

## Jonker, Jennifer B ENV:EX

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**From:** Minister, ENV ENV:EX  
**Sent:** Thursday, December 19, 2013 3:43 PM  
**To:** Correspondence Unit ENV:EX  
**Subject:** FW: JRP Recommends approving Northern Gateway  
**Attachments:** NGP Post JRP Release Dec 19.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

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**From:** Cory Paterson [<mailto:Cory.Paterson@enbridge.com>]  
**Sent:** Thursday, December 19, 2013 3:11 PM  
**Subject:** JRP Recommends approving Northern Gateway

Today the Joint Review Panel recommended that the federal government approve the project, subject to 209 required conditions. The Panel stated: "Based on a scientific and precautionary approach to this complex review, the Panel found that the project, if built and operated in compliance with the conditions set out in its report, would be in the public interest."

*Please find attached for your information a copy of our news release on the Joint Review Panel's report.*

For immediate release

December 19, 2013

### **NORTHERN GATEWAY REINFORCES COMMITMENT TO BUILDING A SAFER. BETTER PIPELINE**

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Media line: 1-888-992-0997  
[media@enbridge.com](mailto:media@enbridge.com)

**Northern Gateway Project Backgrounder**

**The pipeline's route:**

A twin pipeline will run 1,177 km from Bruderheim in northern Alberta, through northern British Columbia, to the deep-water port of Kitimat British Columbia at the head of the Douglas Channel.

**The pipeline's capacity:**

The westbound 36" diameter pipeline will carry up to 525,000 barrels of oil per day. The eastbound 20" diameter pipeline will carry 193,000 barrels of condensate per day, which is a product used to thin oil for pipeline transport.

**The transfer from land to marine operations:**

The Kitimat Marine Terminal will include two ship berths and 19 tanks for oil and condensate. While docked at the Terminal, tankers loading export oil will be surrounded by a containment boom. The forecast is for the terminal to serve around 220 ship calls per year.

**Care taken along the land route:**

70% of the pipeline route will utilize previously disturbed land. The pipeline will be dug deeper under watercourses for added protection. Ten pump stations will be powered by electric pumps to limit noise and greenhouse gas emissions.

**Economic benefits:**

The Northern Gateway Project will bring significant, lasting benefits to the Canadian economy including:

- Over \$300 billion in GDP over 30 years
- \$300 million in employment and contracts for Aboriginal communities and businesses;
- \$4.3 billion of labour-related income across Canada during construction;
- \$2.6 billion in local, provincial and federal government tax revenues (\$1.2 billion in BC);
- 1,150 long-term jobs throughout the Canadian economy (560 in BC)

**Invaluable input from experts:**

A team of over 200 experts and scientists conducted a comprehensive environmental assessment of the project route. Their findings have been incorporated into our planning.

Sincerely,

Cory Paterson

Senior Manager, Public & Government Affairs, Western Access

ENBRIDGE INC.

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For immediate release

December 19, 2013

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TO BUILDING A SAFER, BETTER PIPELINE**

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## Jonker, Jennifer B ENV:EX

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**From:** Minister, ENV ENV:EX  
**Sent:** Tuesday, January 28, 2014 2:05 PM  
**To:** s.22  
**Subject:** RE: Stop Enbridge oil pipeline

Reference: 200119

January 28, 2014

s.22

Thank you for your email of December 20, 2013, regarding the proposed Enbridge pipeline.

Review of the Northern Gateway Pipelines project falls under the authority of the National Energy Board (NEB) because it would cross interprovincial borders (British Columbia/Alberta).

The British Columbia (BC) government presented a written submission to the NEB's review process indicating that it could not support the project as it has been presented. In particular, the province stated that it was uncertain based on the evidence presented whether Northern Gateway could effectively respond to a land or marine spill.

In July 2012, the Province outlined its five requirements for BC to consider support for heavy oil pipelines. The five conditions are:

1. Successful completion of the formal environmental review process with approval by the Joint Review Panel.
2. World-leading marine oil spill response, prevention and recovery systems for British Columbia.
3. World-leading practices for land-based spill prevention, response and recovery systems for British Columbia.
4. Legal requirements regarding Aboriginal and treaty rights must be addressed and First Nations be provided with the opportunities to benefit from these projects.
5. British Columbia receives a fair share of the fiscal and economic benefits of proposed heavy oil projects that reflect the risk borne by the province.

The announcement of the NEB's positive recommendation for the project meets only the first of the five conditions. The federal Cabinet may now make a decision on the federal Environmental Assessment and the NEB's recommendation also starts the timeline for consultation with First Nations.

Our government will need time to review the recommendation and any conditions attached to that recommendation, as well as resolve any outstanding issues related to the Province's four other requirements for it to consider support for heavy oil pipelines.

The position adopted by BC on the Northern Gateway Pipeline project as currently proposed is not a standing rejection for all heavy-oil projects. All proposals will be judged on their merits. The Province's five conditions will still apply.

If approved, the proponent would require a variety of permits from the Province of British Columbia to conduct works. You can be assured that the Government of BC will represent the interests of British Columbians in this process.

Should you desire further detailed information on the federal environmental assessment for the proposed pipeline, please contact the National Energy Board directly at 1-800-899-1265 or at [info@neb-one.gc.ca](mailto:info@neb-one.gc.ca). I also encourage you to visit the Enbridge Northern Gateway Project JRP website at <http://gatewaypanel.review-examen.gc.ca/clf-nsi/hm-eng.html>.

Thank you again for writing and sharing your concern for BC's environment.

Sincerely,

Mary Polak  
Minister

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

From: s.22  
Sent: Friday, December 20, 2013 12:07 PM  
Subject: Stop Enbridge oil pipeline

According to a notice I just received, National Energy Board's joint review panel (JRP) assessing Enbridge's oil tanker and pipeline proposal recommended the federal government approve the project if it meets certain conditions. There have been a lot of people who have stated their opposition to it, including First Nations over whose land the pipeline will go. There have been petitions sent opposing the pipeline idea, yet all that has been ignored. Do First Nations people not have any say about what is put on their land? Maybe the treaties which gave First Nations certain land mean nothing now?

If British Columbia vetoes the idea of a pipeline going through the province, this potential for ecological damage can be stopped. What has Enbridge pledged for cleaning up any oil spills that happen? They should bear the full cost of cleanup of any oil spills.

Please oppose this plan totally. It has too much potential for ecological harm.

s.22

## Jonker, Jennifer B ENV:EX

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**From:** Minister, ENV ENV:EX  
**Sent:** Thursday, December 19, 2013 12:40 PM  
**To:** Correspondence Unit ENV:EX  
**Subject:** FW: JRP Report: Northern Gateway not in the national interest  
**Attachments:** FE-CaseClosed-Dec2013-web.pdf

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

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**From:** Polak.MLA, Mary [<mailto:Mary.Polak.MLA@leg.bc.ca>]  
**Sent:** Tuesday, December 17, 2013 1:07 PM  
**To:** Minister, ENV ENV:EX  
**Subject:** FW: JRP Report: Northern Gateway not in the national interest

**From:** s.22  
**Sent:** December 16, 2013 7:53 PM  
**To:** Polak.MLA, Mary  
**Cc:** [premier@gov.bc.ca](mailto:premier@gov.bc.ca)  
**Subject:** JRP Report: Northern Gateway not in the national interest

Greetings Honourable Polak,

As intervenors in the JRP process for Enbridge Northern Gateway, we decided to put together the attached summary based on the final arguments of several participants. Similarly to the BC Government, we concluded that Northern Gateway should be rejected. Throughout the hearings, Enbridge repeatedly stated that they would provide answers once the project was approved. In our view, they also clearly proved that they do can not build their pipelines safely through our mountains or across our wild salmon rivers, nor can they manage oil tanker traffic and subsequent spills on our coast.

We look forward to working with the BC Government to ensure that the Northern Gateway pipeline and tanker project is never built.

