

FILE

MINISTRY OF ABORIGINAL  
RELATIONS AND RECONCILIATION  
RECEIVED ON:

JUL 11 2011



ENBRIDGE  
NORTHERN  
GATEWAY PIPELINES

June 13, 2011

**Re: Enbridge Northern Gateway Pipelines Project**  
**Additional Materials filed to s.52 Regulatory Application**

On 27 May 2010, Northern Gateway Pipelines Inc. (Northern Gateway) applied to the National Energy Board (Board) for approval of the Enbridge Northern Gateway Project (Project). The Joint Review Panel (Panel), established to review the Project's environmental assessment requirements under the Canadian Environmental Assessment Act (CEA Act) will, under the National Energy Board Act, decide if the Project is in the Canadian public interest. As a result, on May 5, 2011 the Panel has issued Hearing Order OH-4-2011 outlining the procedures to be followed in the joint review process.

In the Hearing Order, Northern Gateway was required to file Additional Evidence to its application. By way of this correspondence, Northern Gateway, as a courtesy, wishes to notify you of its recent filings on June 8 and 9, 2011 as follows:

1. TERMPOL Surveys and Studies including Technical Data Reports in respect of marine transportation matters, as previously provided to the TERMPOL Review Committee, comprised of:
  - (a) Maneuvering Study of Escorted Tankers to and From Kitimat (Real-time simulations of Escorted Tankers bound for a Terminal at Kitimat), Part 1 and Part 2;
  - (b) Marine Shipping Quantitative Risk Analysis, 2010;
  - (c) TERMPOL Vapour Cloud Modelling and Conditional Quantitative Risk Analysis;
2. Update to Application Volume 5A: Aboriginal Engagement and Volume 5B: Aboriginal Traditional Knowledge;
3. Technical Data Report entitled "Hydrocarbon Mass Balance Estimates: Inputs for Spill Response Planning"; and
4. Update to Application Volume 2 including a Pro Forma Precedent Agreement and a Pro Forma Transportation Service Agreement in respect of the proposed crude oil pipeline.

Copies of these filings can be retrieved from the NEB's repository by accessing the following links.

1. <http://www.neb-one.gc.ca/fetch.asp?language=E&ID=A29571>
2. <http://www.neb-one.gc.ca/fetch.asp?language=E&ID=A29573>
3. <http://www.neb-one.gc.ca/fetch.asp?language=E&ID=A29574>
4. <http://www.neb-one.gc.ca/fetch.asp?language=E&ID=A29580>

Interested parties are encouraged to utilize this electronic medium to obtain copies of this filing. However, if you require a CD copy please advise to 1-888-434-0533 or [info@northerngateway.ca](mailto:info@northerngateway.ca).

Kind regards,

Northern Gateway Pipelines Limited Partnership

Box 50, One Bentall Centre, Vancouver, BC V7X 1M4  
(t) 1-888-434-0533 (e) [info@northerngateway.ca](mailto:info@northerngateway.ca) (w) [northerngateway.ca](http://northerngateway.ca)

MINISTRY OF ABORIGINAL RELATIONS  
AND RECONCILIATION  
BRIEFING NOTE

File: 280-20

Ref. No. 25646

I Prepared for the **INFORMATION** of Honourable George Abbott, Minister

II **ISSUE:**

Meeting with John Carruthers, President and CEO Enbridge Northern Gateway Pipeline Project on May 17, 2010

III **BACKGROUND:**

Enbridge is planning a major pipeline project from Alberta to Kitimat which will undergo a public review process lead by the National Energy Board (NEB) and the Canadian Environmental Assessment Agency (CEAA).

The project will include two pipelines – built in the same right-of-way, covering 1170 kilometres. A 20-inch pipeline will take imported condensate from Kitimat to Edmonton, with a 36-inch pipeline carrying condensate diluted oil from the Alberta oil sands for export at Kitimat. (See Attachment #1 for additional project details and assessment of benefits to the British Columbia economy.)

IV **DISCUSSION:**

Enbridge officials are meeting with several ministers to discuss issues related to their specific portfolios: energy, environment and Aboriginal relations. Enbridge officials will highlight the economic benefits of the project in terms of employment, construction, and revenues to the Province and the officials' commitment to engage and involve First Nations in the corridor.

Enbridge is confident of the merit of their project and believe it will meet the various regulatory approvals. (See Attachment #2 – Globe and Mail, April 30, 2010). The article also notes strong opposition from coastal First Nations who oppose any tanker traffic through their lands or waters.

## V CONCLUSION:

The meeting will provide a good opportunity to question Enbridge on their commitment to engage First Nations and address their concerns, particularly Coastal First Nations who are opposing the project.

John Pyper  
Negotiator  
(250) 356-9693

Attachments (1): Enbridge Northern Gateway Pipeline Project Fact Sheet; (2.) Globe Investor – Oil Sands bitumen to flow to West Coast by 2015; Enbridge

May 12, 2010

J:\Land & Resources Branch\Briefing Notes\Info\2010\25646 - Enbridge meeting - final.docx

# Enbridge Northern Gateway Pipeline Project

## Fact Sheet

**PROJECT DESCRIPTION:** Construct and operate two 1170 kilometre (km) pipelines in the same right of way between an Inland terminal at Bruderheim, Alberta and a marine terminal near Kitimat, British Columbia. About 500 kms of pipeline will be in Alberta and about 670 kms will be in British Columbia.

• The Northern Gateway project consists of:

- A 36 Inch West line from near Edmonton to Kitimat carrying 525,000 bpd of condensate diluted oil from the Alberta oil sands for export offshore;
- A 20 Inch East line from Kitimat to Edmonton carrying 193,000 bpd of imported condensate;
- Ten associated pump stations, seven of which are in British Columbia; and
- A marine terminal for tankers and to store oil and condensate.

**PROJECT COSTS:** \$4 billion

### <sup>1</sup>ECONOMIC BENEFITS - CANADA

#### Construction:

- Estimate 5,500 person-years of direct on-site employment in British Columbia and Alberta
- Another 57,200 person-years employment throughout Canadian economy
- \$4.3 billion of direct, indirect and induced labour income in Canada
- Over \$590 million in federal tax revenue (Total government tax revenues during construction will be approximately \$0.9 billion)

#### Operations:

- Estimate 1,150 long-term jobs created throughout Canadian economy
- \$70 million in total labour income annually (\$2.1 billion over 30 years)
- Total local, provincial and federal government tax revenues during operations will be approximately \$85 million per year (\$2.6 billion over 30 years)

### ECONOMIC BENEFITS - BRITISH COLUMBIA

#### Construction:

- About 57 percent of employment will occur in British Columbia
- Over 400 workers required during peak construction to build Kitimat marine terminal and related infrastructure (valued at \$750 million)
- \$2.5 billion in labour income will be generated during construction
- \$165 million tax revenue to Government of British Columbia during construction

#### Operations:

- About half of 1,146 jobs created in operations will be in British Columbia
- 167 long-term jobs created by Kitimat operations including the terminal, marine services, tug fleet, first response personnel and environmental monitors
- \$16.6 million per year in direct wages for tugs, emergency response and terminal support
- \$1.2 billion in tax revenue for the British Columbia government over 30 years

<sup>1</sup> Source for Economic Benefits for Canada, British Columbia and Alberta: Enbridge Correspondence April 9, 2010.

## **ECONOMIC BENEFITS - ALBERTA**

### **Construction:**

- 1,441 person-years of direct on-site employment
- At least 24 percent of project related employment will be comprised of Alberta residents
- \$1.2 billion of direct, indirect and induced labour income
- \$115 million revenue to Government of Alberta during construction

### **Operations:**

- About 380 long-term direct, indirect and induced jobs
- \$26 million per year of direct, indirect and induced labour
- \$15.4 million per year in tax revenue for the Alberta government

**CONSTRUCTION DATE:** Start in 2012 - Completed in 2015

**Status:** Once Northern Gateway files an application with the National Energy Board, the process for an in-depth review and analysis of the pipelines proposal will begin. The first step will be the issuance of a Hearing Order by the Joint Review Panel which will set out the procedures that will be followed for the review of the application.

Anticipate Hearing will take 18 months to complete.

## Globe Investor

Get Quote: Enter sym

### Oil sands bitumen to flow to West Coast by 2015: Enbridge

CEO isn't fazed by environmental opposition and regulatory hurdles to North Gateway project  
Shawn McCarthy  
Globe and Mail Update

Copyright

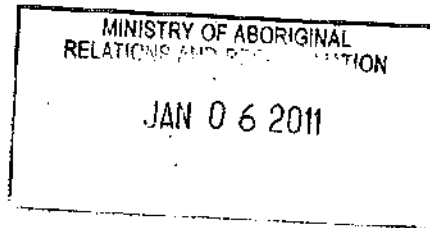
Copyright

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**ENBRIDGE**  
**NORTHERN**  
GATEWAY PIPELINES



December 21, 2010

Dear Sir/Madam,

**Re: Enbridge Northern Gateway Pipelines Project - Updates to Regulatory Application**

Northern Gateway Pipelines Limited Partnership (Northern Gateway) wishes to notify you, as an interested party, that it has recently filed with the National Energy Board (NEB) a binder of updated information to its s. 52 Application for the Enbridge Northern Gateway project originally filed May 27, 2010.

