cory EAO:EX
Cc: 'James Witzke'; 'Sean.Moore@gov.bc.ca<mailto:Sean.Moore@gov.bc.ca>'
Subject: Documents for strength of claim assessment for Gitxaala Nation

Hi Cory,

Thanks for the meeting last week. As discussed, Gitxaala is interested in setting up a time for us to speak with Dr. Charles Menzies and Kecia Dusseault about getting Charles the documents he needs for Gitxaala to respond to BC's strength of claim assessment.

Could you please let us know when you have some possible dates for this call and we'll arrange for Charles to participate.

Thanks,

Virginia C. Mathers
Associate

JFK Law Corporation
340 – 1122 Mainland Street
Vancouver BC V6B 5L1

T 604 687 0549 ext 104 C 778 990 8104
F 604 687 2696 E vmathers@jfkclaw.ca
www.jfkclaw.ca

Please consider the environment before printing this email.

CONFIDENTIALITY: This e-mail message (including attachments, if any) is confidential and is intended only for the addressee. Any unauthorized use or disclosure is strictly prohibited. Disclosure of this e-mail to anyone other than the intended addressee does not constitute waiver of privilege. If you have received this communication in error, please notify us immediately and delete this. Thank you for your cooperation.

Ferbey, Stasia EAO:EX

From: Waters, Cory EAO:EX
Sent: Tuesday, March 31, 2015 10:30 AM
To: 'Virginia Mathers'
Cc: James Witzke; Moore, Sean EAO:EX
Subject: RE: Documents for strength of claim assessment for Gitxaala Nation

Categories: Green Category

Thank you Virginia that is very helpful. I hope to reconnect soon with a response on the materials and further discussions.

From: Virginia Mathers [mailto:VMathers@jfkclaw.ca]
Sent: Tuesday, March 31, 2015 10:17 AM
To: Waters, Cory EAO:EX
Cc: James Witzke; Moore, Sean EAO:EX
Subject: RE: Documents for strength of claim assessment for Gitxaala Nation

Hi Cory,

Here are the sources that Dr. Menzies is having difficulty getting copies of in relation to the Province's strength of claim assessment for Gitxaala.

These sources are either challenging or expensive to locate.

Barbeau, Marius and William Beynon

- 1915-1957 Northwest coast files. Marius Barbeau Collection, Canadian Museum of Civilization, Quebec. (Files cited as: BF 14.2; BF 26.2; BF 40.1-12; BF 42.1-3)

Beynon, William

- 1953 Notebooks 1953, Vols. III, IV, V. Canadian Museum of Civilization, Barbeau Northwest Coast Files, BF 129.1; BF 130.1; BF 131.1.

Boas, Franz

- 1889 First general report on the Indians of British Columbia. In Fifth report of the Committee: appointed for the purpose of investigating and publishing reports on the physical characters, languages, and industrial and social condition of the northwestern tribes of the Dominion of Canada. British Association for the Advancement of Science, Newcastle-upon-Tyne meeting, 1889. London: Offices of the Association.

Hudson's Bay Company

- 1832- 1866 Fort Simpson (Nass) Post Journals, 1832-1866. HBC Archives HBCA B.201/a/1-9,

Matthews, Rev. J.H.

- 1916 Letter to the Secretary of the Royal Commission on Indian Affairs, March 2, 1916.

Powell, Jay

- 2006a By punt to the Kitlope. Prepared for the Royal British Columbia Museum Living Landscapes project, March 2006.
- 2006b Traditional Haisla ownership, use and occupancy of the stewardship areas along the Alcan and BC Hydro transmission lines in Haisla traditional territory. Prepared for the Kitlaanaat Village Council Environment Department, October 2006. Submission of the intervenor, Haisla Nation. British Columbia Utilities Commission Hearing. British Columbia Hydro and Power Authority F2007-2007 Revenue Requirements Application Project No. 3698416.

Robinson, Gordon

- 1956 Tales of Kitimaat: a selection of legends, folk stories, and customs of the Haisla people, a branch of the Kwakiutl Indian language group who live on the west coast of British Columbia. Kitimat: Northern Sentinel Press.

Royal Commission on Indian Affairs for the Province of British Columbia (RCIABC)

- 1913a Transcript of further examination of Indian Agent Ivan Fougner, September 10, 1913.
- 1913b Transcript of examination of A. M. Tyson, Inspector of Indian Agencies, November 12, 1913.
- 1916a Report of the Royal Commission on Indian Affairs for the Province of British Columbia. Victoria, Acme Press.
- 1916b Transcript of George Robinson examination at Kitimat.

Please let us know when these sources can be provided. As discussed at our last meeting, it would also be very useful for Dr. Menzies to have the research notes prepared by the Aboriginal Research Division in relation to the Province's assessment.

Dr. Menzies would also still like to discuss the ARD's findings with Ms. Dusseault as suggested at our last meeting.