Sincerely,

Nikki Skuce  
Senior Energy Campaigner  
ForestEthics Advocacy  
Smithers, BC

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## *Haisla Nation Council*

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February 3, 2014

**Email: [brett.maracle@ceaa-acee.gc.ca](mailto:brett.maracle@ceaa-acee.gc.ca)**

Canadian Environmental Assessment Agency  
160 Elgin Street, 22<sup>nd</sup> floor  
Ottawa, Ontario K1A 0H3

**Attn: Brett Maracle, Crown Consultation Coord.**

**Email: [Minister.Ministre@NRCan-RNCan.gc.ca](mailto:Minister.Ministre@NRCan-RNCan.gc.ca)**

Natural Resources Canada  
580 Booth Street, 21st Floor, Room: C7-1  
Ottawa, Ontario K1A 0E4

**Attn: The Honourable Joe Oliver, Minister**

**Fax: 613-995-0327**

Transport Canada  
330 Sparks Street  
Ottawa, Ontario K1A 0N5

**Attn: The Honourable Lisa Raitt, Minister**

**Fax: 403-292-5503**

National Energy Board  
444 Seventh Avenue SW  
Calgary, Alberta T2P 0X8

**Attn: Gaétan Caron, Chair and CEO**

**Fax: 819-953-0279**

Environment Canada  
10, rue Wellington  
Gatineau, Quebec K1A 0H3

**Attn: The Honourable Leona Aglukkaq, Minister**

**Fax: 819-953-4941**

Aboriginal Affairs and Northern Development Canada  
10 Wellington St  
Gatineau, Quebec K1A 0H4

**Attn: The Honourable Bernard Valcourt, Minister**

**Fax: 613-947-7081**

Fisheries and Oceans Canada  
200 Kent Street  
Ottawa, Ontario K1A 0E6

**Attn: The Honourable Gail Shea, Minister**

Dear Sirs/Mesdames:

**Re: Northern Gateway Pipeline Project - Consultation**

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In a letter provided by Mr. Brett Maracle, the Crown Consultation Coordinator for the Enbridge Northern Gateway Pipeline Project, on December 6, 2013 and corrected on December 16, 2013, Canada explained the role and intent of its Phase IV in the federal government's consultation process for the proposed project and identified three key questions it seeks to receive written input on from Aboriginal groups.

This letter constitutes the Haisla Nation's preliminary submissions to Canada in response to the Joint Review Panel (JRP) Report and outlines requirements for consultation on a forward going basis. It also provides preliminary written comment on the three key issues Canada has identified.

We acknowledge the reference in Mr. Maracle's January 29, 2014 letter to a willingness on the part of Canada to receive the Haisla Nation's comments on the JRP Report and Phase IV consultation beyond the 45 days initially outlined in earlier correspondence.

If we were given a significant time extension, we could provide a shopping list of every aspect of the proposed project that has not been properly addressed by Northern Gateway or through the JRP process and Report, including conditions. With the timelines outlined for a Governor-in-Council decision and given the serious process issues we have identified, we provide this letter as a step toward establishing a meaningful consultation process.

## I. INTRODUCTION

The Haisla Nation stands to be directly and severely impacted by the proposed project. Attached as Appendix I to this submission is an excerpt from the written evidence filed by the Government of Canada in the JRP review process showing Haisla Nation Territory and the proposed pipeline route.

The proposed pipeline will pass through Haisla Nation Territory along the ecologically sensitive Kitimat River to a proposed terminal location on the west side of Kitimat Arm, directly across the Arm from our Kitamaat IR No. 2, our *C'imoc'a* village site.

Northern Gateway's proposed project will bring diluted bitumen and condensate into our Territory, to be transported by way of pipeline and marine tanker vessels, and to be stored on the edge of Kitimat Arm. Diluted bitumen and condensate are both highly toxic substances which will cause significant damage to the environment, including immediate fish and wildlife mortality, when released.

The proposed project carries with it an inordinate amount of risk to Haisla Nation Territory. The Haisla Nation is being asked to play host to this proposed project, despite the risk the proposed project poses to the land, waters and resources relied on by the Haisla Nation for sustenance and cultural heritage. This risk includes a huge risk to Haisla Nation aboriginal rights to trap, hunt and fish, to gather seafood, and gather plant materials. It could result in significant damage to the Haisla Nation cultural heritage – its traditional way of life based on its *nuyem* and in *nusa*.

Northern Gateway seeks to acquire rights to over 478 hectares (1,181 acres) of our aboriginal title land for the tank and marine terminal, as well as 85 km of right-of-way for the pipeline

The terminal site is one of the few areas suitable for terminal development in our Territory. It is also home to over 800 Haisla Nation Culturally Modified Trees (CMTs). Northern Gateway proposes to irrevocably alter the land, the use of the land, and access to this land for the duration of the proposed project, which is anticipated to be at least 80 years. This irrevocable alteration includes the felling of our CMTs.

The use of Haisla Nation aboriginal title land for the proposed project is fundamentally at odds with Haisla Nation stewardship obligations and is not the way the Haisla Nation



would choose to use these lands.

By seeking to use Haisla Nation aboriginal title land for the proposed project, Northern Gateway will be effectively expropriating the economic value of this land. Northern Gateway is proposing to use Haisla Nation aboriginal title land for a project with no benefit to the Haisla Nation and which is fundamentally at odds with Haisla Nation stewardship principles. If this land is to be used for an industrial project, it ought to be one which, rather than expropriating the economic aspect of Haisla Nation aboriginal title, leaves the economic benefit with the Haisla Nation and which is compatible with Haisla Nation stewardship principles.

The Haisla Nation has detailed its concerns with the proposed project in its Written Final Argument submitted to the JRP on May 31, 2013. The Haisla Nation expects Canada to have reviewed this work in full, as well as all the evidence referred to in it. In addition, the Haisla Nation has provided additional information to Canada about its strength of claim and heritage sites and CMTs under cover of a letter dated November 26, 2013 from our legal counsel and under cover of our December 21, 2013 letter, both to Mr. Maracle.

The Haisla Nation expects Canada to be prepared to address the concerns we have detailed through the JRP process as part of the anticipated up-coming consultation process.

## **II. BACKGROUND ON CONSULTATION**

The Haisla Nation has requested the federal government to engage in meaningful consultation with respect to the proposed Northern Gateway Pipeline project since 2005, when Enbridge first filed its Project Information Package with the Canadian Environmental Assessment Agency.

On October 27, 2005 the Haisla Nation wrote to federal and provincial Ministers outlining the need for consultation and accommodation prior to any decision to approve the proposed project and seeking to meet with the Ministers.

Once the Haisla Nation became aware that Northern Gateway was resurrecting its proposed project, we wrote to federal and provincial Ministers and the National Energy Board on August 5, 2008, again outlining the need for consultation and accommodation prior to any decision to approve the proposed project and seeking to have input into the design of the project review process.

Canada has, to date, refused to engage in meaningful consultation with the Haisla Nation. Instead, Canada has unilaterally imposed what it calls a "deep level meaningful consultation" process which is fundamentally flawed for a number of reasons, as outlined below.

### **1. Lack of Adequate Funding**

Canada has not provided adequate funding to the Haisla Nation for its participation in

the JRP process.

Canada selected the JRP process as the predominant way for the Haisla Nation to provide Canada with information about Haisla Nation aboriginal rights, including title, and the potential effects of the proposed project on Haisla Nation aboriginal rights and title. The Haisla Nation could only do this by participating extensively in the JRP process.

The extent of Haisla Nation participation is apparent from the amount of evidence provided by the Haisla Nation to the process. This evidence related not only to Haisla Nation aboriginal rights and title, but also included scientific information the Haisla Nation felt the JRP ought to consider. Much of the evidence adduced by the Haisla Nation could have been provided by Canada, had it chosen to have its departments participate in the JRP process with the intention to provide comprehensive, balanced and unbiased information.

The Haisla Nation submitted funding applications for Canada's Aboriginal Funding Envelopes for Phases I, II & III, and IV but was never awarded anywhere near the funding it requested. For Phase II & III participation, the Haisla Nation ultimately received funding that amounted to less than 24% of its request. For Phase IV, the Haisla Nation submitted a funding application for \$568,028. The Haisla Nation was asked to revise its funding application to meet the pre-determined token sum of \$14,000. The Haisla Nation has been awarded funding in the amount of \$14,000 for Phase IV consultation, representing less than 2.5% of its original request.