The updated information to the following volumes is outlined in the binder's Table of Contents:

- 1) Volume 1 – Overview and General Information;
- 2) Volume 3 – Engineering Construction and Operation; and
- 3) Volumes 6A and 6C - Environmental and Socio-Economic Assessment

A copy of these filings can be retrieved from the NEB repository by accessing the following link:

<http://www.neb-one.gc.ca/fetch.asp?language=E&ID=A27738>

Interested parties are encouraged to utilize this electronic medium to obtain copies of this filing, however, if you require a CD or hard copy please contact Ms. Susan Schmeiler at (403) 266-7913.

Kind regards,

Northern Gateway Pipelines Limited Partnership



Mon, Aug 23, 2010 11:28 AM

From:	ESCU-Corr Unit	Sent:	2010/08/23	Rcvd:		Status:	Completed
To:	CR-Central Records	Due:		Active:		State:	
Action:	Attention and file	Cmpltd:	2010/08/23				



# Kitamaat Village Council

HAISLA P.O. BOX 1101, KITAMAAT VILLAGE, B.C. V0Y 2B0 TELEPHONE 639-9382, 639-9361 OR 639-9383 FAX 632-2840

Aboriginal Relations  
and Reconciliation

AUG 19 2010

Correspondence Unit

August 10, 2010

Via Facsimile to: 819-953-0279

The Honourable Jim Prentice  
Minister of the Environment  
Les Terrasses de la Chaudière  
10 Wellington Street, 28<sup>th</sup> Floor  
Gatineau, Quebec  
K1A 0H3

26202  
MINISTRY OF ABORIGINAL  
RELATIONS & RECONCILIATION  
MINISTERS OFFICE

AUG 10 2010

RECEIVED  
DRAFT REPLY ☐ FNA ☐ FYI ☒  
REPLY DIRECT ☐ FILE ☐

Attention: Hon. Jim Prentice, Minister

Dear Minister Prentice:

RE: Inadequate Funding Allocated for Haisla Nation Participation in the Enbridge Northern  
Gateway Project Joint Panel Review

We are in receipt of a letter from Elaine Feldman dated July 23, 2010 in response to our letter of May 6, 2010 to Peter Sylvester requesting that the CEA Agency indicating the substantial inadequacy of funding for our participation in the Enbridge Northern Gateway Project Joint Panel Review. Our letter noted the following:

The amount allocated to the Haisla Nation is less than 18% of what we originally requested in our application. This is drastically insufficient to allow for meaningful participation in the review process and inconsistent with our request to fully participate as interveners as specified in our application. The limits placed on how funds are to be spent is prejudicial to our ability to decide what needs to be addressed. There is no timeframe specified for the use of the allocation when it is conceivable that the Phase II process could go on for 2 years or more. Furthermore, the rationale provided by the FRC pre-judges the technical content of the review process, demonstrates a lack of understanding of how the review is likely to proceed, oversimplifies the content of this review, ignores any consideration of the level of participation that was applied for and ignores the timeframe for the allocation. In short, the amount of the allocation is insulting and demeaning to any meaningful participation by us in the review process. The rationale provided is not only

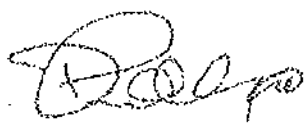
technically flawed but prejudicial to the review itself and to our ability to address matters as they arise. This project will have dramatic social and environmental impacts on the Haisla Nation if it goes ahead. We must be able to independently assure ourselves that the review process will meet the highest standards and that any and all uncertainties that arise are satisfactorily addressed. Therefore, we are formally requesting that you reconsider the woefully inadequate amount of our allocation and provide us with funding consistent with the amount we originally applied for.

Ms. Feldman's response took almost three months to arrive and in doing so further prejudiced our ability to address matters properly. Her response does not address most of the most serious issues raised in our letter. It is insulting to have waited three months to receive a condescending reiteration of process and procedure that we are well aware of.

We have repeatedly made clear that we intend to participate fully in the review process and provided detailed costs for what it would require for us to do so. The available budget allocated for funding participation in this review is wholly inadequate.

It is apparent that more funding is required to ensure that meaningful participation by the Haisla Nation is possible. The CEA Agency and/or your Ministry must go back to Treasury Board and obtain the necessary balance of funding to ensure that meaningful participation can occur. Until this occurs, the review cannot legitimately proceed. To do less, places your government in a position of engaging in a process that promotes tokenism and that will fall far short of adequately covering the serious matters that it must address.

Yours truly,



Dolores Poilard  
Chief Councillor  
Kitimaat Village Council

cc: National Energy Board (Fax: 1-877-288-8803)  
Attention: Gaetan Caron, Chair/CEO

Enbridge Northern Gateway Pipelines (Fax: 403-231-3920)  
Attention: John Carruthers, President

Canadian Environmental Assessment Agency (Fax: 613-948-2208)  
Attention: Elaine Feldman, President

Turning Point First Nations (Fax: 604-696-9887)  
Attention: Art Sterritt

First Nations Summit (Fax: 604-926-9923)  
Attention: Chief Ed John  
Union of British Columbia Indian Chiefs (Fax: 604-684.5726)  
Attention: Don Baines

BC Assembly of First Nations (Fax: 604-922-7433)  
Attention: Regional Chief Jody Wilson-Raybould

BC Ministry of Agriculture and Lands (Fax: 250-387-1522)  
Attention: Hon. Steve Thomson

BC Ministry of Environment (Fax: 250-387-1356)  
Attention: Hon. Barry Penner

BC Ministry of Aboriginal Relations and Reconciliation (Fax: 250-953-4856)  
Attention: Hon. George Abbott

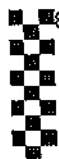
BC Ministry of Forests and Range and Ministry Responsible for the Integrated Land  
Management Bureau (Fax: 250-387-1040)  
Attention: Hon. Pat Bell

Skeena Bulkley Valley Member of Parliament (Fax: 613-993-6654)  
Attention: Nathan Cullen

Transport Canada (Fax: 613-995-0327)  
Attention: Hon. John Baird

Fisheries and Oceans Canada (Fax: 613-990-1866)  
Attention: Hon. Gail Shea

Donovan & Company (Fax: 604-688-4282)



# *Kitamaat Village Council*

525 Gitksan Avenue, PO Box 1101 Kitamaat Village, BC V0T 2B0  
Telephone: 250-639-9361 ext. 205; Fax: 250-632-2840; Toll Free: 1-888-842-4752

## **FAX COVERSHEET**

Date: Tuesday August 10, 2010

To: Minister of Environment  
Attention: Hon. Jim Prentice  
Fax: (819) 953-0279

CC: National Energy Board  
Attention: Gaetan Caron, Chair/CEO  
Fax: (1-877-288-8803)

Enbridge Northern Gateway Pipelines  
Attention: John Carruthers  
Fax: (403) 231-3920

Canadian Environmental Assessment Agency  
Attention: Elaine Feldman  
Fax: (613) 948-2208

Turning Point First Nations  
Attention: Art Sterritt, Executive Director  
Fax: (604) 696-9887

First Nations Summit  
Attention: Chief Ed John  
Fax: (604) 926-9923

Union of BC Indian Chiefs  
Attention: Don Baines  
Fax: (604) 684-5726

BC Assembly of First Nations  
Attention: Regional Chief Jody Wilson-Raybould  
Fax: (604) 922-7433

BC Ministry of Agriculture and Lands  
Attention: Hon. Steve Thomson  
Fax: (250) 387-1522

BC Ministry of Environment  
Attention: Hon. Barry Penner  
Fax: (250) 387-1356

BC Ministry of Aboriginal Relations and Reconciliation  
Attention: Hon. George Abbott  
Fax: (250) 953-4856

BC Ministry of Forests and Range and Ministry Responsible for the Integrated  
Land Management Bureau  
Attention: **Hon. Pat Bell**  
Fax: (250) 387-1040

Skeena Bulkley Valley Member of Parliament  
Attention: Nathan Cullen  
Fax: (613) 993-6654

Transport Canada  
Attention: Hon. John Baird  
Fax: (613) 995-0327

Fisheries and Oceans Canada  
Attention: Hon. Gail Shea  
Fax: (613) 990-1866

Donovan & Associates  
Attention: Allan Donovan  
Fax: (604) 688-4282

From: Crystal Smith for Dolores Pollard

We are transmitting 5 pages (including cover page).  
If you do not receive all pages, please, call the number above.

**ORIGINAL**

ESCU-Corr Unit

## Referral Slip

Wed, Aug 11, 2010 12:55 PM

<b>Action:</b> <b>Attention and File</b>	<b>Due:</b>	<b>Log ID:</b> <b>26117</b>
<b>Jennifer GRIFFITH</b> <b>Barrister and Solicitor</b> <b>Donovan &amp; Company</b> <b>6th Floor, 73 Water Street</b> <b>Vancouver bc V6B 1A1</b>	<b>Type:</b> Letter	<b>Written:</b> 2010/07/22
	<b>Office:</b> MO-Minister	<b>Received:</b> 2010/07/23
	<b>Entered By:</b> ctownsen	<b>Interim/CU:</b>
	<b>Sign By:</b>	<b>Signed:</b>
	<b>Batch:</b>	<b>Closed:</b> 2010/08/11
	<b>File No.:</b> 103400-80/HATS1/GPPR1	
	<input type="checkbox"/> Confidential	<input type="checkbox"/> Priority for DM
	<input type="checkbox"/> See Notes	

Phone: 604 688-4272 Fax: 604 688-4282

Addressed To: Bell, Penner, de Jong, Abbott

Issue: Land Use Planning

First Nation: Haisla Nation

Info: \*\*ILMB RESPONDING\*\*

Copied To: Chief Dolores Pollard, Haisla Nation

Email:

Drafter: None

MLA: Kwan, Jenny (BC NDP)

Electoral Dist: Vancouver-Mount Pleasant

**Subject**

Legal counsel for the Haisla Nation and are writing to address the potential impacts of Northern Gateway Pipeline's proposed project on Haisla Nation aboriginal rights, including aboriginal title.