Many thanks,

Virginia C. Mathers

JFK Law Corporation
604 687 0549 ext. 104
vmathers@jfklaw.ca

-----Original Message-----

From: Waters, Cory EAO:EX [<mailto:Cory.Waters@gov.bc.ca>]

Sent: Wednesday, March 18, 2015 12:32 PM

To: Virginia Mathers

Cc: James Witzke; Moore, Sean EAO:EX

Subject: Re: Documents for strength of claim assessment for Gitxaala Nation

Hi Virginia thank you for your follow up.

Aboriginal Research Division has requested to understand if there are specific resources Dr. Menzies is having difficulty locating or obtaining. It would enable ARD to better provide guidance or consider requests for specific, hard-to-find or obtain documents.

Appreciated.

Sent from my iPhone

On Mar 18, 2015, at 11:14 AM, Virginia Mathers <VMathers@jfklaw.ca<<mailto:VMathers@jfklaw.ca>>> wrote:

Hi Cory,

Is there any update on setting up a call to discuss the Strength of Claim materials?

Thanks,

Virginia C. Mathers

JFK Law Corporation

604 687 0549 ext. 104

vmathers@jfklaw.ca<<mailto:vmathers@jfklaw.ca>>

From: Virginia Mathers

Sent: Friday, March 06, 2015 4:40 PM

To: 'Waters, Cory EAO:EX'

Cc: 'James Witzke'; 'Sean.Moore@gov.bc.ca'<<mailto:Sean.Moore@gov.bc.ca>>'

Subject: RE: Documents for strength of claim assessment for Gitxaala Nation

Hi Cory,

Are you able to provide an update on setting up a call with Kecia to discuss the Gitxaala's strength of claim assessment?

Thanks,

Virginia C. Mathers

JFK Law Corporation

604 687 0549 ext. 104

vmathers@jfklaw.ca<<mailto:vmathers@jfklaw.ca>>

From: Virginia Mathers

Sent: Tuesday, February 24, 2015 4:38 PM

To: Waters, Cory EAO:EX

Cc: 'James Witzke'; 'Sean.Moore@gov.bc.ca'<<mailto:Sean.Moore@gov.bc.ca>>'

Subject: Documents for strength of claim assessment for Gitxaala Nation

Hi Cory,

Thanks for the meeting last week. As discussed, Gitxaala is interested in setting up a time for us to speak with Dr. Charles Menzies and Kecia Dusseault about getting Charles the documents he needs for Gitxaala to respond to BC's strength of claim assessment.

Could you please let us know when you have some possible dates for this call and we'll arrange for Charles to participate.

Thanks,

Virginia C. Mathers

Associate

JFK Law Corporation

340 – 1122 Mainland Street
Vancouver BC V6B 5L1
T 604 687 0549 ext 104 C 778 990 8104
F 604 687 2696 E vmathers@jfkllaw.ca
www.jfkllaw.ca

Please consider the environment before printing this email.

CONFIDENTIALITY: This e-mail message (including attachments, if any) is confidential and is intended only for the addressee. Any unauthorized use or disclosure is strictly prohibited. Disclosure of this e-mail to anyone other than the intended addressee does not constitute waiver of privilege. If you have received this communication in error, please notify us immediately and delete this. Thank you for your cooperation.

Ferbey, Stasia EAO:EX

From: Waters, Cory EAO:EX
Sent: Wednesday, March 18, 2015 12:32 PM
To: Virginia Mathers
Cc: James Witzke; Moore, Sean EAO:EX
Subject: Re: Documents for strength of claim assessment for Gitxaala Nation

Categories: Green Category

Hi Virginia thank you for your follow up.

Aboriginal Research Division has requested to understand if there are specific resources Dr. Menzies is having difficulty locating or obtaining. It would enable ARD to better provide guidance or consider requests for specific, hard-to-find or obtain documents.

Appreciated.

Sent from my iPhone

On Mar 18, 2015, at 11:14 AM, Virginia Mathers <VMathers@jfklaw.ca> wrote:

Hi Cory,
Is there any update on setting up a call to discuss the Strength of Claim materials?

Thanks,

Virginia C. Mathers

JFK Law Corporation
604 687 0549 ext. 104
vmathers@jfklaw.ca

From: Virginia Mathers
Sent: Friday, March 06, 2015 4:40 PM
To: 'Waters, Cory EAO:EX'
Cc: 'James Witzke'; 'Sean.Moore@gov.bc.ca'
Subject: RE: Documents for strength of claim assessment for Gitxaala Nation

Hi Cory,
Are you able to provide an update on setting up a call with Kecia to discuss the Gitxaala's strength of claim assessment?

Thanks,

Virginia C. Mathers

JFK Law Corporation
604 687 0549 ext. 104
vmathers@jfklaw.ca

From: Virginia Mathers
Sent: Tuesday, February 24, 2015 4:38 PM
To: Waters, Cory EAO:EX
Cc: 'James Witzke'; 'Sean.Moore@gov.bc.ca'
Subject: Documents for strength of claim assessment for Gitxaala Nation
Hi Cory,

Thanks for the meeting last week. As discussed, Gitxaala is interested in setting up a time for us to speak with Dr. Charles Menzies and Kecia Dusseault about getting Charles the documents he needs for Gitxaala to respond to BC's strength of claim assessment.