Canada has consistently under-funded the Haisla Nation for its participation in the review of the proposed project and for related consultation activities. Canada has pointed out that the Haisla Nation was awarded the highest amount of any Aboriginal group for Phase II and III participation. Canada cannot rely on its underfunding of other Aboriginal groups to justify underfunding the Haisla Nation. Further, the Haisla Nation is the only Aboriginal group that will be directly affected by all three components of the proposed project: the pipeline, the terminal, and the marine shipping.

We ask that Canada come to the consultation table with a mandate to address the Haisla Nation deficit on this file and with a realistic funding proposal for the consultation process that Canada is finally willing to initiate.

## **2. Lack of Meaningful Consultation on JRP Process**

### **2.1 Government Solicitation of Views on JRP Process**

On October 15, 2008 the federal government invited the Haisla Nation to provide comments on Canada's draft JRP Agreement. Through submissions dated April 9, 2009 and August 24, 2009, the Haisla Nation submitted its comments on the proposed agreement. In those submissions, the Haisla Nation identified a number of technical concerns, continued to assert the need to develop a separate process for consultation and sought early meetings to commence consultation on matters outside the mandate of the JRP.

In its November 6, 2009 letter purporting to respond to Haisla Nation concerns, Canada identified the way in which it felt it had addressed Haisla Nation concerns.

- In response to Haisla Nation requests for involvement in the development of a meaningful process to address Haisla Nation aboriginal right, including aboriginal title, Canada identified soliciting input from First Nations on the draft JRP Agreement and making subsequent changes to it as having provided that involvement.
- In response to Haisla Nation concerns that the JRP process was not appropriate to address Haisla Nation aboriginal rights and aboriginal title, Canada referred to revisions to the JRP Agreement (through ss. 6.4, 6.5, 8.1 and 8.2) which made it clear the JRP would collect information about aboriginal rights and potential impacts to aboriginal rights.
- In response to the Haisla Nation identifying issues that were outside the mandate of the JRP, Canada stated that the Crown Consultation Coordinator would be available to "meet directly with Aboriginal groups regarding matters that are not within the JRP's mandate and will work with federal departments to determine, as appropriate, if any action is required".
- In response to the Haisla Nation's request for a separate process, Canada stated it had changed the JRP process to separate Aboriginal groups from the public.

Canada provided an issues tracking table with its response, which stated:

Within the approach provided, how consultation was integrated into the process as a "whole-of-government" approach was provided, however, how that consultation is conducted was not defined.

Canada also stated numerous times:

The Crown is open to discussing how consultation, within the framework provided will be carried out.

Canada purports to have integrated the Haisla Nation's concerns about the draft JRP Agreement into a revised Agreement. On December 10, 2009 we wrote to the Canadian Environmental Assessment Agency to explain exactly how Canada failed to address and integrate our concerns. Here we explained that:

- Canada's approach failed to recognize Haisla Nation stewardship of its Territory and denied the Haisla Nation a stewardship role;
- The Kemess North Mine Project review clearly identified the shortcomings of a JRP process for addressing aboriginal concerns;
- Haisla Nation concerns about the process had not been properly considered or addressed;

- The JRP process was an information gathering process and could not address aboriginal rights and title; and
- The JRP process placed a huge onus on First Nations to provide information to the process.

On April 16, 2010, the President of the Canadian Environmental Assessment Agency replied, referring once again to the opportunity to comment on the draft JRP Agreement as amounting to involvement in the design of the process. Canada did not consult on the process. It sought the Haisla Nation's views on the draft JRP Agreement.

Finally, the President of the Canadian Environmental Assessment Agency wrote, "[a]s well, we will seek your input, well in advance of the release of the Panel environmental assessment report (expected in late 2011), on the process for consultation on the report".

The Haisla Nation requested that Canada set up a process for consultation that was separate from the environmental assessment and certificate review. Canada disregarded our request. Instead, Canada chose to consult through the regulatory review, using its "whole-of-government" approach. In its letter of November 6, 2009, Canada wrote:

When considering the best manner to consult Aboriginal groups who may be adversely impacted by its conduct in respect of the project, the federal government is mindful of the potential for existence of a legal duty to consult with a large number of Aboriginal groups with various interests.

What Canada should have realized is that it has a very real obligation to consult with the Haisla Nation at the deepest end of the consultation spectrum that cannot be pigeon-holed into a one-size-fits-all approach.

Further, the term "whole-of-government" is misleading, as this approach actually prohibits the majority of government from engaging in consultation. Documents we have obtained under an Access to Information Request clearly indicate individual departments were asked to not communicate directly with the Haisla Nation.

Further, questions directed at federal government witnesses during the JRP process confirmed that federal departments had not met with the Haisla Nation since the commencement of the JRP process. While these witnesses were reluctant to confirm that they had been prohibited from meeting with us, they repeatedly referred to the "whole-of-government" approach to consultation as their reason for not meeting.

Canada's "whole-of-government" approach clearly limited engagement to a strict process with no opportunity for real engagement.

## **2.2 Unilateral Change to JRP Process**

In July of 2012, Canada, without any consultation with the Haisla Nation, enacted

legislative revisions to a number of pieces of legislation relevant to the JRP process and the potential impact of the proposed project on Haisla Nation aboriginal rights, as part of an omnibus bill that was passed with little or no parliamentary debate.

These changes replaced the *Canadian Environmental Assessment Act* with *CEAA, 2012* and amended provisions of the *National Energy Board Act* dealing with decision-making. The legislative changes also imposed timelines on the review of the proposed project.

One of the fundamental changes resulting from this legislation was to place the ultimate decision-making authority for the proposed project into the hands of federal Cabinet. In addition, the legislative changes removed the JRP's discretion over timelines for the hearings and have imposed a decision deadline on the Governor-in-Council.

To address these significant legislative revisions, Canada had to amend the JRP Agreement retroactively, since the JRP process had been underway for many months based on prior legislation, to reflect the change in decision-making locus and the strict timelines imposed on the JRP process.

### **2.3 No Meaningful Consultation on JRP Process**

Canada purports to have consulted early with the Haisla Nation by seeking comments on the draft JRP Agreement. This position is misleading and inaccurate. The Agreement under which the JRP review was completed is not the one put forward to the Haisla Nation for consultation and is not the one which Canada says was developed with input from the Haisla Nation.

Thus, even where Canada purports to have considered Haisla Nation concerns when it developed the JRP review process – and we do not agree that Canada did address our concerns – Canada then made significant unilateral changes to the process after the JRP process was well under way.

### **3. Unwillingness to Engage During JRP Process**

Canada purports to have engaged in early consultation, by seeking comments on its draft JRP Agreement and through the JRP process itself. What Canada has done to date cannot be called consultation. It fails to meet any of the fundamental hallmarks of a meaningful consultation process.

One of the ways it fails to allow for a meaningful consultation process is through Canada's refusal to meet with the Haisla Nation to initiate early discussions about potential project impacts. We have asked Canada in letters from us and from our legal counsel for meetings with federal decision-makers numerous times (letters dated December 13, 2010 to federal Ministers; March 29, 2011 to federal Ministers; May 12, 2011 to Minister of Environment Kent; September 20, 2011 to Minister of Environment Kent; September 20, 2011 to Crown Consultation Coordinator Mr. Maracle; March 8, 2012 to Minister of Environment Kent).



Canada only acknowledged our request for a meeting with decision-makers in one instance. According to a letter from Minister of Environment Kent dated April 19, 2012, he had asked the President of the Canadian Environmental Assessment Agency to meet with us on his behalf in December of 2011. Since that meeting could not be scheduled prior to the commencement of oral hearings on January 10, 2012, however, Minister Kent reneged on his promise of a meeting.

For over six years, Canada ignored Haisla Nation requests for meetings. Once the JRP's oral hearing process commenced, Canada further closed the door on any opportunity for a meeting until after the JRP Report was released. This refusal to consult was baseless. The ongoing JRP process was not a rational or justifiable basis for Canada's refusal to consult.

As a result of the process Canada has imposed, Canada has precluded any opportunity for meaningful two-way dialogue up to this point. Canada essentially engaged in the JRP process for the "gathering of information". Thus, consultation has not truly started. At best the JRP process provided information to Canada which Canada must be prepared to consider and discuss, now that Canada purports to finally be willing to engage in a two-way consultation process.

The deep consultation components of exchange of information (about anything other than the process Canada has established), correspondence (again, about anything other than the process Canada has established), and meetings have not occurred to date.