**Referrals**

<b>From:</b> MO-Minister	<b>Sent:</b> 2010/07/26	<b>Rcvd:</b>	<b>Status:</b> Completed
<b>To:</b> MO-MA	<b>Due:</b> 2010/07/30	<b>Active:</b> <1 day	<b>State:</b>
<b>Action:</b> For necessary action	<b>Cmpltd:</b> 2010/07/26		

From Notes: 2010/07/26 ctownsen (MO-Minister) sent to Ministry CU for necessary action.

<b>From:</b> MO-MA	<b>Sent:</b> 2010/07/26	<b>Rcvd:</b> 2010/07/27	<b>Status:</b> Sarah Staples
<b>To:</b> ESCU-Corr Unit	<b>Due:</b>	<b>Active:</b>	<b>State:</b>
<b>Action:</b> Attention and file	<b>Cmpltd:</b> 2010/08/11		

From Notes: 2010/07/26 ctownsen (MO-Minister) sent to Ministry CU for necessary action.

To Notes: 2010/07/27 sastaple (ESCU-Corr Unit) Email sent to MAG and ENV asking if either ministries will be taking the lead for the response.  
 2010/08/11 12:54 sastaple (ESCU-Corr Unit) Trevor Morrison at ILMB has advised they will be responding and will pc all ministers (see email attached)

<b>From:</b> ESCU-Corr Unit	<b>Sent:</b> 2010/08/11	<b>Rcvd:</b>	<b>Status:</b> Completed
<b>To:</b> CR-Central Records	<b>Due:</b>	<b>Active:</b>	<b>State:</b>
<b>Action:</b> Attention and file	<b>Cmpltd:</b> 2010/08/11		

**Staples, Sarah ABR:EX**

---

**From:** Morrison, Trevor ILMB:EX  
**Sent:** Wednesday, August 11, 2010 12:00 PM  
**To:** Staples, Sarah ABR:EX  
**Subject:** Re: Letter of July 22, 2010 from Jennifer Griffith (Donovan & Company)

We're responding and will copy all addresses.

---

**From:** Staples, Sarah ABR:EX  
**To:** Morrison, Trevor ILMB:EX  
**Sent:** Wed Aug 11 09:03:32 2010  
**Subject:** FW: Letter of July 22, 2010 from Jennifer Griffith (Donovan & Company)

Hi Trevor,

Just wanted to double check and ensure that ILMB is responding to Jennifer Griffith's letter of July 22, 2010, so that we can FYI our copy.

Will you please ensure that Minister Abbott is pc'd on the response as well.

<<Griffith, Jennifer - 26117.pdf>>

Thank you!

**Sarah Staples**

A/ Correspondence Clerk

Correspondence Unit

Ministry of Aboriginal Relations and Reconciliation

5th Floor, 2957 Jutland Rd

Phone: 250 952-6284 Fax: 250 387-6073

---

**From:** Donison, Sonia FOR:EX  
**Sent:** Tuesday, August 10, 2010 10:06 AM  
**To:** Staples, Sarah ABR:EX  
**Subject:** RE: Letter of July 22, 2010 from Jennifer Griffith (Donovan & Company)

Hi Sarah! I have advised Elizabeth that this is an ILMB issue and she is dealing with Trevor Morrison

*Thank You! Di Bohja!*

Sonia Donison, Manager  
Correspondence and Communications Services  
3rd Floor, 1520 Blanshard



Phone: 250-387-5818 | Fax: 250-953-4072

E-mail: [gregory.green@gov.bc.ca](mailto:gregory.green@gov.bc.ca)

<< OLE Object: Picture (Device Independent Bitmap) >>

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**From:** Staples, Sarah ABR:EX

**Sent:** Tuesday, July 27, 2010 12:35 PM

**To:** Green, Greg AG:EX; Ford, Sara ENV:EX

**Subject:** For Necessary Action - Letter of July 22, 2010 from Jennifer Griffith (Donovan & Company)

Good Afternoon,

We have received the following letter of July 22, 2010, from Jennifer Griffith at Donovan & Company, addressed to Minister Bell, Minister de Jong, Minister Penner and Minister Abbott.

MARR program staff have advised that the lead ministry to respond should either be MAG or ENV. Will you please confirm if either of you will be responding to this letter, if so could you add a pc for Minister Abbott?

**SUBJECT:**

*Legal counsel for the Haisla Nation and are writing to address the potential impacts of Northern Gateway Pipeline's proposed project on Haisla Nation aboriginal rights, including aboriginal title.*

<< File: Griffith, Jennifer - 26117.pdf >>

Thank you,

**Sarah Staples**

A/ Correspondence Clerk

Correspondence Unit

Ministry of Aboriginal Relations and Reconciliation

5th Floor, 2957 Jutland Rd

Phone: 250 952-6284 Fax: 250 387-6073



# DONOVAN & COMPANY

Barristers and Solicitors

6<sup>th</sup> Floor, 73 Water Street  
Vancouver, BC V6B 1A1  
Telephone (604) 688-4272  
Telecopier (604) 688-4282  
Website: [www.aboriginal-law.com](http://www.aboriginal-law.com)

This message is intended only for the use of the individual or entity to which it is addressed and contains information that is privileged, confidential and exempt from disclosure. If the reader of this message is not the intended recipient or an employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone at our cost and return the original message to us by mail. Thank you.

## TELECOPY MESSAGE

DATE: JULY 22, 2010

FILE #: 5010-25

FROM: JENNIFER GRIFFITH

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: The Hon. Pat Bell  
FIRM: Ministry of Forests and Range  
FAX #: 250-387-1040  
CITY: Victoria, B.C.

NAME: The Hon. Michael de Jong  
FIRM: Ministry of Attorney General  
FAX #: 250-387-6411  
CITY: Victoria, B.C.

NAME: The Hon. Barry Penner  
FIRM: Ministry of Environment  
FAX #: 250-387-1356  
CITY: Victoria, B.C.

NAME: The Hon. George Abbott  
FIRM: Ministry of Aboriginal Relations & Reconciliation  
FAX #: 250-953-4856  
CITY: Victoria, B.C.

- 2 -

CC:  
NAME: Chief Dolores Pollard  
FIRM: Haisla Nation  
FAX #: 250-632-2840  
CITY: Kitamaat, BC

URGENT: YES  
CONFIDENTIAL: YES  
ORIGINAL TO FOLLOW BY MAIL: NO

We are transmitting 4 pages (including this cover page).

**SPECIAL MESSAGE:**

**Please see the attached letter.**

**Thank you.**

If you do not receive all of the pages, please call our firm at (604) 688-4272 and ask for Sandra Wong.

# DONOVAN & COMPANY

Barristers and Solicitors

6<sup>th</sup> Floor, 73 Water Street  
 Vancouver, BC V6B 1A1  
 Telephone (604) 688-4272  
 Fax (604) 688-4282  
 Website: [www.aboriginal-law.com](http://www.aboriginal-law.com)

Reply to:  
[jennifer.griffith@aboriginal-law.com](mailto:jennifer.griffith@aboriginal-law.com)

July 22, 2010

**VIA FAX TO: 250 387-1040**

Integrated Land Management Bureau  
 Ministry of Forests and Range  
 PO Box 9049  
 STN PROV GOVT  
 Victoria BC V8W 9E2

Attention: The Hon. Pat Bell

**VIA FAX TO: 250 387-1356**

Ministry of Environment  
 PO Box 9047  
 STN PROV GOVT  
 Victoria BC V8W 9E2

Attention: The Hon. Barry Penner

Dear Ministers:

**Re: Potential Impacts to Haisla Nation Aboriginal Title**

We represent the Haisla Nation and are writing to address the potential impacts of Northern Gateway Pipeline's proposed project on Haisla Nation aboriginal rights, including aboriginal title.

As you may be aware, the proposed tanker terminal location for this project is in the heart of Haisla Nation Territory, along Kitimat Arm near Bees IR No. 6. The Haisla Nation has great concern with the proposed regulatory review of this project, and the absence of a meaningful consultation process, including inadequate funding to engage in the process that has been created.

We are aware that the Province, a few years ago, conducted a number of strength of claims reports for First Nations in British Columbia. Some of these reports were disclosed to our clients in the context of discussions around Crown land related issues.