Could you please let us know when you have some possible dates for this call and we'll arrange for Charles to participate.

Thanks,

Virginia C. Mathers

Associate

JFK Law Corporation

340 – 1122 Mainland Street

Vancouver BC V6B 5L1

T 604 687 0549 ext 104 C 778 990 8104

F 604 687 2696 E vmathers@jfkclaw.ca

www.jfkclaw.ca

***We have launched our new website! Come and see what we've done at
www.jfkclaw.ca***

Please consider the environment before printing this email.

CONFIDENTIALITY: This e-mail message (including attachments, if any) is confidential and is intended only for the addressee. Any unauthorized use or disclosure is strictly prohibited. Disclosure of this e-mail to anyone other than the intended addressee does not constitute waiver of privilege. If you have received this communication in error, please notify us immediately and delete this. Thank you for your cooperation.

Ferbey, Stasia EAO:EX

From: McDonald, Tavis EAO:EX
Sent: Thursday, January 22, 2015 11:09 AM
To: James Witzke; Virginia Mathers
Cc: Moore, Sean EAO:EX; Howes, Kenneth EAO:EX; Griffiths, Felice EAO:EX; Van Doorn, Mark EAO:EX; Waters, Cory EAO:EX
Subject: Follow up from last weeks meeting
Attachments: LTR Gitxaala to EAO regaring Strength of Claim Assessment.pdf; LTR Gitxaala to Nexen regarding Aurora LNG Draft Consultation Plan.pdf; LTR Gitxaala to Nexen regarding Draft VCs.pdf

Categories: Green Category

Hi James/Virginia

As always, appreciate the opportunity to meet with you last week and the candor of our discussions. I had a couple of items that I wanted to follow up on as part of the transition on the LNG files I was leading.

- I acknowledge the concerns raised at the meeting as well as the follow up letter (attached) on EAO's initial SoC analysis on the Aurora project. Felice is currently following up on the reference material as well as the additional sources you cited for consideration. I will discuss this with the new project lead when I meet with him next week and Sean will respond to you.
- I will also be talking with Sean in rescheduling the meeting between Aurora/EAO/Gitxaala to discuss consultation (letter sent to Aurora attached) and the selection of Value Components (letter sent to Aurora, see attached)
- I appreciate the input and discussion with respect to substitution. I will be discussing these further with the project leads and EAO/CEAA will be developing a more succinct response to address the concerns raised.
- I have highlighted to Aurora the concerns raised by Gitxaala around how Socio Economic effects is addressed between Part B and C of the Assessment report. It will be a key area and a topic of discussion at the upcoming working group meeting.
- WCC LNG- the current plan is to have the draft Section 11 out by the end of February. I will discuss with Ken the commitment I made to you to respond to any comments Gitxaala submits on the S. 11 draft prior to finalising. I will also pass on to the proponent the concern you raised on how the Project Description describes proximity to Lax Kw'alaams and Metlakatla but not Gitxaala.

Thanks and talk to you soon.

Tavis McDonald, RPF Project Assessment Manager, Environmental Assessment Office
Telephone: (250) 638-5172 | Mobile: (250) 631-2871

Ferbey, Stasia EAO:EX

From: Virginia Mathers <VMathers@jfkclaw.ca>
Sent: Friday, November 21, 2014 3:42 PM
To: McDonald, Tavis EAO:EX
Cc: James Witzke; Waters, Cory EAO:EX
Subject: RE: Follow up from November 19 meeting with Gitxaala - Preparations for strength of claim meeting

Categories: Green Category

Great, thank you Tavis. We look forward to hearing from you.

Virginia C. Mathers

JFK Law Corporation

604 687-0549 x 104 (office)

778 990-8104 (cell)

604 687-2696 (fax)

From: McDonald, Tavis EAO:EX [<mailto:Tavis.McDonald@gov.bc.ca>]

Sent: Friday, November 21, 2014 2:48 PM

To: Virginia Mathers

Cc: James Witzke; Waters, Cory EAO:EX

Subject: RE: Follow up from November 19 meeting with Gitxaala - Preparations for strength of claim meeting

Thanks Virginia and nice to meet you as well. I'll discuss the below with Cory and determine if and how we can share these materials with you.

Look forward to talking again soon

T

Tavis McDonald, RPF Project Assessment Manager, Environmental Assessment Office

Telephone: (250) 638-5172 | Mobile: (250) 631-2871

From: Virginia Mathers [<mailto:VMathers@jfkclaw.ca>]

Sent: Friday, November 21, 2014 2:27 PM

To: McDonald, Tavis EAO:EX

Cc: James Witzke

Subject: Follow up from November 19 meeting with Gitxaala - Preparations for strength of claim meeting

It was nice to meet you in Prince Rupert on Wednesday, Tavis.

I wanted to confirm Gitxaala's interest in meeting with the Province to discuss strength of claim in relation to Aurora LNG and the other new projects currently proposed for the Prince Rupert Harbour area.