Canada has yet to meet with the Haisla Nation to discuss the proposed project, other than to tell the Haisla Nation it is only engaging in consultation through the JRP process for now. This is not consultation. It is perhaps, at best, an initial step towards a consultation process.

#### **4. Failure to Adhere to Aboriginal Consultation Framework**

Canada has failed to adhere to the process it described in its own Aboriginal Consultation Framework by retroactively imposing timelines, by failing to provide relevant information to the JRP, and by failing to meet to address matters that fall outside the JRP mandate.

At about the same time Canada finalized its Joint Review Agreement it released its Aboriginal Consultation Framework. Canada says it developed its Aboriginal Consultation Framework to set out how it will rely on the JRP process to the extent possible to fulfill its legal obligation to consult with Aboriginal groups on the proposed project.

Canada's Aboriginal Consultation Framework identifies five consultation phases, each designed to meet specific objectives determined by Canada. It is only now, in Phase IV, that Canada is proposing to meet with the Haisla Nation to discuss substantive issues.

Canada appears to be in denial about the effectiveness of its Aboriginal Consultation

Framework for meaningful consultation. As recently as January 29, 2014, Mr. Maracle wrote:

... the process set out by the Government of Canada in the Aboriginal Consultation Framework was finalized after receiving and carefully considering input from Aboriginal groups, including the Haisla, in 2008 and 2009. The Government of Canada believes the process outlined in the Aboriginal Consultation Framework provides for a deep level of meaningful consultation with Aboriginal groups, with Phase IV being the final step prior to a decision being made on the Project.

The Aboriginal Consultation Framework was not developed on the basis of input from the Haisla Nation. It was never provided to the Haisla Nation in draft form for consideration and comment, and Canada has never informed the Haisla Nation of how its framework has considered and incorporated the Haisla Nation's concerns. The Aboriginal Consultation Framework was put forward to provide the appearance that consultation will be taken seriously, as an effort on Canada's part to justify not developing a comprehensive consultation process for the proposed project outside of the regulatory review.

Canada has already failed to adhere to the Aboriginal Consultation Framework, as set out below. Further, it is apparent that the JRP Report has not provided the information Canada appears to have anticipated it would. Finally, with the reference to Phase IV as the final step prior to a decision being made, it is clear that Phase IV consultation must address all the implications of the issuance of a certificate under the *National Energy Board Act* and a positive decisions statement under *CEAA, 2012*.

#### **4.1 Retroactive Imposition of Timelines**

Canada has changed its consultation process by retroactively imposing timelines.

While some of the phases may be considered to have timelines attached to them by virtue of being aligned with the JRP process, Phase IV of Canada's Aboriginal Consultation Framework makes no references to time limitations. Similarly, Canada's Written Evidence on Government of Canada Aboriginal Consultation, submitted to the JRP, makes no mention of time limits for Phase IV consultation.

Time limits have been imposed retroactively, however, through legislative amendments. These legislative changes were enacted unilaterally, after the JRP process had started, with no consultation with the Haisla Nation.

#### **4.2 Failure to Provide Relevant Information**

Canada has failed to adhere to its own framework in other critical ways. In describing the role of federal departments in the JRP process, the Aboriginal Consultation Framework states:

Federal departments will be active participants in the JRP process to ensure the

environmental assessment and the consultation record, is as accurate and complete as possible.

In fact, Canada provided only limited written evidence to the JRP process, thereby shaping what would be before the JRP. Oral questioning of federal government witnesses demonstrates that federal government departments not only failed to provide relevant information but also obstructed a clear understanding of project impacts. In a number of instances, federal government participants were either unable or unwilling to provide evidence relevant to the assessment of the proposed project:

- Natural Resources Canada has expertise on acid rock drainage and metal leaching but did not include any evidence on acid rock drainage or metal leaching in the final version of its written evidence.
- Fisheries and Oceans Canada does not have the mandate to conduct an assessment of potential toxicological effects of an oil spill, and Environment Canada did not review or provide any information to the JRP specific to the proposed project on the pipeline component of spills.
- Federal government witnesses were unable to answer questions about the toxicity of dispersants.
- With respect to climate change, the federal government only filed some limited evidence, which was limited to frequency and magnitude of storm conditions.
- When asked whether it had conducted investigations or considered information relating to the subsurface currents in the CCAA or OWA that might affect the movement of submerged oils, Environment Canada stated that it does not measure hydrodynamic data and that this information generally comes from Fisheries and Oceans Canada. Fisheries and Oceans Canada did not provide experts who could speak to subsurface currents.
- The federal government consultation witness panel was not prepared to respond to Haisla Nation evidence regarding its aboriginal title.

Thus, despite a commitment to the Haisla Nation through its Aboriginal Consultation Framework to ensure the environmental assessment record is as complete as possible, Canada failed to provide relevant information to the process.

Further, Canada's witnesses provided information that was inconsistent with information previously provided to the Haisla Nation. In response to a request for direct government-to-government discussions with Canada about the proposed project, the President of the Canadian Environmental Assessment Agency wrote on April 16, 2010:

The Panel and associated consultation process for the Project is not intended to provide the means to recognize or prove potential rights. The British Columbia Treaty Commission process is the mechanism through which this important work is undertaken.



Yet when questioned about Canada's acceptance of the Haisla Nation's Comprehensive Claim after legal and historic verification, Canada's witness stated:

With respect to the B.C. Treaty process, which is interest based, we do not -- Canada does not assess the asserted title and rights of any particular First Nation that's in that process.

...

The First Nation Haisla [sic], when it submitted its claim to the B.C. Treaty process, it's the B.C. Treaty Commission, which is an independent body, that accepted them into the process and once we commenced negotiations, it is all interest based. We do not do an assessment of any title and rights that the First Nation brings to the table, we negotiate Treaty rights.

Finally, Canada made no effort to further understand the proposed project, potential impacts of the project on aboriginal rights and title, or the breadth or limits of consultation undertaken by Northern Gateway. Canada had the opportunity to seek leave to question evidence, but chose not to.

#### **4.3 Failing to Meet to Address Issues Beyond JRP Mandate**

Canada's Aboriginal Consultation Framework also states:

The Crown Consultation Coordinator will be available to discuss and meet directly with Aboriginal groups during Phases II and III on the following subjects:

Matters that fall outside of the JRP's mandate, although these are expected to be the exception given the broad mandate of the JRP; ....

The Haisla Nation made numerous requests for an early meeting with decision-makers to discuss impacts to Haisla Nation aboriginal title that will result from the proposed project, a matter which clearly fell outside of the JRP's mandate, Canada refused every time. The promise of an opportunity for meetings for consultation on matters that are clearly outside the JRP's mandate during Phase II and III was hollow.

#### **4.4 No Assessment of Impacts on Aboriginal Rights**

Further, it appears that Canada was anticipating the JRP Report to discharge aspects of Canada's consultation or complete some of the steps required in consultation. According to its Aboriginal Consultation Framework, Canada envisioned Phase IV to include the process of consultation to establish whether all concerns about potential project impacts on potential or established Aboriginal and treaty rights have been characterized accurately by in the JRP Report.

In his December 16, 2013 letter, Mr. Maracle wrote:

The mandate of the Panel for the proposed project was expanded to enable it to consider the concerns of Aboriginal groups and to make recommendations to

avoid or mitigate potential adverse impacts or infringements on Aboriginal or Treaty rights and interests and, as such, assist Government of Canada consultation efforts.

The JRP, however, has not addressed concerns about potential project impacts on potential or established Aboriginal and treaty rights. The JRP has not made any assessment of potential or established Aboriginal and treaty rights. The JRP Report does not contain any analysis of potential impacts on potential or established Aboriginal and treaty rights. It makes no reference to the use of Haisla Nation aboriginal title land for the proposed project and provides no analysis of how other Haisla Nation aboriginal rights may be impacted.

Canada envisioned a process whereby Canada provided relevant information to the JRP. Canada did not. Canada envisioned a process that involved meetings to discuss matters beyond the mandate of the JRP, but Canada has refused to take part in such meetings. Canada expected the JRP Report to provide a foundation for consultation on potential adverse effects of the proposed project on aboriginal title and rights. It does not.