Allan Donovan\*  
 Karim Ramji\*  
 Myriam Brulot  
 James Hickling  
 Shavla Point

Merrill W. Shepard†  
 Chris Roine  
 Jennifer Griffith  
 Niki Sharma

Aboriginal Relations  
 and Reconciliation

JUL 27 2010

Correspondence Unit

**VIA FAX TO: 250 387-6411**

Ministry of Attorney General  
 PO Box 9044  
 STN PROV GOVT  
 Victoria BC V8W 9E2

Attention: The Hon. Michael de Jong

**VIA FAX TO: 250 953-4856**

Min. of Aboriginal Relations & Reconciliation  
 PO Box 9100  
 STN PROV GOVT  
 Victoria BC V8W 9B1

Attention: The Hon. George Abbott

26117

MINISTRY OF ABORIGINAL  
 RELATIONS & RECONCILIATION  
 MINISTERS' OFFICE

JUL 23 2010

RECEIVED

DRAFT REPLY ☐ FNA ☐ FYI ☒  
 REPLY DIRECT ☒ FILE ☐

## DONOVAN &amp; COMPANY

- 2 -

We are writing to enquire whether the Province has, to date, conducted a strength of claim assessment or commissioned a strength of claim report, and or strength of interest report or study for the Haisla Nation. If so, the Haisla Nation, would very much appreciate seeing a copy of this report, and we request that you provide us with a copy on their behalf.

We are also writing to enquire how the Province intends to engage meaningfully with the Haisla Nation to assess the potential impacts of the Northern Gateway Pipeline project and whether or how such impacts can be accommodated.

Yours truly,

DONOVAN & COMPANY

  
Jennifer Griffith  
JG/

cc: Haisla Nation (Fax: 250-632-2840)  
Attention: Chief Dolores Pollard

ORIGINAL

ESCU-Corr Unit

Referral Slip

Tue, Jun 15, 2010 10:20 AM

<b>Action:</b> <b>Attention and File</b>	<b>Due:</b>	<b>Log ID:</b> <b>25922</b>
Dolores POLLARD Chief Councillor Haisla Nation Kitamaat Village Council Haisla PO Box 1101 Kitamaat Village BC V0T 2B0	<b>Type:</b> First Nation	<b>Written:</b> 2010/06/03
	<b>Office:</b> MO-Minister	<b>Received:</b> 2010/06/03
	<b>Entered By:</b> ctownsen	<b>Interim/CU:</b>
	<b>Sign By:</b>	<b>Signed:</b>
	<b>Batch:</b>	<b>Closed:</b> 2010/06/15
	<b>File No.:</b> 63400-80/HAIS/1/GPPR1	
<input type="checkbox"/> Confidential <input type="checkbox"/> Priority for DM <input type="checkbox"/> See Notes		

Phone: 250-639-9361 Fax: 250-632-2840

Email:

Addressed To: Peter Sylvester, President CEAA

Drafter: None

Issue: Aboriginal Relations

MLA: Austin, Robin (BC NDP)

First Nation: Haisla Nation

Electoral Dist: Skeena

Info: Stuart Gale/ Katie Scott

Copied To: attached

**Subject**

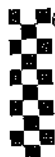
Response to letter dated April 16, 2010 stating that questions raised by the Haisla Nation about the proposed Northern Gateway Pipeline Project and review were not meaningfully addressed.

**Referrals**

<b>From:</b> MO-Minister	<b>Sent:</b> 2010/06/03	<b>Rcvd:</b>	<b>Status:</b> Completed
<b>To:</b> MO-MA	<b>Due:</b>	<b>Active:</b>	<b>State:</b>
<b>Action:</b> Attention and file	<b>Cmpltd:</b> 2010/06/09		
<b>From Notes:</b> 2010/06/03 ctownsen (MO-Minister) with Muneesh/Joel.			
<b>To Notes:</b> 2010/06/09 ctownsen (MO-Minister) sent to Ministry CU for attention and file.			

<b>From:</b> MO-MA	<b>Sent:</b> 2010/06/09	<b>Rcvd:</b> 2010/06/14	<b>Status:</b> Sarah Staples
<b>To:</b> ESCU-Corr Unit	<b>Due:</b>	<b>Active:</b>	<b>State:</b>
<b>Action:</b> Attention and file	<b>Cmpltd:</b> 2010/06/15		
<b>From Notes:</b> 2010/06/09 ctownsen (MO-Minister) sent to Ministry CU for attention and file.			
<b>To Notes:</b> 2010/06/15 sastaple (ESCU-Corr Unit)			

<b>From:</b> ESCU-Corr Unit	<b>Sent:</b> 2010/06/15	<b>Rcvd:</b>	<b>Status:</b> Completed
<b>To:</b> CR-Central Records	<b>Due:</b>	<b>Active:</b>	<b>State:</b>
<b>Action:</b> Attention and file	<b>Cmpltd:</b> 2010/06/15		



## *Kitamaat Village Council*

525 Gitksan Avenue, PO Box 1101 Kitamaat Village, BC V0T 2B0  
Telephone: 250-639-9361 ext. 205; Fax: 250-632-2840; Toll Free: 1-888-842-4752

### **FAX COVERSHEET**

Date: June 3, 2010

To: Canadian Environmental Assessment Agency (Fax: 613-957-0935)  
Attention: Peter Sylvester, President

CC: National Energy Board (Fax: 1-877-288-8803)  
Attention: Gaetan Caron, Chair/CEO

Enbridge Northern Gateway Pipelines (Fax: 403-231-3920)  
Attention: John Carruthers, President

Turning Point First Nations (Fax: 604-696-9887)  
Attention: Art Sterritt

First Nations Summit (Fax: 604-926-9923)  
Attention: Chief Ed John

Union of British Columbia Indian Chiefs (Fax: 604-684.5726)  
Attention: Grand Chief Stuart Phillip

BC Assembly of First Nations (Fax: 604-922-7433)  
Attention: Regional Chief Jody Wilson-Raybould

BC Ministry of Agriculture and Lands (Fax: 250-387-1522)  
Attention: Hon. Steve Thomson

BC Ministry of Environment (Fax: 250-387-1356)  
Attention: Hon. Barry Penner

BC Ministry of Aboriginal Relations and Reconciliation (Fax: 250-953-4856)  
Attention: Hon. George Abbott

BC Ministry of Forests and Range and Ministry Responsible for the Integrated Land  
Management Bureau (Fax: 250-387-1040)  
Attention: Hon. Pat Bell

Transport Canada (Fax: 613-995-0327)  
Attention: Hon. John Baird, Min. of Transport, Infrastructure and Communities

Environment Canada (Fax: 819-953-0279)  
Attention: Hon. Jim Prentice

Fisheries and Oceans Canada (Fax: 613-990-1866)

Attention: Hon. Gail Shea

Donovan & Company (Fax: 604-688-4282)

From: **Crystal Smith for Dolores Pollard**

**We are transmitting 6 pages (including cover page).**

**If you do not receive all pages, please, call the number above.**

Comment:

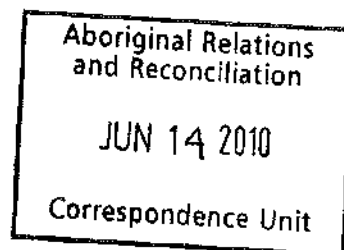
**Confidential**





# Kitamaat Village Council

HAISLA P.O. BOX 1101, KITAMAAT VILLAGE, B.C. V0T 2B0 TELEPHONE 639-9382, 639-9361 OR 639-9383 FAX 632-2840



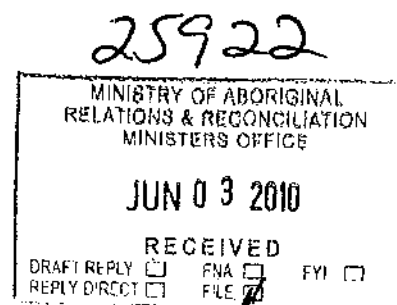
June 3, 2010

Canadian Environmental Assessment Agency  
160 Elgin St., 2<sup>nd</sup> Floor  
Ottawa, ON K1A 0H3

Attention: Peter Sylvester, President

Dear Mr. Sylvester:

**Re: Northern Gateway Project - Your Letter Dated April 16, 2010**



## I. Introduction

We are writing in response to your letter dated April 16, 2010, which did respond, but did not meaningfully address questions raised by the Haisla Nation about the proposed Northern Gateway Pipeline Project and the review of that project.

We note that our submissions on these points have not resulted in any modification of the process. It appears that you treat our correspondence as an inconvenient argument that needs to be countered rather than an expression of our constitutional rights that necessitates accommodation. We require, and Canada's laws require, that you start taking our aboriginal rights, aboriginal title, and our People seriously.

## II. The Joint Review Panel Process

### i. Canada's Failure to Consult to Date

Your letter emphasizes the establishment of a joint review panel ("JRP") process, pursuant to the Joint Review Panel Agreement which was finalized in December of 2009. As already set out in previous correspondence, the Haisla Nation was not meaningfully consulted on the design of this process.

The JRP process treats First Nations as mere stakeholders, when we all know that the constitutional protection to be afforded to aboriginal rights and title require far deeper engagement with potentially affected First Nations than with stakeholders. We suggest you look at a map of the proposed project, a map of Haisla Nation Territory, and a map of Haisla Nation reserves, in order to understand the potential impact of this project on the Haisla Nation. We own, by way of aboriginal title, a large segment of lands through which the pipeline is proposed to run and the entire area where the terminal is proposed to be located. We have aboriginal rights and title over a large segment of the proposed oil tanker route. It does not appear to us that Canada has even begun to consider our constitutionally protected rights.

## ii. Canada's Improper Delegation of Consultation

You point out "that the Joint Review Panel Process is being conducted by an independent panel – it is the panel that is now in control of the process". This raises the concern that the Crown is seeking to minimize its role in consultation and accommodation by delegating to the JRP, a quasi-judicial body, which cannot consult with First Nations.