As discussed, in advance of this meeting, Gitxaala would appreciate receiving copies of the materials used to inform the Province's assessment to date. Specifically, Gitxaala is interested in the references cited by the EAO in the Gitxaala section of the draft Assessment Reports for the Pacific NW LNG, Westcoast Connector Gas Transmission, and Prince Rupert Gas Transmission Line Projects. (It is our understanding that the same materials were cited in all three reports.) We realize that some of these materials are quite large so if you want to discuss the best way of providing copies please give me a call.

Thanks,

Virginia

Virginia C. Mathers

JFK Law Corporation

340 - 1122 Mainland Street

Vancouver, BC V6B 5L1

604 687-0549 x 104 (office)

778 990-8104 (cell)

604 687-2696 (fax)

Please consider the environment before printing this email.

CONFIDENTIALITY: This e-mail message (including attachments, if any) is confidential and is intended only for the addressee. Any unauthorized use or disclosure is strictly prohibited. Disclosure of this e-mail to anyone other than the intended addressee does not constitute waiver of privilege. If you have received this communication in error, please notify us immediately and delete this. Thank you for your cooperation. This message has not been encrypted. Special arrangements can be made for encryption upon request.

Visit our website at www.jfklaw.ca for information about our firm and the services we provide.

Ferbey, Stasia EAO:EX

From: Howes, Kenneth EAO:EX
Sent: Monday, November 10, 2014 10:58 AM
To: Virginia Mathers
Cc: James Witzke; Waters, Cory EAO:EX; Mayall, Jane EAO:EX
Subject: RE: Follow up items from meeting with Gitxaala on October 23

Categories: Green Category

Hi Virginia,

I am following up on your email requests below. On the matter of your first request, it is my understanding that Cory Waters has provided you with all the relevant memos regarding Gitxaala Nation's strength of claim. On your second request, EAO has provided a list of references (as an appendix to the draft assessment report, Part C circulated on October 14, 2014). EAO will not be providing copies of the actual documents, as this material is protected by copyright, and is available publically – in fact, many of the references are noted in the submissions provided by Gitxaala to the EAO, including reports by Dr. Menzies.

Please let me know if you have any questions, or you wish further clarity.

Regards,
Ken

From: Virginia Mathers [<mailto:VMathers@jfklaw.ca>]
Sent: Monday, October 27, 2014 5:19 PM
To: Howes, Kenneth EAO:EX
Cc: James Witzke
Subject: Follow up items from meeting with Gitxaala on October 23

Hi Ken,

We would like to follow up on a few information requests from our meeting in Prince Rupert on Thursday.

1. Could you please send us a copy of all of the Crown's memos relating to Gitxaala's strength of claim?
2. As discussed on Thursday, Gitxaala has requested copies of the references cited by the EAO in Gitxaala's section of the draft Assessment Report for the Pacific NW LNG Project. We look forward to receiving these materials. If you have any questions about providing these materials please let me know.

Thanks,

Virginia C. Mathers
JFK Law Corporation
340 - 1122 Mainland Street
Vancouver, BC V6B 5L1

604 687-0549 x 104 (office)
778 990-8104 (cell)
604 687-2696 (fax)

Please consider the environment before printing this email.

CONFIDENTIALITY: This e-mail message (including attachments, if any) is confidential and is intended only for the addressee. Any unauthorized use or disclosure is strictly prohibited. Disclosure of this e-mail to anyone other than the intended addressee does not constitute waiver of privilege. If you have received this communication in error, please notify us immediately and delete this. Thank you for your cooperation. This message has not been encrypted. Special arrangements can be made for encryption upon request.

Visit our website at www.jfklaw.ca for information about our firm and the services we provide.

Ferbey, Stasia EAO:EX

From: Dickson, Julie ABR:EX
Sent: Monday, November 3, 2014 10:20 AM
To: Nash, Laurel ABR:EX; Leece, Robert ABR:EX; 'rjanes@jfkllaw.ca'; Waters, Cory EAO:EX
Cc: Symington, Phil ABR:EX
Subject: Signed Letter to Chief Clarence Innis
Attachments: 2014Oct27_letter to Chief Innis.pdf

Categories: Green Category

Good morning,

Attached is the October 27 letter to Chief Clarence Innis for your records.

Thank you,

Julie Dickson

Administrative Assistant
Negotiations and Regional Operations Division - North Region
Ministry of Aboriginal Relations and Reconciliation
Ph: (250) 953-3523
Fax: (250) 387-0887



October 27, 2014

Ref: 35624

Acting Chief Clarence Innis
Gitxaala Nation
PO Box 149
Kitkatla BC V0V 1C0

Dear Acting Chief Innis,

I am writing to you to clarify our response to the December 20, 2013 letter addressed to me from David Robbins. I understand that you have raised the issue of our response to the Mr. Robbins letter in several letters to the Environmental Assessment Office (EAO), most recently in a letter dated October 14, 2014.