Some of the critical elements of Canada's Aboriginal Consultation Framework have been ignored, creating a consultation deficit even within Canada's unilaterally selected process between the Haisla Nation and Canada about the proposed project.

#### **4.5 Promise of Further Consultation**

Finally, in setting out its Phase IV consultation, Canada said that the federal Cabinet could decide that further consultation with Aboriginal groups is required. The approval process for the proposed project has since changed, as a result of legislative amendments which impose timelines.

In his December 16, 2013 letter to the Haisla Nation outlining what will occur during Phase IV consultation, Mr. Maracle has requested that the Haisla Nation provide its response to Canada's three questions within 45 days of the issuance of the JRP Report.

The Key Steps diagram provided with Mr. Maracle's letter shows that Canada has allocated only 45 days during which face-to-face meetings will take place. Finally, the Haisla Nation was advised that if it wanted to provide wording for inclusion in the Crown Consultation Report it would be limited to 2-3 pages, "given the number of groups involved" and must be provided by April 16, 2014.

Canada appears intent on rushing ahead toward a decision on the proposed project regardless of the extent of Haisla Nation concerns that have gone completely unaddressed by the JRP process and the JRP Report and the need for meaningful consultation to address these concerns.

We acknowledge the reference in Mr. Maracle's January 29, 2014 letter to a willingness on the part of Canada to receive the Haisla Nation's comments on the JRP Report and Phase IV consultation beyond the 45 days initially outlined in correspondence from

Canada, and to show some flexibility regarding the number of pages from the Haisla Nation it will include in its Crown Consultation Report. These small adjustments to Phase IV consultation alone cannot address Canada's consultation deficit.

Despite assurances in the Aboriginal Consultation Framework that Cabinet may decide additional consultation is required, Mr. Maracle's letter suggests no possibility of a directive from federal Cabinet for further consultation. Chief Councillor Ellis Ross raised his concerns regarding inadequate time for a meaningful consultation process in a telephone discussion with Natural Resources Minister Joe Oliver. Joe Oliver referred to timelines being imposed through legislation. From our analysis, it is clear that federal Cabinet has the authority to extend the timelines for a Governor-in-Council decision under s. 54 of the *National Energy Board Act*, on the recommendation of the Minister.

The Haisla Nation contends that Canada should decide that further consultation is required, and that the Minister should formally extend the time limit for a Governor-in-Council decision to allow meaningful consultation to occur.

## **5. Haisla Nation Concerns with JRP Process**

### **5.1 Articulation of Concerns**

The Haisla Nation identified its concerns with the JRP process and how Canada intended to consult on the proposed project early in the project review process. In its letter of December 10, 2009, the Haisla Nation clearly delineated its concerns with the JRP process, including the following concerns:

- a Joint Review Panel process is a fundamentally inadequate forum for the conduct of the Crown's legal obligation to consult and accommodate;
- the JRP Report will be issued well in advance of meaningful consultation; and
- Canada's suggestion that it is open to discussing how consultation would occur was conditional on being able to pigeon-hole consultation into its unilaterally designed framework.

In a November 23, 2010 letter to the JRP, our legal counsel outlined our concerns relating to the JRP process as they related to consultation. These included the following concerns:

- without having the ability to make an assessment of strength of claim, the JRP would not be able to determine the scope of consultation required and would therefore not be able to assess the adequacy of consultation;
- the environmental assessment would not be the result of a meaningful consultation and accommodation process, as it would be required to proceed prior to an assessment of strength of claim;
- the JRP would not be able to effectively present the Haisla Nation's evidence of aboriginal title and rights to Canada; and

- consultation would be separated from mitigation opportunities.

## **5.2 Concerns Borne Out**

The Haisla Nation concerns have been borne out. The JRP Report makes it very clear that:

- The JRP has not considered the aboriginal perspective how the proposed project will affect current use of land for traditional purposes;
- The JRP has made no assessment of Haisla Nation aboriginal rights, including aboriginal title – despite the mass of evidence concerning Haisla Nation aboriginal rights and title tendered by the Haisla Nation and completely unchallenged by Northern Gateway and Canada;
- The JRP has not considered how the proposed project would impact Haisla Nation aboriginal rights, including aboriginal title;
- The JRP has referred to the Haisla Nation's evidence of aboriginal rights and title by listing the Haisla Nation's submissions to the JRP in an appendix, but has undertaken no analysis of that evidence at all.

In our view, the JRP process has addressed none of Canada's legal obligation to consult and accommodate. As a result, a huge amount of time has passed during which Canada could have been consulting with the Haisla Nation. We repeatedly sought early engagement by Canada, but Canada chose to defer to the JRP process. If there are any time constraints now, it is of Canada's doing. Canada's flawed consultation approach cannot be allowed to lead to a truncated and inadequate consultation process. The Haisla Nation will not be rushed through a few meetings to create the appearance, without the reality, of good faith consultation.

## **6. Consultation with the Haisla Nation is at the Earliest Stage**

### **6.1 Federal Consultation Guidelines**

Canada has developed guidelines for federal departments engaged in consultation. Canada describes these guidelines as:

- informed by Canada's understanding of the legal parameters of the duty;
- to provide policy-based guidance to assist officials in their efforts to effectively incorporate consultations and, where appropriate, accommodation into government activities and processes; and
- developed to provide practical advice and guidance to federal departments and agencies in determining when the duty to consult may arise and how it may be fulfilled.

Guiding Principle Number 4 of Canada's guidelines describes a meaningful consultation process as one which is:

- carried out in a timely, efficient and responsive manner;
- transparent and predictable;
- accessible, reasonable, flexible and fair;
- founded in the principles of good faith, respect and reciprocal responsibility;
- respectful of the uniqueness of First Nation, Métis and Inuit communities; and,
- includes accommodation (e.g. changing of timelines, project parameters), where appropriate

The guidelines lay out a step-by-step consultation process. Where a duty to consult exists, the guidelines direct that the following sequential steps be taken:

#### **Phase 1: Pre-Consultation Activities**

- Step 1: Describe and 'map out' the proposed Crown conduct
- Step 2: Identify potential adverse impacts of Crown conduct
- Step 3: Identify which Aboriginal groups are in the area of the proposed Crown conduct and ascertain their respective potential or established Aboriginal or Treaty rights and related interests
- Step 4: Make an initial determination as to whether there is a duty to consult
- Step 5: Assess the scope of the duty to consult and, where appropriate, accommodate
- Step 6: Design the form and content of the consultation process
- Step 7: Ensure that a records management and filing system is in place

#### **Phase 2: Crown Consultation Process**

- Step 1: Implement the consultation process
- Step 2: Document, catalogue and store all Crown consultation meeting records and other correspondence
- Step 3: Develop and maintain an issues management tracking table
- Step 4: Adjust the consultation and accommodation process, as necessary

#### **Phase 3: Accommodation**

- Step 1: Gather and analyze information supporting the basis for accommodation
- Step 2: Identify possible accommodation measures and options
- Step 3: Select appropriate accommodation options
- Step 4: Communicate and document selected accommodation measures

#### **Phase 4: Implementation, Monitoring and Follow-Up**

- Step 1: Communicate and implement the decision(s)
- Step 2: Monitor and follow-up
- Step 3: Evaluate the consultation process



## **6.2 Consultation with the Haisla Nation According to Federal Guidelines**

By our assessment, the consultation process between Canada and the Haisla Nation is at Step 5 of Phase 1 of the process laid out in the federal guidelines: assess the scope of the duty to consult and, where appropriate, accommodate.

The Haisla Nation has repeatedly asked Canada to provide its strength of claim assessment. In response to an information request made by the Haisla Nation during the JRP process requesting information about and the provision of Canada's strength of claim assessment for the Haisla Nation, the federal government stated:

Subsection 8(2) of the JRP Agreement requires the Joint Review Panel to reference in its report information provided by Aboriginal groups regarding their strength of claim respecting Aboriginal rights. Accordingly, the Government of Canada is using the Joint Review Panel process to collect information related to the strength of the Haisla Nation's potential Aboriginal rights. [Federal Government Participants]

When asked during oral questioning whether Canada has prepared a strength of claim assessment for the Haisla Nation, Canada's witness representing AANDC stated that to the best of her knowledge Canada had not prepared a strength of claim for the Haisla Nation. While we accept that this witness was not aware of Canada's work on an analysis of the strength of the Haisla Nation's claim of aboriginal rights and title, we do not believe that Canada has not undertaken this work. In our view, Canada has but, to date, has been unwilling to share it with the Haisla Nation.