The delegation of any aspect of consultation and accommodation to a quasi-judicial body is highly problematic, and one which will prejudice our ability to be meaningfully engaged. As you know, the Supreme Court of Canada has said that the scope of consultation is informed by both the strength of claim and by the potential impacts of the proposed project. The JRP is, by its Terms of Reference, prohibited from assessing our strength of claim. The JRP simply cannot be relied upon as a one-stop information repository, and its recommendations cannot be relied on by the federal Crown to support decisions in the absence of a proper consultation and accommodation process.

## iii. Canada's Illegitimate Approach to Capacity Funding

We have already commented on the inadequate funding allocation to the Haisla Nation in a separate letter. Your comments on the JRP process underline the seriousness of the concerns that we have raised. Your letter highlights the importance of First Nations providing evidence to the panel and confirms that the federal government will rely on the JRP process to the extent possible to fulfill its legal duty to consult with aboriginal groups. These statements emphasize the importance that for a First Nation to be meaningfully engaged in this process, it must receive adequate funding to participate fully in this process.

Further, given your proposed deference to the JRP process for the eliciting of evidence relating to potential impacts of this project, it is imperative that the Haisla Nation receive an adequate amount of funding to set out clearly the nature of its aboriginal rights, including aboriginal title, in the project area and the way in which these rights will be impacted.

The funding allocation proposed appears to be strategically designed to prevent us from advancing our evidence of aboriginal rights and title as required by your process. On the one hand, the federal government is deferring to a quasi-judicial process for the gathering of information and partial consultation and accommodation. On the other hand the federal government is intentionally crippling our ability to participate in this quasi-judicial process by failing to provide adequate funding for meaningful participation.

Canada's proposed funding allocation would prohibit us from using more than \$30,000 of the funds provided on legal representation. Will Canada limit its spending on legal matters to \$30,000? Will Enbridge? Will the National Energy Board? It is fundamentally unacceptable for Canada to offer us only a fraction of the funding that we need to participate effectively in the JRP process. It is unbelievable that Canada would propose to tie our hands as to how we use these funds so as to prevent us from having lawyers represent our interests. This restriction harkens back to Canada's old *Indian Act*

provisions that made it illegal for First Nations to hire lawyers to advance their land claims. The only difference is that your restrictions are less visible; you now imbed your prohibition into funding agreements rather than legislation.

We have looked at the National Energy Board's Rules of Procedure. The rules demonstrate very clearly the extent to which the National Energy Board hearings are a court-like process. A quick review of the recent McKenzie Valley pipeline JRP process confirms that a large number of those participants had either legal counsel or their own regulatory affairs departments. Similarly, the interveners in the National Energy Board's recent Keystone XL Pipeline process generally had legal representation. Further, we note that both the National Energy Board and Enbridge will have legal counsel, and presume that the Joint Review Panel will be assigned legal counsel as well. Canada proudly notes that the Department of Justice is the "largest law firm in Canada" employing over 2,000 lawyers.

The funding offer made to the Haisla Nation is grossly inadequate to cover legal costs for this portion of the process. The restriction on our use of the funding is unacceptable and threatens to undermine the process entirely. The Northern Gateway JRP process will be nothing but a sham if potentially affected First Nations do not have access to enough funding to engage fully in the process, and to have legal representation for the hearings.

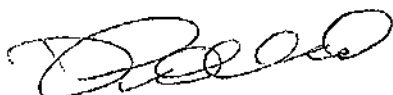
#### iv. Proposed Meeting

Finally, we reiterate that we expect the federal Crown decision-makers to consult meaningfully with us with respect to this proposed project. We have already identified, at the outset, a number of consultation issues which cannot be dealt with through the JRP process. Your refusal to meet and discuss how this is going to occur, your refusal to discuss scoping of the JRP process, and the grossly inadequate and restricted funding offer add up to a completely unacceptable response to the concerns raised in our previous correspondence.

It appears to us that Canada's refusal to meet with us is a tactic calculated to interfere with our ability to consult with Canada on issues concerning our aboriginal rights and title, our environment and the interests of our People. We ask that you come to our community and meet with our Chief and Council to start a meaningful dialogue about Haisla Nation aboriginal rights and title. We ask that this initial meeting take place before the end of this month.

We will consider your continued refusal to meet with us to be illegal and as a breach of Canada's constitutional obligations to the Haisla Nation.

Yours truly,



Dolores Pollard  
Chief Councillor  
Kitamaat Village Council

cc: National Energy Board (Fax: 1-877-288-8803)

Attention: Gaetan Caron, Chair/CEO

Enbridge Northern Gateway Pipelines (Fax: 403-231-3920)  
Attention: John Carruthers, President

Turning Point First Nations (Fax: 604-696-9887)  
Attention: Art Sterritt

First Nations Summit (Fax: 604-926-9923)  
Attention: Chief Ed John

Union of British Columbia Indian Chiefs (Fax: 604-684.5726)  
Attention: Grand Chief Stuart Phillip

BC Assembly of First Nations (Fax: 604-922-7433)  
Attention: Regional Chief Jody Wilson-Raybould

BC Ministry of Agriculture and Lands (Fax: 250-387-1522)  
Attention: Hon. Steve Thomson

BC Ministry of Environment (Fax: 250-387-1356)  
Attention: Hon. Barry Penner

BC Ministry of Aboriginal Relations and Reconciliation (Fax: 250-953-4856)  
Attention: Hon. George Abbott

BC Ministry of Forests and Range and Ministry Responsible for the Integrated  
Land Management Bureau (Fax: 250-387-1040)  
Attention: Hon. Pat Bell

Transport Canada (Fax: 613-995-0327)  
Attention: Hon. John Baird, Min. of Transport, Infrastructure and Communities

Environment Canada (Fax: 819-953-0279)  
Attention: Hon. Jim Prentice

Fisheries and Oceans Canada (Fax: 613-990-1866)  
Attention: Hon. Gail Shea

Donovan & Company (Fax: 604-688-4282)

**ORIGINAL**

ESCU-Corr Unit

## Referral Slip

Tue, Mar 09, 2010 2:31 PM

<b>Action:</b> <b>Attention and File</b>	<b>Due:</b>	<b>Log ID:</b> <b>25440</b>
Dolores POLLARD Chief Councillor Kitamaat Village Council Haisla PO Box 1101 Kitamaat Village BC V0T 2B0	<b>Type:</b> Fax	<b>Written:</b> 2010/03/04
	<b>Office:</b> ESCU-Corr Unit	<b>Received:</b> 2010/03/04
	<b>Entered By:</b> sastaple	<b>Interim/CU:</b>
	<b>Sign By:</b>	<b>Signed:</b>
	<b>Batch:</b>	<b>Closed:</b> 2010/03/09
	<b>File No.:</b> 63400-80/Hais 2/ GPPR1	
	<input type="checkbox"/> Confidential <input type="checkbox"/> Priority for DM <input type="checkbox"/> See Notes	

Phone:

Fax:

Email:

Addressed To: Canadian Environmental Assessment Agency

Drafter: None

Issue:

MLA: Austin, Robin (BC NDP)

First Nation: Kitamaat Village Council (Haisla Nation)

Electoral Dist: Skeena

Info: Stuart Gale/ Katie Scott

Copied To: Please see letter for full distribution list

**Subject**

Response to Mr. Peter Sylvester's letter regarding Canada's approach to consultation for Enbridge's Northern Gateway Pipeline Project

**Referrals**

<b>From:</b> ESCU-Corr Unit	<b>Sent:</b> 2010/03/09	<b>Rcvd:</b> 2010/03/09	<b>Status:</b> Sarah Staples
<b>To:</b> ESCU-Corr Unit	<b>Due:</b>	<b>Active:</b>	<b>State:</b>
<b>Action:</b> Attention and file	<b>Cmplt'd:</b> 2010/03/09		
<b>To Notes:</b> 2010/03/09 sastaple (ESCU-Corr Unit)			

<b>From:</b> ESCU-Corr Unit	<b>Sent:</b> 2010/03/09	<b>Rcvd:</b>	<b>Status:</b> Completed
<b>To:</b> CR-Central Records	<b>Due:</b>	<b>Active:</b>	<b>State:</b>
<b>Action:</b> Attention and file	<b>Cmplt'd:</b> 2010/03/09		



## Kitamaat Village Council

525 Gitksan Avenue, PO Box 1101 Kitamaat Village, BC V0T 2B0  
Telephone: 250-639-9361; Fax: 250-632-2840; Toll Free: 1-888-842-4752

### FAX COVERSHEET

Date: March 4, 2010

To: Canadian Environmental Assessment Agency  
Attention: Mr. Peter Sylvester -- President  
(613) 957 0935

CC: National Energy Board (Fax: 1-877-288-8803)  
Attention: Gaetan Caron, Chair/CEO  
Enbridge Northern Gateway Pipelines (Fax: 403-231-3920)  
Attention: John Carruthers, President  
Turning Point First Nations (Fax: 604-696-9887)  
Attention: Art Sterritt  
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BC Ministry of Aboriginal Relations and Reconciliation (Fax: 250-953-4856)  
Attention: Hon. George Abbott  
BC Ministry of Forests and Range and Ministry Responsible for the Integrated Land  
Management Bureau (Fax: 250-387-1040)  
Attention: Hon. Pat Bell  
Transport Canada (Fax: 613-995-0327)  
Attention: Hon. John Baird, Min. of Transport, Infrastructure and Communities  
Environment Canada (Fax: 819-953-0279)  
Attention: Hon. Jim Prentice  
Fisheries and Oceans Canada (Fax: 613-990-1866)  
Attention: Hon. Gail Shea  
Donovan & Company (Fax: 604-688-4282)  
c/o Tara Marsden, First Nations Working Group

25440

MINISTRY OF ABORIGINAL  
RELATIONS & RECONCILIATION  
MINISTERS OFFICE

MAR 04 2010

RECEIVED

DRAFT REPLY ☐ FNA ☐ FYI ☐  
REPLY DIRECT ☐ FILE ☐

Aboriginal Relations  
and Reconciliation

11/1/10

Correspondence Unit

From: Dolores Pollard – Chief Councillor Kitamaat Village Council

Total number of pages including cover page: 8. Please pass these pages to the above mentioned person(s).