On November 7th, 2013, I sent a letter to you in which I presented British Columbia's initial view of the nature of Gitxaala Aboriginal Interests over 4 areas in the Prince Rupert Region that may be impacted by LNG development. This information was provided to Gitxaala in accordance with our Engagement Framework Agreement and in advance of any engagement by other provincial agencies such as the EAO. I advised that the Ministry of Aboriginal Relations and Reconciliation (MARR) is taking a coordinating role in providing the province's view of claimed aboriginal rights and title (Aboriginal Interests) over these areas and that further consultations concerning project or application specific regulatory decisions will be carried out by the responsible government agency.

I appreciate the response from David Robbins and the inclusion of the Gitxaala strength of claim report and supporting oral evidence. This information was shared with the EAO and was considered in their assessment of strength of claim provided to you and the Gitxaala on January 31, 2014, March 12, 2014, and in their most recent letter of October 24, 2014. These letters were provided as follow up to my November 7th, 2013 letter as part of the consultation process on potential LNG development in the Prince Rupert area. It was my expectation that Gitxaala would continue their consultation engagement with the Province through the EAO.

I encourage Gitxaala to continue to engage with the EAO in this consultation process and bring forward any new information to their attention. The Environmental Assessment (EA) process will generate detailed information about the potential impacts of the proposed projects, and will involve the development of mitigation strategies to address potential impacts to Aboriginal Interests. There are a number of opportunities for Gitxaala engagement throughout the EA process.

Yours truly,



Mark Lofthouse
Chief Negotiator

Cc: Robert Lecce, Senior Negotiator
Ministry of Aboriginal Relations and Reconciliation

Laurel Nash, A/Assistant Deputy Minister
Ministry of Aboriginal Relations and Reconciliation

Cory Waters, First Nations Lead, LNG Projects
Environmental Assessment Office

Robert Janes, Legal Counsel
Janes Freedman Kyle Law Corporation

Ferbey, Stasia EAO:EX

From: Waters, Cory EAO:EX
Sent: Friday, October 31, 2014 5:46 PM
To: 'Virginia Mathers'; Chan, Debbie JAG:EX; Dusseault, Kecia JAG:EX
Cc: James Witzke; Charles Menzies
Subject: RE: Dr. Menzies report on Prince Rupert Harbour area

Categories: Green Category

Thank you for this Virginia – we note it was provided previously on the cd conveyed to EAO on October 31, 2013 (one year ago today).

From: Virginia Mathers [<mailto:VMathers@jfkllaw.ca>]
Sent: Friday, October 31, 2014 11:02 AM
To: Waters, Cory EAO:EX; Chan, Debbie JAG:EX; Dusseault, Kecia JAG:EX
Cc: James Witzke; Charles Menzies
Subject: Dr. Menzies report on Prince Rupert Harbour area

Good morning,

At our meeting yesterday, Dr. Menzies referenced his report on the Prince Rupert Harbour area.

A copy of this report is attached.

Many thanks,
Virginia

Virginia C. Mathers

JFK Law Corporation
340 - 1122 Mainland Street
Vancouver, BC V6B 5L1

604 687-0549 x 104 (office)
778 990-8104 (cell)
604 687-2696 (fax)

Please consider the environment before printing this email.

CONFIDENTIALITY: This e-mail message (including attachments, if any) is confidential and is intended only for the addressee. Any unauthorized use or disclosure is strictly prohibited. Disclosure of this e-mail to anyone other than the intended addressee does not constitute waiver of privilege. If you have received this communication in error, please notify us immediately and delete this. Thank you for your cooperation. This message has not been encrypted. Special arrangements can be made for encryption upon request.

Visit our website at www.jfkllaw.ca for information about our firm and the services we provide.

Ferbey, Stasia EAO:EX

From: Waters, Cory EAO:EX
Sent: Friday, October 31, 2014 5:01 PM
To: 'Robert Janes'; 'clarence.innis@gitxaalanation.com'; 'jamesw@gitxaalanation.com'; Virginia Mathers; XT:Ignas, Mark FOR:IN
Cc: 'drobbins@woodwardandcompany.com'; Robertson, Linda G ABR:EX; Lofthouse, Mark ABR:EX; Steynen, Marc; 'Jillian.smith@ceaa-acee.gc.ca'; 'katherine.beavis@tc.gc.ca'; 'Catherine.Ponsford@ceaa-acee.gc.ca'; 'candace.anderson@ceaa-acee.gc.ca'; Howes, Kenneth EAO:EX; Bailey, Scott EAO:EX; Braun, Nathan EAO:EX; Mayall, Jane EAO:EX; Ferbey, Stasia EAO:EX; Chan, Debbie JAG:EX; Balcaen, Trish L EAO:EX; Dusseault, Kecia JAG:EX
Subject: RE: Letter dated October 24, 2014 from EAO
Categories: Green Category

Good afternoon,

Thank you Chief Innis and Gitxaala representatives for meeting yesterday with EAO at JFK offices in Vancouver to discuss ongoing concerns held by Gitxaala Nation in relation to the three EA projects whose application reviews are nearing completion. I sincerely appreciate the views you expressed.

Further to yesterday's meeting, EAO intends to insert the following content in each of the three assessment reports to represent the ongoing Gitxaala concerns that were discussed. I share this in the event that it may inform your separate submissions on the projects.