It is thus clear that Canada was delaying providing the Haisla Nation with its strength of claim assessment until after the completion of the JRP process and the issuance of the JRP Report.

Determining the scope of consultation requires both a determination of strength of claim and an assessment of potential impacts. The JRP Report does not assess potential impacts. Determining the scope of consultation required cannot yet have been completed.

### **RESPONSES REQUIRED:**

- 1. Please confirm that it is also Canada's understanding that we are at Step 5 of Phase I of the consultation process laid out in the federal guidelines.**
- 2. Please provide the Haisla Nation with Canada's strength of claim assessment.**

## **6.3 Report of Special Envoy Confirms Consultation Concerns**

In his letter of December 16, 2013, Mr. Maracle wrote:

The Government of Canada believes the process outlined in the [Aboriginal

Consultation] Framework provides for a deep level of meaningful consultation with Aboriginal groups.

This statement ignores recommendations from Canada's special envoy tasked with assessing Canada's process of consulting with Aboriginal groups about energy projects. In November of 2013, Mr. Douglas R. Eyford released his Report to the Prime Minister titled *Forging Partnership Build Relationship – Aboriginal Canadians and Energy Development*.

Mr. Eyford's Report recommended that Canada should consider undertaking early engagement to address Aboriginal interests that may not be dealt with in a regulatory process. The Haisla Nation has been seeking such early engagement from Canada since the proposed project was first announced.

Mr. Eyford's Report also recommended that Canada should engage, and conduct consultations in addition to those in regulatory processes, as may be required, to address issues and facilitate resolutions in exceptional circumstances. The Haisla Nation had also asked for this, identifying early that this proposed project was an exceptional circumstance due to the significant potential impacts on the Haisla Nation.

It is not too late for Canada to correct the deficiencies in its consultation process, but it cannot realistically do so by adhering to the approach imposed unilaterally by Canada and laid out in Mr. Maracle's letter of December 16, 2013.

## **7. Role of JRP Process for Consultation with Haisla Nation**

The JRP process and JRP Report do not provide the starting point for consultation between the Haisla Nation and Canada that Canada anticipated it would. It provides no assessment of Haisla Nation aboriginal rights and title, no consideration of project impacts from the Haisla Nation perspective, and no assessment of impacts to Haisla Nation aboriginal rights and title.

### **7.1 Haisla Nation JRP Evidence on Aboriginal Rights Went Unchallenged**

Canada designed a review process for the proposed project which required the Haisla Nation to submit evidence regarding its aboriginal rights and its strength of claim to those rights as part of the JRP process.

The Haisla Nation filed extensive written evidence in the JRP process that demonstrates the strength of its claim to aboriginal rights and aboriginal title to the areas to be impacted by the proposed project. The purpose of this evidence was to inform the JRP and the Crown of the Haisla Nation's strength of claim so that the consultation that must take place if the Crown is to discharge its obligations honourably could be properly scoped.

Significantly, the evidence submitted by the Haisla Nation was not challenged. Northern Gateway did not seek to examine any of the expert witness authors to test this evidence. The federal government participants did not seek to leave to cross-examine

these witnesses to test their evidence either.

Northern Gateway did question Chief Councillor Ellis Ross, but chose to limit its cross examination to certain peripheral matters such as the LNG project being developed on the Haisla Nation's Bees IR No. 6. Neither Northern Gateway nor Canada questioned Chief Councillor Ellis Ross on the extensive evidence of aboriginal rights and title set out in his affidavit, or prepared by Dr. Powell, Mr. Wolfhard and Mr. Evans and submitted by the Haisla Nation. In fact, Canada chose to not seek leave to question any of the Haisla Nation's witnesses.

Canada's choice not to question the Haisla Nation aboriginal title and rights and strength of claim evidence essentially amounts to a concession that Haisla Nation evidence of its aboriginal rights, including aboriginal title, and impacts to those rights is valid.

## **7.2 Canada Failed to Provide Evidence to the JRP Process**

If Canada had any contrary evidence, it should have filed it as part of the JRP process. Canada's JRP Agreement contemplated that the JRP process was to be fully informed about the potential impacts of the proposed project on Aboriginal rights and interests:

6.5 In order that the Panel may be fully informed about the potential impacts of the project on Aboriginal rights and interests, the Panel will require the proponent to provide evidence regarding the concerns of Aboriginal groups, and will also carefully consider all evidence provided in this regard by Aboriginal peoples, other participants, federal authorities and provincial departments.

Despite asking Aboriginal groups to provide to the JRP process information they deemed relevant to their aboriginal and treaty rights and how the proposed project may impact those rights, Canada took no steps to provide anything beyond the most rudimentary information about Aboriginal groups to the JRP process. For the Haisla Nation this consisted of general information about treaty negotiations and a statement of intent map.

Section 6.5 of the JRP Agreement created a legitimate expectation on behalf of the Haisla Nation that the federal government would also provide information to the JRP about potential impacts on Haisla Nation aboriginal rights, including Canada's strength of claim assessment.

As Canada's description of Phase IV consultation in its Aboriginal Consultation Framework indicates, Canada expected the JRP to characterize potential project impacts on potential or established Aboriginal and treaty rights. The JRP would need to determine what those rights are before it could characterize the potential project impacts.



## **RESPONSES REQUIRED:**

- 1. Please advise us of the role that Canada sees the JRP Report playing in its consultation with the Haisla Nation.**
- 2. Please confirm that Canada accepts that the Haisla Nation has a strong claim to aboriginal rights to hunt, fish, trap and gather within the areas that will be affected by the pipeline, terminal and tanker traffic associated with the proposed project.**
- 3. Please confirm that Canada accepts that the Haisla Nation has a strong claim to aboriginal title to the areas that will be affected by the pipeline, terminal and tanker traffic associated with the proposed project.**

## **III. THREE QUESTIONS POSED BY GOVERNMENT OF CANADA**

In keeping with its one-size-fits-all consultation process, the Government of Canada is soliciting submissions from all Aboriginal groups on three questions:

1. Does the Report appropriately characterize the concerns you raised during the JRP process?
2. Do the recommendations and conditions in the Panel Report address some / all of your concerns?
3. Are there any "outstanding" concerns that are not addressed in the Panel Report? If so, do you have recommendations (i.e., proposed accommodation measures) on how to address them?

This approach continues the one-way information gathering that Canada has engaged in since the outset of this project review and seeks to lock consultation into a box rather than foster meaningful dialogue. It is an unprincipled approach to consultation.

Consultation with the Haisla Nation must go far beyond considering what the Haisla Nation says in response to Canada's three questions, if it is to be meaningful. It is simply not good enough to ask, "Do you like the JRP Report?" Canada is proposing to make decisions that will allow the proposed project to go ahead. All the ramifications of Canada's pending decisions must be considered in a meaningful consultation process.

The Haisla Nation is providing preliminary responses to Canada's questions but maintains that the consultation between the Haisla Nation and Canada that follows the cookie-cutter time-limited approach Canada is putting forward cannot be meaningful.

As all three aspects of the proposed project (pipeline, terminal and tanker traffic) are in Haisla Nation Territory, the review of and response to the JRP Report is extremely onerous for the Haisla Nation. As a result, the Haisla Nation cannot provide a detailed response at this time. The Haisla Nation expects to delve further into the issues raised in this preliminary submission and through our evidence and Written Final Argument

and Oral Reply Argument during the anticipated two-way consultation process.

We repeat our concerns identified in our letter to Mr. Maracle dated December 12, 2013 regarding the amount of funding provided by Canada for Phase IV consultation. We have reviewed the funding allocated and see that Canada has provided all First Nations with the same amount of funding, regardless of the breadth of review of the JRP Report required or the scope of project impacts that need to be discussed as part of consultation.