#### Comment:

We are enclosing a copy of a letter sent on December 10, 2009. As we have not yet received a response and have not seen the letter in the CEAA registry we are sending another copy. We respectfully request that all recipients confirm receipt by emailing Crystal Smith – Clerk to Council at [crystal.smith@haisla.ca](mailto:crystal.smith@haisla.ca) or by telephone (1-888-842-4752 extension 208)

Sincerely,

Chief Dolores Pollard  
Kitamaat Village Council



## Kitamaat Village Council

HAISLA PO BOX 1101, KITAMAAT VILLAGE BC V0T2B0 TELEPHONE 250 639-9361,  
FAX 250 632-2840

Thursday, December 10, 2009

Canadian Environmental Assessment Agency  
160 Elgin St., 2<sup>nd</sup> Floor  
Ottawa, ON K1A 0H3

Attention: Peter Sylvester

Dear Mr. Sylvester:

**Re: Your Letter Dated November 6, 2009 Regarding Canada's Approach to Consultation for  
Enbridge's Northern Gateway Pipeline Project**

We have reviewed your letter and the enclosed documents regarding Canada's Joint Review Panel ("JRP") process for Enbridge's Northern Gateway Pipeline Project (the "Project"), and write to set out our continuing concerns with this process.

### **1. Failure to Respect Haisla Nation Governance and Stewardship**

Since 2005, the Haisla Nation has been advising Canada that it asserts aboriginal title and other aboriginal rights to a portion of the Project's proposed pipeline route, to the proposed marine terminal site, and to the marine portions of its Territory. We have provided strong *prima facie* evidence of our aboriginal rights and title and none of this evidence has been questioned in any way by either British Columbia, Canada or the proponent.

The Haisla Nation has a strong *prima facie* claim of aboriginal rights and title to its Traditional Territory. The Haisla Nation's claim to aboriginal rights and title to the portion of the pipeline route through its territory, to the proposed Enbridge facility site and to the portion of the tanker route within its territory are strong and well documented. Accordingly, any commercial activities carried out in this area will likely constitute *prima facie* infringements of the Haisla Nation's aboriginal rights and title. The proposed activity - the transportation of crude oil - will certainly amount to a highly significant infringement of our strongly evidenced aboriginal rights and title.

The Haisla Nation is required by its *nuyem* (traditional law), and by its obligations to its members, to protect and manage its aboriginal title and rights to the Haisla Nation Territory, including the Kitamaat River area and estuary.

Haisla Nation aboriginal title can only be understood within the context of the Haisla traditional law (Haisla *nuyem*) and the Haisla Nation land ownership concepts of *wa'wais* and *bagwaiyas*.

A *wa'wais* is a watershed that is a heritable territory. *Wa'wais* means "mountain" and a *wa'wais* normally includes all of the valleys and the foothills within a ridge of surrounding mountains. A *wa'wais* typically comprises an entire watershed area and extends to its upland headwaters. The Haisla Nation Territory currently contains 54 Haisla *wa'wais*. Ownership of each *wa'wais* attaches to a particular traditional Haisla name.

Each of these Haisla names carries with it certain prerogatives. For example, a name could carry with it the right to wear particular regalia and crest symbols, or the right to particular dances and songs. Haisla names can also

carry with them rights to a particular wa'wais. These names and the property rights associated with them have been passed down from generation to generation for untold millennia.

The traditional Haisla concept of ownership, as it relates to a Haisla wa'wais, includes the following privileges and obligations:

- a. entrance to and use of resources within a wa'wais requires the permission of the owner;
- b. strict rules provide for discipline of trespassers and poachers on the wa'wais;
- c. the resources from the wa'wais are dispensed at the discretion of the wa'wais holder;
- d. there is an obligation of stewardship which requires the wa'wais holder to avoid harm or depletion of the resources in the wa'wais;
- e. the wa'wais is inalienable in the sense that traditionally it could only be transferred by inheritance.

Thus, at Haisla law, a wa'wais is exclusively held and occupied by a particular Haisla clan. The ownership of each of these Haisla wa'wais areas has been documented genealogically. The traditional and contemporary use and occupation of each wa'wais has also been recorded. Haisla place names have been identified within each wa'wais. There are Haisla myths, legends and folklore narratives that attach to each area.

A second and important form of the traditional Haisla property system is the bagwaiyas. This translates to "the place where we harvest the things that we need". A bagwaiyas is an area within Haisla Territory that is rich in one or more important resources, and use is permitted to all members of the Haisla Nation. In some cases, bagwaiyas areas are surrounded by other wa'wais boundaries, but the bagwaiyas areas are commonly owned by all Haisla people; they are not passed, by inheritance, from one owner to another as wa'wais are. Their common ownership by Haisla people generally has been a constant throughout their history.

The Haisla Nation's concepts of nuyem, wa'wais, and bagwaiyas are components of Haisla Nation governance and its relationship to its Territory. This relationship requires the Haisla Nation to act as a steward in its Territory and to, in the context of this stewardship, ensure that the lands, waters and resources of the Haisla Nation Territory are protected for future generations of Haisla Nation members.

The proposed Project poses a high potential threat to Haisla Nation Territory, and we demand to be integrally involved in the design of the process for assessing and reviewing the proposed Project and its potential impacts on our Territory.

We have made this clear from as early as 2005. Despite this, Canada has designed a process that denies the Haisla Nation its governance and stewardship role. Canada's continuing refusal to consult meaningfully with the Haisla Nation with respect to the review of the proposed Project amounts to a failure to demonstrably integrate our concerns about the review of the Project into your decision on how to proceed with the review of the Project. Accordingly, Canada's conduct in respect of this project is already in breach of its constitutional, fiduciary, and honourable obligations.

## 2. Canada's Selection of a JRP Process

We have reviewed the *Consideration of Aboriginal Group Comments on the Draft Joint Review Panel Agreement* and your letter, and find that Canada's responses to our comments have been inadequate. While Canada has acknowledged that it has an obligation to consult with the Haisla Nation prior to allowing the proposed Project to proceed, we do not agree that the revisions you have made to the *JRP Agreement* and *Terms of Reference*, and the clarification you have provided through the Framework and Scoping documents address our concerns.



You state that "[t]he panel process has proven over time to be a very effective means by which to review the environmental impacts of projects and to provide a forum for the consideration of broad societal concerns, including those of Aboriginal groups with respect to the projects under review". In fact, the only post-*Haida*<sup>1</sup> JRP review of a project in British Columbia, which is largely still subject to unmodified or unceded aboriginal title, that we are aware of is the Kemess North Mine Project review. We note that the Environmental Assessment Report for that Panel review states:

Throughout the panel process, Aboriginal participants raised concerns about the overall review process, lack of adequate funding to Aboriginal groups to participate in the panel process, inadequate consultation by the federal and provincial governments, and the Project's potential effects on Aboriginal rights and title. While these issues had important repercussions for the panel process, addressing them was beyond the scope of the Panel's mandate. They were addressed separately through discussions between each Aboriginal group and the federal and provincial governments (p. 20).

Accordingly, there has only been one post-*Haida* JRP review process in British Columbia. This review was, by the Panel's admission, a completely inadequate process to address issues of aboriginal rights and title in the post-*Haida* context.

We have consistently sought to be involved in the design of the review process. Your response has been to propose a process and then unilaterally revise that proposed process into a "final" process. This does not amount to meaningful engagement of the Haisla Nation in the design of the process. You have received our comments and made unilateral adjustments to your process. This is a one way street approach to consultation that brings to mind the old adage: "Man proposes. God disposes". It is no more acceptable for Canada to make these decisions unilaterally than it would be for our Aboriginal Nation to do so.

We acknowledge that you have received comments from not just the Haisla Nation but from many other First Nations along the proposed pipeline corridor. The fact that consultation may be complicated by the number of Aboriginal Nations involved does not excuse you, however, from ensuring that the process is meaningful. The Supreme Court of Canada has specifically recognized that consultation and accommodation before final claims resolution may be challenging but is nevertheless required (*Haida, supra*, para. 38). Each Aboriginal Nation whose constitutional rights are jeopardized is entitled to an acceptable consultation process. You are not entitled to a "volume based discount" when it comes to the honour of the Crown.

### 3. The JRP Process

The documents you have provided set out a process whereby the JRP will act as an information gathering body with respect to First Nation aboriginal title and rights. The *Aboriginal Consultation Framework for the Northern Gateway Pipeline Project* states that the federal government will rely on the JRP process to the extent possible to assist in fulfilling its duty to consult with aboriginal groups but that the federal government will consult directly with potentially affected aboriginal groups on issues that are outside the mandate of the JRP. The *Framework* also states that matters that fall outside the JRP's mandate are "expected to be the exception given the broad mandate of the JRP" (p. 7).