In a meeting October 30, 2014 between EAO and Gitxaala Nation, Gitxaala Nation continued to emphasize to EAO its significant disagreement relating to the adequacy of consultation and accommodation, particularly regarding EAO's assessment of the strength of Gitxaala's claims of Aboriginal rights and title to the Prince Rupert Harbour area. Gitxaala Nation placed strong emphasis on their views that EAO has not sufficiently considered the oral evidence that has been provided relating to their claims in the Prince Rupert area, and that such evidence in relation to the proposed Project needs to be considered at face value, rather than allegedly being discounted by EAO.

EAO acknowledges the information provided in the Gitxaala statutory declarations derives from attestations of a Gitxaala presence in the vicinity of Prince Rupert, largely beginning in the 1880s but with some references to members living in this area prior to that time. EAO has considered this evidence in the context of the ethnohistorical record, which includes a recording of other oral history, a majority of which suggests that Gitxaala (like Gitga'at and Interior Tsimshian groups) may have started using the area on a regular and consistent basis at some point after 1846, including after the establishment of the mission village of Metlaktla in 1862.

There was a discussion of the challenges related to the differing information regarding which group occupied and/or had control of specific sites within the Prince Rupert Harbour area, the time period when different groups used or occupied that area, and whether any such use or occupation was by permission of another group. Gitxaala raised concerns regarding EAO's reliance on Beynon's work, particularly where it attributes use, occupation or control of areas in the Prince Rupert Harbour area to the nine Allied Tribes and not also to Gitxaala. EAO is of the view that all information needs to be considered. EAO noted that responses to these issues were conveyed in one of the two October 28, 2014 memoranda provided to Gitxaala in advance of the meeting, which built on information previously shared by EAO in March, 2014.

EAO appreciates that confusion has been created by use of the term “Coast Tsimshian” to represent the surviving nine Tsimshian tribes who previously had winter villages in the lower Skeena River and relocated their winter villages to Prince Rupert Harbour prior to contact. We understand that the Coast Tsimshian term has been used by different linguists and ethnohistorians in different way to include different groups. To avoid this confusion, EAO will use the term “nine Allied Tsimshian Tribes” to refer to the surviving nine tribes who previously had winter villages in the lower Skeena River and relocated their winter villages to Prince Rupert Harbour prior to contact. References to Southern Tsimshian similarly will be revised.

Although Gitxaala were provided consultation opportunities at a deeper level by having been listed on Schedule B, Gitxaala raised the concern that its Aboriginal Interests were not appropriately accommodated because of EAO’s assessment of its strength of claims. There was a discussion of measures to mitigate or avoid impacts on Aboriginal Interests developed during the EA. A particular concern that Gitxaala raised was regarding the potential social and economic effects that Gitxaala members could experience. EAO can confirm that the proposed EA Certificate condition requiring a Social and Economic Effects Management Plan (SEEMP) requires the Proponent to engage with all affected Aboriginal Groups, which includes Gitxaala, [PNW-specific and in relation to PNW LNG, to develop this plan that will address the anticipated cumulative social and economic impacts relating to the proposed Facility, including specific consideration for vulnerable populations. This plan must be developed and approved in accordance with defined timelines outlined in the draft condition. Note that there is no distinction made among the Aboriginal Groups to be engaged in the development of this plan such that some would be engaged more than others. We also understand that BC had an initial discussion with Gitxaala regarding benefits to Gitxaala related to LNG. BC does not direct Proponents in relation to benefit negotiations, and has shared the SOC summary information to inform delegated aspects of consultation.

Gitxaala emphasized its concerns regarding the timeline and requested a suspension of time limits pursuant to section 24(4) to allow for more consultation to address or reconcile Gitxaala’s outstanding concerns. EAO acknowledged the request but continues to be of the view that the consultation and accommodation process has been reasonable and adequate in the circumstances.

I would also like to note that EAO has amended the articulation of our Strength of Claim in our Assessment Reports to eliminate references of “no information” to characterize the nature of Gitxaala’s claim, and will characterize it as follows:

- Based on the information reviewed and test for title as set out in *Tsilhqot’in*, EAO is of the view that Gitxaala Nation have a weak prima facie claim of Aboriginal title within or near those portions of the proposed Project areas in the vicinity of the Prince Rupert Harbour which overlap with the asserted traditional territory of Gitxaala Nation as the evidence available suggests Gitxaala Nation use of these lands was for transitory purposes and at the permission of other the nine Allied Tribes. Gitxaala Nation significantly disagrees with this view. EAO is of the view that Gitxaala Nation has a strong *prima facie* claim of Aboriginal title at the historic eulachon fishing camp, in the Stoney Point area, and a lower *prima facie* claim to title at Red Bluff owing to uncertainty of the time that use of this site by Gitxaala Nation was established, and whether such use could have extended from permission by the Nisga’a at this site.