#### **IV. HAISLA PRELIMINARY RESPONSE TO CANADA'S QUESTIONS**

##### **1. Does the Report appropriately characterize the concerns you raised during the Joint Review Panel process?**

The Report does not appropriately characterize the concerns raised by the Haisla during the JRP process. The JRP Report is written in a way that prevents an assessment of how or whether the JRP considered Haisla Nation concerns and of how or whether the JRP purports to address the Haisla Nation concerns. Further, the JRP Report is lacking in some of the fundamental justification required to understand how it arrived at its recommendations. As a result, the Haisla Nation has filed an application for a judicial review of the JRP Report, seeking to have the Report quashed and sent back to the JRP for reconsideration.

By way of a preliminary response to Canada's question, the Haisla Nation's concerns with the JRP Report include, but are not limited to:

- The JRP failed to ensure it had the information required by the Scope of Factors prior to assessing the effects of the proposed project on the marine environment at the terminal and on freshwater and marine fish habitat.
- The JRP appears to have misunderstood the evidence before it regarding Haisla Nation Culturally Modified Trees (CMTs) at the proposed terminal site.
- The JRP has failed to assess impacts of the proposed project on Haisla Nation cultural heritage.
- The JRP has concluded that the risk of a large spill from the pipeline in the Kitimat River Valley is not likely, despite very significant information gaps relating to geohazards, design, leak detection and spill response.
- The JRP has concluded that a large spill would result in significant adverse environmental effects. However, the JRP appears to base a finding that these effects are unlikely to occur on unreasonable assumptions about how widespread the effects would be or how long they would last. The JRP has not considered the extent to which a localized effect could impact the Haisla Nation. In addition, the JRP has not considered the extent to which even an effect which is not permanent can affect the Haisla Nation.
- The JRP relies on the concept of "natural recovery" as mitigation of significant adverse effects. The Haisla Nation asked the JRP to compel information from

Northern Gateway about the applicability of its evidence on recovery to species found specifically in Haisla Nation Territory. The JRP, however, refused to compel this evidence from Northern Gateway.

- The JRP has accepted at face value that Northern Gateway would shut down its pipeline within 13 minutes in the event of a rupture and has failed to consider the effects of a large spill that is not detected within this timeframe through the control centre (or as was the case in Kalamazoo, is detected by the control centre but is systematically mischaracterized and ignored).

The Haisla Nation expects to discuss these issues, as well as others identified through consultation, further with Canada during the anticipated two-way consultation process.

## **2. Do the recommendations and conditions in the Panel Report address some / all of your concerns?**

The recommendations and conditions in the JRP Report do not address any of the Haisla Nation's concerns.

### **2.1 Recommendations**

The Haisla Nation Final Written Argument set out in detail its submissions regarding the recommendations the JRP should make. We refer you to our Final Written Argument for more detail. For your convenience, we have set out here what we wrote in our Final Written Argument to the JRP:

#### **Haisla Nation Aboriginal Rights and Title**

1. The Panel should find that the Haisla Nation has a very high strength of claim to its Territory, and that it has provided clear, cogent, and persuasive evidence of exclusive use and occupation of its Territory that pre-dates 1846.
2. The Panel should find that Haisla Nation members rely on the lands, water, and resources of Haisla Nation Territory in the exercise of their aboriginal rights, and that the exercise of these rights entail fishing, hunting, trapping, and gathering in Haisla Nation Territory and, more specifically, in the *wa'wais* which will be impacted by the proposed project.
3. The Panel should find that Crown consultation with the Haisla Nation has, up to this point, not been adequate.
4. The Panel should find that the proposed Crown consultation process raises serious doubts about whether it can be meaningful and whether it can be relied on to discharge the honour of the Crown.

### **Economic Benefits and Burdens**

5. The Panel should recommend against the issuance of a s. 52 certificate for the Condensate Import Line.
6. The Panel should find that NG has not established that the proposed project is needed and in the public interest.

### **Environmental Effects of Proposed Pipelines**

7. The Panel should determine that it cannot reasonably assess the significance of adverse effects from the proposed project on the basis of the information provided by NG.
8. The Panel should determine that the proposed project is likely to result in significant adverse effects to rare ecological communities that cannot be mitigated.
9. The Panel should find that NG has not provided enough information to allow a reasonable assessment of the risk of a spill from the proposed pipelines.
10. The Panel should find that NG has not adequately considered the factors that contribute to the risk of a spill from the proposed pipelines.
11. The Panel should find that NG's assessment of the toxicity of oil when spilled from the proposed pipelines is not reliable because it does not consider the full range of products that could be shipped on the proposed project, it does not consider all the potential pathways of effect, and it does not fully consider chronic toxicity.
12. The Panel should find that NG has not demonstrated that spill response will be able to mitigate the effects of a spill from the proposed pipelines.
13. The Panel should find that the proposed project is likely to result in significant adverse environmental effects from the proposed pipelines.
14. The Panel should conclude that these significant adverse environmental effects cannot be justified due to the profound impact they would have on the Haisla Nation, on Haisla Nation Territory, and on Haisla Nation cultural heritage.

### **Environmental Effects of Proposed Kitimat Terminal**

15. The Panel should find that the scale of the destruction of Haisla Nation CMTs at the proposed terminal site will result in significant adverse environmental effects on Haisla Nation cultural heritage and on Haisla Nation historical, archaeological and paleontological sites.

16. The Panel should recommend that additional baseline information is required about fish and fish habitat at the proposed marine terminal, as required by the *Scope of Factors* before a decision statement can be issued.
17. The Panel should find that NG has failed to provide the information required about baseline conditions at the proposed marine terminal site and that this prevents the Panel from determining that the proposed project is not likely to cause significant adverse environmental effects.
18. The Panel should recommend that additional information is required about fish habitat compensation, as required by the *Scope of Factors*, before a decision statement can be issued.
19. The Panel should find that NG has failed to provide the information required about fish habitat compensation for HADDs at the proposed marine terminal site and that this prevents the Panel from determining that the proposed project is not likely to cause significant adverse environmental effects.
20. The Panel should find that NG's assessment of the toxicity of oil when spilled to the marine environment at the proposed marine terminal is not reliable because it does not consider the full range of products that could be shipped on the proposed project, it does not consider all the potential pathways of effect, and it does not fully consider chronic toxicity.
21. The Panel should find that NG has not demonstrated that spill response will be able to mitigate the effects of a spill from at the marine terminal.
22. The Panel should find that the construction and operations of the proposed Kitimat Terminal will result in significant adverse environmental effects on Haisla Nation cultural heritage and on Haisla Nation historical, archaeological and paleontological sites.
23. The Panel should find that an accident or malfunction at the proposed Kitimat Terminal will result in significant adverse environmental effects on the Haisla Nation's current use of lands and resources for traditional purposes.
24. The Panel should find that the construction and operations of the proposed Kitimat Terminal will result in significant adverse environmental effects by negatively impacting Haisla Nation cultural heritage.
25. The Panel should find that the proposed project is likely to result in significant adverse environmental effects at the marine terminal.
26. The Panel should conclude that these significant adverse environmental effects from the proposed Kitimat Terminal cannot be justified due to the



profound impact they would have on the Haisla Nation, on Haisla Nation Territory, and on Haisla Nation cultural heritage.

### **Environmental Effects of Marine Shipping**

27. The Panel should find that NG's assessment of the toxicity of oil when spilled to the marine environment from tankers is not reliable because it does not consider the full range of products that could be shipped on the proposed project, it does not consider all the potential pathways of effect, and it does not fully consider chronic toxicity.
28. The Panel should find that NG has not demonstrated that spill response will be able to mitigate the effects of a spill from marine shipping.
29. The Panel should find that the marine shipping associated with the proposed project is likely to result in significant adverse environmental effects by prohibiting the Haisla Nation's current use of lands and resources for traditional purposes.
30. The Panel should find that the marine shipping associated with the proposed project is likely to result in significant adverse environmental effects by negatively impacting Haisla Nation cultural heritage.
31. The Panel should find that the proposed project is likely to result in significant adverse environmental effects from marine shipping.
32. The Panel should conclude that these significant adverse environmental effects from marine shipping cannot be justified due to the profound impact they would have on the Haisla Nation, on Haisla Nation Territory, and on Haisla Nation cultural heritage.