The *Terms of Reference* for the JRP, however, specifically prohibit the JRP from making "final determinations about the strength of an Aboriginal group's claim respecting aboriginal rights" (page 8). As you know, the first step in a consultation process is to determine where on the spectrum enunciated in *Haida*, consultation falls. This is informed by both the strength of claim and the likelihood or potential for the proposed decision to infringe asserted aboriginal rights. Without making an assessment of strength of claim, a government decision-maker can not even begin to consult.

<sup>1</sup> *Haida Nation v. British Columbia (MOF)*, [2004] 3 S.C.R. 511 ("*Haida*")

In effect, the JRP will be prohibited from engaging meaningfully with any First Nation about their aboriginal title and rights and the potential impacts of the proposed Project. Canada proposes to rely on the JRP to fulfil, to the extent possible, its consultation and accommodation obligation. But at the same time Canada prohibits the JRP from making the very determination that the Supreme Court of Canada has said is the critical starting point of any consultation. This is a fundamental flaw in the proposed process: one that we would have pointed out to you had we known that you intended to take this approach.

Under the proposed process, the information that is provided by First Nations to the JRP will be summed up for inclusion in the JRP's Environmental Assessment Report, for consideration by Canada. Canada's Consultation Co-ordinator will then "consult" with First Nations on the content of the Environmental Assessment Report. We are not convinced, however, that the JRP, with its limited mandate, will be in a position to effectively and accurately present our expression of aboriginal title and rights to Canada. We are concerned that the JRP's inability to make the determinations about strength of claim will also limit the ability of the JRP to ensure that all of the appropriate information is considered.

Further, the Environmental Assessment Report will not be the result of a meaningful consultation and accommodation process. That consultation and accommodation process cannot commence until Canada has made an assessment of our strength of claim. We have, of course, informed you of our view that we have an extremely strong claim and that Canada should consult with us at the highest end of the spectrum with respect to the impacts of the proposed Project on both our aboriginal title and on our other aboriginal rights.

The *Framework* that Canada has set out is merely a framework for reviewing the JRP process and identifying issues that cannot be meaningfully addressed in the JRP process. We note Canada's anticipation that these issues will be an exception, but do not share your views. The excerpt from the Environmental Assessment Report for the Kemess Mine North Project, set out above, confirms the shortcomings of JRP reviews in this regard. It confirms that the JRP is a fundamentally inadequate forum for the conduct of the Crown's legal obligation to consult and accommodate.

At the end of the day, any report issued by the JRP will be in advance of a meaningful consultation process. The reliance on the JRP process to act as a one time opportunity for First Nations to provide information about their aboriginal interests will undermine the meaningfulness of consultation in a very serious way.

You have advised that "the Crown is open to discussing how consultation, within the framework provided, will be carried out". This apparent openness to ongoing engagement in the design of a consultation process is in fact limited to consultation *within the framework provided*. This indicates Canada is not willing to discuss the framework upon which it has already settled unilaterally.

We seek to engage Canada directly in government-to-government discussions on the proposed Project and on the potential impacts of the proposed Project. This discussion should happen much earlier in the process than is currently contemplated:

- We have already advised Canada that we assert aboriginal title to those portions of Haisla Nation Territory which will be impacted by the proposed Project. The JRP is not mandated to engage in consultation with us in relation to our aboriginal title (which includes the right to choose the use to which the land is put) and the way in which the proposed Project will infringe that title. It certainly cannot address the Crown's avoidance and accommodation obligations with respect to our Aboriginal Title.
- We have identified critical potential infringements to our other aboriginal rights. In particular we have discussed impacts on our fishing rights and our governance rights. The direct government-to-government consultation process that we propose will have to address these issues as well.

There is no reason that this dialogue should not be occurring at the outset of Canada's assessment of this Project. We ask for your commitment to meet with us to discuss the scope, content of, timetable and funding for this consultation and accommodation process.

#### 4. Onus of Providing Information and Evidence

Canada's approach to the review of the proposed Project does not even begin to address the potential for this Project to infringe Haisla Nation aboriginal rights including title. The JRP is specifically mandated to not make any final determinations of a First Nation's strength of claim. First Nations will be required, however, as part of the JRP process, to make their strength of claim case in the form of information submissions to the JRP. At this stage, we are not assured by Canada that there will be a forum for this information to be meaningfully assessed and addressed.

We are therefore being asked to pour significant resources, both human and financial, into the JRP process in advance of any commitment from Canada to design a meaningful process to ensure that the Crown's obligation to consult with us and, where appropriate, accommodate our rights will be discharged. Canada is proposing an empty process in substitution for the honourable fulfilment of the Crown's substantive obligations.

We anticipate that providing this information will require significant human and economic resources. We therefore expect Canada to provide funding, in advance, to cover all of the costs of providing this information to the JRP.

We advise that this funding requirement is likely to exceed the funding allotments anticipated for the panel review, but are of the view that we cannot participate meaningfully in the JRP process without being fully funded for an Aboriginal Interest and Use Study for the proposed pipeline corridor, marine terminal and shipping routes in Haisla Nation Territory. We will also require funding to retain other technical experts, to retain legal counsel, and to address the considerable anticipated internal costs involved in preparing and presenting our evidence.

#### 5. Scoping

We repeat our view that the Project that has been improperly scoped. As you know, the extraction of oil for this pipeline is, in our view, an integral part of the Project. This pipeline will facilitate and encourage additional extraction of oil. These activities have significant impacts on the environment that should be considered in terms of an assessment of the present and future public convenience and necessity of this Project. These impacts go beyond cumulative impacts. They are a direct result of the Project. In fact, it is our understanding that oil producers are providing financial support to Enbridge to facilitate this Project, confirming how integrally the extraction of oil is linked to the proposed Project.

Further, the review of the proposed Project should distinguish clearly between marine and freshwater components. The assessment of potential impacts on the Kitimaat River system should be based on an ecosystem approach, rather than on a crossing by crossing approach. We will address additional concerns regarding the scoping of and technical review approach to the Project in separate correspondence.

#### 6. Conclusion

Canada has, to date, failed to address the Haisla Nation's concerns about the way in which the proposed Project will be reviewed and has failed to accommodate our governance and stewardship rights by involving us in the design of a review process. The process to date has been neither legitimate nor adequate. The process will not result in the discharge of the Crown's obligation to consult with us on the potential impacts of the proposed Project on our aboriginal rights.

The proposed process will not even begin to address either the Crown's obligation to avoid infringements of our aboriginal rights and title or the obligation to accommodate our Nation with respect to infringements of our rights and title.

We need to know that the Crown is committed to fulfill its obligations to us, and will commit the necessary time and resources to do this. We therefore seek a meeting to discuss how Canada will ensure that the Haisla Nation is consulted, and where appropriate accommodated, with respect to all the potential impacts of the proposed Project on the Haisla Nation.

Please contact our office at your earliest opportunity to schedule such a meeting.

Yours truly,



Dolores Pollard  
Chief Councillor  
Kitamaat Village Council

cc: National Energy Board (Fax: 1-877-288-8803)  
Attention: Gaetan Caron, Chair/CEO

Enbridge Northern Gateway Pipelines (Fax: 403-231-3920)  
Attention: John Carruthers, President

Turning Point First Nations (Fax: 604-696-9887)  
Attention: Art Sterritt

First Nations Summit (Fax: 604-926-9923)  
Attention: Chief Ed John

Union of British Columbia Indian Chiefs (Fax: 604-684.5726)  
Attention: Don Baines

BC Assembly of First Nations (Fax: 604-922-7433)  
Attention: Regional Chief Jody Wilson-Raybould

BC Ministry of Agriculture and Lands (Fax: 250-387-1522)  
Attention: Hon. Steve Thomson

BC Ministry of Environment (Fax: 250-387-1356)  
Attention: Hon. Barry Penner

BC Ministry of Aboriginal Relations and Reconciliation (Fax: 250-953-4856)  
Attention: Hon. George Abboitt

BC Ministry of Forests and Range and Ministry Responsible for the Integrated Land Management Bureau  
(Fax: 250-387-1040)  
Attention: Hon. Pat Bell

Transport Canada (Fax: 613-995-0327)  
Attention: Hon. John Baird, Min. of Transport, Infrastructure and Communities

Environment Canada (Fax: 819-953-0279)  
Attention: Hon. Jim Prentice

Fisheries and Oceans Canada (Fax: 613-990-1866)  
Attention: Hon. Gail Shea

Donovan & Company (Fax: 604-688-4282)

c/o Tara Marsden, First Nations Working Group

**Scott, Katie P ABR:EX**

**From:** Pocock, Sharon PAB:EX  
**Sent:** Thursday, February 26, 2009 11:06 AM  
**To:** Scott, Katie P ABR:EX  
**Subject:** FW: Joanne Monaghan says Premier Campbell has agreed to sit down with her and Kitimaat Village Chief...

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Hi Katie, just in case you haven't come across it, here's a transcript of a short piece of CJFW at 07.00 this morning about the Haisla

"Kitimat Mayor Joanne Monaghan says Premier Campbell has agreed to sit down with her and Kitimaat Village Chief Councillor Steve Wilson in a joint meeting. Monaghan says the two local leaders wrote the Premier two weeks ago requesting the audience. She describes the joint letter as a breakthrough in improving cooperation between Kitimat and the Haisla."