Respectfully,

Cory Waters
First Nations Lead for LNG Projects
BC Environmental Assessment Office
phone: (250) 387-0236
cell: (250) 812-4751

From: Robert Janes [mailto:RJanes@jfklaw.ca]

Sent: Tuesday, October 28, 2014 9:26 PM

To: Waters, Cory EAO:EX; 'clarence.innis@gitxaalanation.com'; 'jamesw@gitxaalanation.com'; Virginia Mathers

Cc: 'drobbins@woodwardandcompany.com'; Robertson, Linda G ABR:EX; Lofthouse, Mark ABR:EX; Steynen, Marc; 'Jillian.smith@ceaa-acee.gc.ca'; 'katherine.beavis@tc.gc.ca'; 'Catherine.Ponsford@ceaa-acee.gc.ca'; 'candace.anderson@ceaa-acee.gc.ca'; Howes, Kenneth EAO:EX; Bailey, Scott EAO:EX; Braun, Nathan EAO:EX; Mayall, Jane EAO:EX; Spiteri, Bailey EAO:EX; Chan, Debbie JAG:EX; Balcaen, Trish L EAO:EX; Dusseault, Kecia JAG:EX; XT:Ignas, Mark FOR:IN

Subject: RE: Letter dated October 24, 2014 from EAO

Dear Mr. Waters,

I think you can appreciate receiving two highly technical memorandums dealing with a range of ethno-historical materials provided to the Crown on March 8, 2013 at 5:28 pm on October 28, 2014 for a meeting scheduled for October 30, 2014 is actually not incredibly helpful or constructive. This leaves us with little time to review this material ourselves much less have our consultants and relevant chiefs review and comment on it.

Robert

Robert JM Janes
JFK Law Corporation
816-1175 Douglas Street
Victoria, BC V8W 2E1

250-888-5269(c)

Please consider the environment before printing this email.

CONFIDENTIALITY: This e-mail message (including attachments, if any) is confidential and is intended only for the addressee. Any unauthorized use or disclosure is strictly prohibited. Disclosure of this e-mail to anyone other than the intended addressee does not constitute waiver of privilege. If you have received this communication in error, please notify us immediately and delete this. Thank you for your cooperation. This message has not been encrypted. Special arrangements can be made for encryption upon request.

Visit our website at www.jfklaw.ca for information about our firm and the services we provide.

From: Waters, Cory EAO:EX [mailto:Cory.Waters@gov.bc.ca]

Sent: Tuesday, October 28, 2014 5:28 PM

To: 'clarence.innis@gitxaalanation.com'; 'jamesw@gitxaalanation.com'; Virginia Mathers; Robert Janes

Cc: 'drobbins@woodwardandcompany.com'; Robertson, Linda G ABR:EX; Lofthouse, Mark ABR:EX; Steynen, Marc;

'Jillian.smith@ceaa-acee.gc.ca'; 'katherine.beavis@tc.gc.ca'; 'Catherine.Ponsford@ceaa-acee.gc.ca';

'candace.anderson@ceaa-acee.gc.ca'; Howes, Kenneth EAO:EX; Bailey, Scott EAO:EX; Braun, Nathan EAO:EX; Mayall,

Jane EAO:EX; Spiteri, Bailey EAO:EX; Chan, Debbie JAG:EX; Balcaen, Trish L EAO:EX; Dusseault, Kecia JAG:EX

Subject: RE: Letter dated October 24, 2014 from EAO

Good afternoon,

Further to the letter provided to you on October 24, 2014, I am attaching two follow-up memoranda as follows:

1. Ministry of Justice, October 28, 2014. Memo from Kecia Dusseault, Senior Research Officer, Aboriginal Research Division to Cory Waters, First Nations Lead, LNG Projects, Environmental Assessment Office. "Gitxaala at the Nass River Eulachon Fishery."
2. Ministry of Justice, October 28, 2014. Memo from Kecia Dusseault, Senior Research Officer, Aboriginal Research Division to Ken Howes, Project Assessment Manager, Environmental Assessment Office. "Detailed Review of the Gitxaala Submission – Prince Rupert Harbour Area (March 2013)"

I trust that this information will assist in our discussions on October 30 in Vancouver.

Sincerely,

Cory Waters
First Nations Lead for LNG Projects
BC Environmental Assessment Office
phone: (250) 387-0236
cell: (250) 812-4751

From: Spiteri, Bailey EAO:EX
Sent: Friday, October 24, 2014 5:23 PM
To: 'clarence.innis@gitxaalanation.com'; 'jamesw@gitxaalanation.com'
Cc: 'rjanes@jfklaw.ca'; 'vmathers@jfklaw.ca'; 'drobbins@woodwardandcompany.com'; Robertson, Linda G ABR:EX; Lofthouse, Mark ABR:EX; Steynen, Marc; 'Jillian.smith@ceaa-acee.gc.ca'; 'katherine.beavis@tc.gc.ca'; 'Catherine.Ponsford@ceaa-acee.gc.ca'; 'candace.anderson@ceaa-acee.gc.ca'; Waters, Cory EAO:EX; Howes, Kenneth EAO:EX; Spiteri, Bailey EAO:EX; Bailey, Scott EAO:EX; Braun, Nathan EAO:EX; Mayall, Jane EAO:EX
Subject: Letter dated October 24, 2014 from EAO

Good afternoon,

Please see attached letter dated October 24, 2014, signed by Cory Waters, EAO.

Cheers,

Bailey Spiteri
Administrative Assistant | Environmental Assessment Office
4th floor – 836 Yates St, Victoria, BC V8W 1L8
Ph: (250) 387-7983 | Fax: (250) 356-6448 | Email: Bailey.Spiteri@gov.bc.ca
♻️ Please consider the environment before printing this message.

Ferbey, Stasia EAO:EX

From: Waters, Cory EAO:EX
Sent: Tuesday, October 28, 2014 5:28 PM
To: 'clarence.innis@gitxaalanation.com'; 'jamesw@gitxaalanation.com'; 'vmathers@jfkllaw.ca'; 'rjanes@jfkllaw.ca'
Cc: 'drobbins@woodwardandcompany.com'; Robertson, Linda G ABR:EX; Lofthouse, Mark ABR:EX; Steynen, Marc; 'Jillian.smith@ceaa-acee.gc.ca'; 'katherine.beavis@tc.gc.ca'; 'Catherine.Ponsford@ceaa-acee.gc.ca'; 'candace.anderson@ceaa-acee.gc.ca'; Howes, Kenneth EAO:EX; Bailey, Scott EAO:EX; Braun, Nathan EAO:EX; Mayall, Jane EAO:EX; Spiteri, Bailey EAO:EX; Chan, Debbie JAG:EX; Balcaen, Trish L EAO:EX; Dusseault, Kecia JAG:EX
Subject: RE: Letter dated October 24, 2014 from EAO
Attachments: Memo Gitxaala at Nass River Oct 2014.pdf; Gitxaala EAO PRHarbour (Oct. 2014).pdf
Categories: Green Category

Good afternoon,

Further to the letter provided to you on October 24, 2014, I am attaching two follow-up memoranda as follows:

1. Ministry of Justice, October 28, 2014. Memo from Kecia Dusseault, Senior Research Officer, Aboriginal Research Division to Cory Waters, First Nations Lead, LNG Projects, Environmental Assessment Office. "Gitxaala at the Nass River Eulachon Fishery."
2. Ministry of Justice, October 28, 2014. Memo from Kecia Dusseault, Senior Research Officer, Aboriginal Research Division to Ken Howes, Project Assessment Manager, Environmental Assessment Office. "Detailed Review of the Gitxaala Submission – Prince Rupert Harbour Area (March 2013)"

I trust that this information will assist in our discussions on October 30 in Vancouver.

Sincerely,

Cory Waters
First Nations Lead for LNG Projects
BC Environmental Assessment Office
phone: (250) 387-0236
cell: (250) 812-4751

From: Spiteri, Bailey EAO:EX
Sent: Friday, October 24, 2014 5:23 PM
To: 'clarence.innis@gitxaalanation.com'; 'jamesw@gitxaalanation.com'
Cc: 'rjanes@jfkllaw.ca'; 'vmathers@jfkllaw.ca'; 'drobbins@woodwardandcompany.com'; Robertson, Linda G ABR:EX; Lofthouse, Mark ABR:EX; Steynen, Marc; 'Jillian.smith@ceaa-acee.gc.ca'; 'katherine.beavis@tc.gc.ca'; 'Catherine.Ponsford@ceaa-acee.gc.ca'; 'candace.anderson@ceaa-acee.gc.ca'; Waters, Cory EAO:EX; Howes, Kenneth EAO:EX; Spiteri, Bailey EAO:EX; Bailey, Scott EAO:EX; Braun, Nathan EAO:EX; Mayall, Jane EAO:EX
Subject: Letter dated October 24, 2014 from EAO

Good afternoon,

Please see attached letter dated October 24, 2014, signed by Cory Waters, EAO.


Cheers,

Bailey Spiteri

Administrative Assistant | Environmental Assessment Office

4th floor – 836 Yates St, Victoria, BC V8W 1L8

Ph: (250) 387-7983 | Fax: (250) 356-6448 | Email: Bailey.Spiteri@gov.bc.ca

 Please consider the environment before printing this message.

Ferbey, Stasia EAO:EX

From: Braun, Nathan EAO:EX
Sent: Friday, April 17, 2015 9:19 AM
To: 'James Witzke' (jamesw@gitxaalanation.com)
Cc: Dodd, Nikki EAO:EX
Subject: LNG Canada - Gitxaala SOC edits
Attachments: Part C_draft-20150413 - Gitxaala SOC edits.docx

Follow Up Flag: Follow up
Flag Status: Completed

Hello James,

Following from our discussions earlier this week, here are the edits we proposed in relation to Gitxaala's comments about EAO's SOC assessment. We have made these edits in consideration of the nature and extent of the effects of the proposed LNG Canada project.

We are still considering other comments from Gitxaala.

Please let me know if you have any further comments on the SOC assessment, and if you would like to meet to discuss.

Regards,
Nathan

Page 098 to/à Page 140

Withheld pursuant to/removed as

DUPLICATE