Cheers  
 Sharon

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**From:** Wilkie, Maria PAB:EX  
**Sent:** Thursday, February 26, 2009 9:20 AM  
**To:** de Faye, Bob ABR:EX; Paton, Arlene ABR:EX  
**Cc:** Pocock, Sharon PAB:EX; Davis, Laura PAB:EX  
**Subject:** FW: Joanne Monaghan says Premier Campbell has agreed to sit down with her and Kitimaat Village Chief...

Hi there, not sure whether you are aware of this meeting or when it is occurring - I have no info.

---

**From:** tno@gov.bc.ca [mailto:tno@gov.bc.ca]  
**Sent:** Thursday, February 26, 2009 8:07 AM  
**To:** Wilkie, Maria PAB:EX  
**Subject:** TNO: Joanne Monaghan says Premier Campbell has agreed to sit down with her and Kitimaat Village Chief...

The Following (1) story(s) were added to TNO:  
CJFW Joanne Monaghan says Premier Campbell has agreed to sit down with her and Kitimaat Village Chief Steve Wilson in a joint meeting. The mayor describes the opportunity as a breakthrough in improving cooperation between Kitimat and the Haisla First Nation.

**Townsend, Chris ABR:EX**

**From:** Campbell, Karl ABR:EX  
**Sent:** Tuesday, October 12, 2010 11:48 AM  
**To:** Townsend, Chris ABR:EX  
**Subject:** FW: Response 168168 Jennifer Griffith  
**Attachments:** 168168 Griffith.docx

26473

MINISTRY OF ABORIGINAL RELATIONS & RECONCILIATION MINISTERS OFFICE		
OCT 13 2010		
RECEIVED		
DRAFT REPLY <input type="checkbox"/>	FNA <input type="checkbox"/>	FYI <input type="checkbox"/>
REPLY DIRECT <input type="checkbox"/>	FILE <input checked="" type="checkbox"/>	

Good Morning Chris

I am forwarding you the e-mail/letter received for Minister Abbott.

Thanks,

*Karl Campbell*

Correspondence Assistant  
Ministry of Aboriginal Relations and Reconciliation  
Executive Correspondence Unit  
Phone: (250) 387-6853 Fax: (250) 387-6073



Please consider the environment before printing this email

Aboriginal Relations and Reconciliation
OCT 20 2010
Correspondence Unit

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**From:** Admin Assistant, CEO ILMB:EX  
**Sent:** Tuesday, October 12, 2010 11:45 AM  
**To:** Campbell, Karl ABR:EX; Green, Greg AG:EX; Beitz, Brian ENV:EX  
**Subject:** RE: Response 168168 Jennifer Griffith

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**From:** Admin Assistant, CEO ILMB:EX  
**Sent:** Tuesday, October 12, 2010 11:43 AM  
**To:** Campbell, Karl ABR:EX; Green, Greg AG:EX; Beitz, Brian ENV:EX  
**Subject:** Response 168168 Jennifer Griffith

Please find attached a copy of the response sent out by Minister Bell's office.

Fiona Campbell



File: 280-30  
Ref: 168168

Jennifer Griffith  
Donovan and Company  
73 Water St 6th Fl  
Vancouver BC V6B 1A1

Dear Ms. Griffith:

I am writing in response to your letter of July 22, 2010, expressing concern about the potential impacts of the Enbridge Northern Gateway Project proposed pipeline on the Haisla Nation's aboriginal rights, including title, and requesting information on existing strength-of-claim reports pertaining to the Haisla Nation. I will be responding on behalf of government.

I can confirm that a report providing a review of historical and ethnographic sources relevant to Haisla Nation was produced in 2008. The report was developed by the Ministry of Attorney General, Legal Services Branch, Aboriginal Research Division, providing a review of relevant ethno-historical and archaeological information. Please note this report is neither an exhaustive nor conclusive examination of all evidence relating to a First Nation's aboriginal interests or claims. Rather, it provides a review of information that is publically and readily available at the time to support an understanding of the First Nation's history and traditional practices.

Due to confidentiality concerns associated with some of the content incorporated into the report, we are unable to share this report outside of provincial government in its current format. However, as a result of your request, we will work over the next six months to remove any confidential or potentially privileged information from the document so that it can be shared with you. At the time it is shared, we will invite the Haisla to review the report for any errors or to provide any other additional information that may be missing.

With regard to the Enbridge Northern Gateway Project, the project has been submitted to the National Energy Board (NEB) for review, and the NEB is responsible for meaningful consultation and, if appropriate, accommodation of First Nations aboriginal rights. Following the NEB process, the federal government will make a decision on the project, and if approved, the proponent would apply for various provincial permits that are required for construction. Those operational permits are not expected for at least two years should the process proceed to that stage.

.../2

Ministry of Forests and Range and  
Minister Responsible for the  
Integrated Land Management Bureau

Office of the Minister

Mailing Address:  
PO Box 9049 Stn Prov Govt  
Victoria BC V8W 1X4

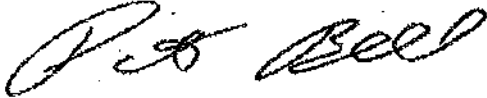
Tel: 250 387-6240  
Fax: 250 387-1040  
Website: [gov.bc.ca/for](http://gov.bc.ca/for)  
[www.ilmb.gov.bc.ca](http://www.ilmb.gov.bc.ca)



If operational permits are applied for, the Province would consider all the information on aboriginal interests that is provided through the NEB process and consultation with the federal government, and the Province would consult with First Nations at that time.

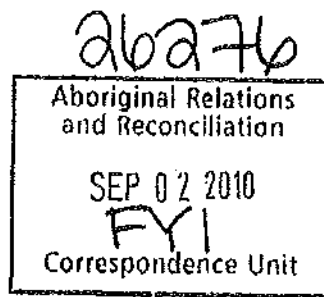
Please contact Geoff Recknell at 250 847-7535 or [Geoff.Recknell@gov.bc.ca](mailto:Geoff.Recknell@gov.bc.ca) for further information.

Sincerely,



Pat Bell  
Minister

pc: Honourable George Abbott, Minister of Aboriginal Relations and Reconciliation  
Honourable Michael de Jong, Attorney General and Minister of Public Safety  
and Solicitor General  
Honourable Barry Penner, Minister of Environment  
Geoff Recknell, Manager, Skeena Sub-Region, First Nations Initiatives Division, ILMB  
Chief Dolores Pollard, Haisla Nation



August 19, 2010

**Re: Enbridge Northern Gateway Pipelines Project  
Update to Regulatory Application**

Dear Sir/Madam,

As a person with an interest in the Enbridge Northern Gateway Pipelines Project, we wish to notify you that we have filed with the National Energy Board (NEB) an update to the s. 52 Application for the Enbridge Northern Gateway project, which was originally filed May 27, 2010.

The updates are as follows:

- 1) Volume 3, Appendix G.2, Preliminary HDD Feasibility Assessments
- 2) Volume 3, Appendix G.2, Preliminary Geotechnical HDD Feasibility Assessments

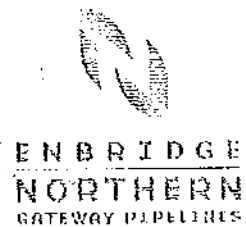
A copy of this update can be retrieved from the NEB repository by accessing the following link:

<https://www.neb-one.gc.ca/ll-eng/livelink.exe?func=ll&objId=629538&objAction=browse>

Interested Parties are encouraged to utilize this electronic medium to obtain copies of this filing. However, if you require a hard copy please advise.

Kind regards,

Northern Gateway Pipelines Limited Partnership



Box 50, One Bentall Centre  
Vancouver, BC V7X 1M4

1 604.694.7740 1 604.694.7755  
www.northerngateway.ca

### **A message from John Carruthers – President, Enbridge Northern Gateway**

For over two years now, you've met with us to learn about the Northern Gateway Project; to hear about the world class safety measures planned; and to understand what the economic benefits would be when a \$5.5 billion investment is made in the North.

Our communications materials highlight pipeline integrity, marine safety and incident response measures. But on July 26<sup>th</sup>, those assurances were challenged when 19,500 barrels of oil were spilled near our pump station in Marshall, Michigan. That leak is among the most serious incidents in Enbridge's long history. We sincerely regret that we disrupted people's lives and created a mess on properties, public places and local waterways.

We are working hard on the cleanup, and have made very good progress at the Michigan oil spill site and also along the affected creek and river. Week to week, the state of the river continues to significantly improve, and community members appreciate that worker and heavy equipment activity is now decreasing in many areas. Our work plans related to the cleanup have been approved by the U.S. Environmental Protection Agency. Enbridge will continue working to meet our commitment to restore the area to its previous condition.

One of our main priorities is to reach out directly to anyone who may have been affected by the spill. We have accepted responsibility for all costs related to emergency response or payment of claims that are a direct result of this incident. A toll free call in number was established and two Enbridge Community Centers have been operating seven days a week in the communities of Marshall and Battle Creek, Michigan, so the public can find out more information, ask questions and/or submit claims. More information about the incident and Enbridge's response can be found at [response.enbridgeus.com](http://response.enbridgeus.com).

We take our responsibility to prevent leaks very seriously. As the operator of North America's largest crude oil pipeline system, Enbridge prides itself on safely and reliably delivering energy to people across the continent. Pipelines have been proven to be one of the safest forms of transportation.