### **Public Interest**

33. The Panel should find that in the totality, the impacts and risks associated with the proposed project outweigh the potential benefits, so the proposed project is not in the public interest.
34. The Panel should find that the impacts and risks associated with the project are so disproportionately distributed compared to where the benefits lie, that the proposed project is not in the public interest.
35. The Panel should find that the potential impacts of the proposed project on the Haisla Nation are of a nature that cannot be justified, so the proposed project is not in the public interest.
36. The Panel should find that the potential impacts to asserted Haisla Nation aboriginal rights and title from the proposed project are such that the proposed project cannot be found to be in the public interest in the absence

of meaningful consultation. The engagement that has occurred to date cannot be considered meaningful consultation and is missing significant components of a meaningful consultation process. The current status of engagement and the federal government imposition of a 6-month time limit to complete consultation raise serious concerns that meaningful consultation will not be possible. Therefore the proposed project is not in the public interest.

The JRP Report does not address any of these concerns. We expect to discuss these concerns with Canada during the anticipated two-way consultation process.

## 2.2 Conditions

The Haisla Nation made submissions on the draft conditions that were provided by the JRP as part of its Written Final Argument and Oral Reply Argument. We refer you to our argument and the transcript of June 19, 2013 for those submissions.

Not only have the Haisla Nation's submissions on conditions not been incorporated into the conditions, they appear to have been in large part completely ignored by the JRP.

Some of the critical conditions the Haisla Nation sought are:

- the Marine Environmental Effects Monitoring Program must include a requirement for a **minimum of five years of pre-construction** marine environmental effects monitoring before construction can commence at the marine terminal;
- revisions to marine voluntary commitments;
- financial assurances commensurate with daily throughput volumes;
- toxicity assessments as part of fate and behaviour research;
- an increase to secondary containment volume at the terminal site; and
- automatic shutdown of the pipeline 13 minutes after a remote spill detection alarm is triggered.

Further, the Haisla Nation sought a number of the conditions to be conditions precedent that had to be met before any certificate could take effect. Finally, the Haisla Nation sought that conditions requiring the generation of a report or plan include the requirement that the Haisla Nation must be provided with an opportunity to review, question and make submissions on the report or plan.

All the Haisla Nation's submissions on conditions need to be fully considered, meaningfully addressed, and where possible demonstrably integrated into a certificate for the proposed project, if one is issued. Full consideration of all the conditions and the Haisla Nation's submissions to the JRP will take considerably more time than Canada has allocated to consultation and considerably more funding than the token \$14,000 provided to the Haisla Nation.

The Haisla Nation expects to discuss the JRP's recommendations and conditions and the Haisla Nation's concerns with those recommendations and conditions further with Canada during the anticipated two-way consultation process.

**3. Are there any "outstanding" concerns that are not addressed in the Panel Report? If so, do you have recommendations (i.e., proposed accommodation measures) on how to address them?**

There are a number of outstanding concerns that are not addressed in the JRP Report.

- The JRP has stated that it has considered how the proposed project may affect traditional practices and activities. In fact, the JRP has done far less. The JRP has only considered how the proposed project may affect species or ecosystems that are relied on by aboriginal people. Further, the JRP's assessment has been based on thresholds established by the proponent without regard to aboriginal use needs.
- The JRP has not considered the potential impacts that the proposed project could have on Haisla Nation aboriginal rights, including aboriginal title.
- The JRP has expressly made no determinations at all of Haisla Nation aboriginal rights and no assessment at all of the Haisla Nation's strength of claim to those rights:

In keeping with its mandate, the Panel has not made any determinations regarding Aboriginal rights, including Métis rights, treaty rights, or the strength of an Aboriginal group's claim respecting Aboriginal rights (Report Part 2, p. 47).

- The Haisla Nation specifically outlined the basis for the Haisla Nation's aboriginal rights and aboriginal title claims in its Written Final Argument submitted to the JRP. The JRP has not assessed the potential impacts of the proposed project on Haisla Nation asserted rights. The JRP has neither characterized the aboriginal rights claimed by the Haisla Nation nor made any determination of Haisla Nation aboriginal rights. Without characterizing and assessing the nature of a right, it is not possible to assess potential impacts to a right.
- The JRP has made no assessment of the strength of the Haisla Nation's claims to its aboriginal rights. Without assessing the strength of a claim to a right, it is not possible to understand the potential degree and extent of impacts of an infringing activity.
- The JRP has made no assessments relative to Haisla Nation aboriginal title.
- The JRP has assessed the proposed project in terms of the overall Canadian public interest, without properly considering how proposed project will affect the Haisla Nation specifically and without considering Haisla Nation aboriginal rights and title.
- The JRP has not assessed the risks of the proposed project on Haisla Nation Territory. The JRP has weighed the risks from the proposed project against the



benefits to arrive at a recommendation that the proposed project should be approved. The risks and benefits have not been weighed at the local Haisla Nation Territory level, taking into account the perspective of the Haisla Nation. The JRP has not weighed the risk for Haisla Nation Territory specifically against the benefits to the Haisla Nation.

In summary, the JRP process and JRP Report cannot substitute for the consideration of how the proposed project will affect the Haisla Nation through a meaningful consultation process. Thus, the way to accommodate the concerns of the Haisla Nation about the proposed project is to establish a meaningful process to examine those concerns.

#### **RESPONSE REQUIRED:**

- **Please confirm that Canada will engage in a meaningful consultation process to examine the Haisla Nation's concerns with the proposed project.**

#### **V. ADDITIONAL INFORMATION RELEVANT TO IMPACTS**

Since the JRP's hearings into the proposed project closed, additional information that is relevant to project risk and impacts has been generated and made publicly available. This information includes the following reports:

- *West Coast Spill Response Study*, prepared by Nuka Research and Planning Group, LLC, for the Government of British Columbia, dated March 28, 2013 and July 19, 2013.
- *A Review of Canada's Ship-Source Oil Spill Preparedness and Response Regime – Setting the Course for the Future*, authored by the Transport Canada Tanker Safety Expert Panel dated November 15, 2013.
- Federal Government Technical Report, *Properties, Composition, and Marine Spill Behaviour, Fate and Transport of Diluted Bitumen Products from the Canadian Oil Sands*, authored by Environment Canada, Emergencies Science and Technology, Fisheries and Oceans Canada, Centre for Offshore Oil, Gas and Energy Research, and Natural Resources Canada, CanmetENERGY, dated November 30, 2013.
- National Oceanic and Atmospheric Administration (NOAA). September 2013. NOAA Technical Memorandum NOS OR&R 44: *Transporting Alberta Oil Sands Products: Defining the Issues and Assessing the Risks*.

It is incumbent upon Canada to consider and discuss the information in these reports as part of a meaningful consultation process with the Haisla Nation. We set out below some of the key findings in each of these reports which are relevant to potential impacts of the proposed project on Haisla Nation aboriginal rights, including aboriginal title.

1. *West Coast Spill Response Study*

- Most oil spilled into the marine environment cannot be cleaned up
- There is a disconnect between planning standards and response capability
- Response gaps are not adequately assessed or considered
- Canada's spill response regime is far from world class

2. *A Review of Canada's Ship-Source Oil Spill Preparedness and Response Regime – Setting the Course for the Future*

- The Douglas Channel area will go from being a low risk area to a very high risk area for a spill if the proposed project is approved
- Recommends being prepared for a true worst case discharge, rather than the credible worst case discharge put forward by Northern Gateway and considered by the JRP
- Canada does not currently have an adequate regulatory regime to support world class spill response
- Recommends increasing regulatory role at the same time Canada is reducing staffing and funding to the departments which would carry out these roles

We are enclosing a technical critique of this report, prepared by M.R. Gordon & Associates for the Haisla Nation Council, for your consideration.

3. *Properties, Composition, and Marine Spill Behaviour, Fate and Transport of Diluted Bitumen Products from the Canadian Oil Sands*

- A number of uncertainties remain with respect to how diluted bitumen will behave when spilled into the marine environment
- Northern Gateway did not provide adequate information about sediment levels in the proposed project area to allow a proper consideration of interactions which would cause diluted bitumen to sink
- Dispersants may not be effective
- Diluted bitumen will by weathering alone reach densities at which it will sink in freshwater without mechanical or physical assistance

4. *Transporting Alberta Oil Sands Products: Defining the Issues and Assessing the Risks*

- Research to date indicates that diluted bitumen has significant differences from conventional crudes in its fate, behaviour and effects

- If diluted bitumen products are not recognized as potentially non-floating oils, contingency plans could be underestimating risks and response needs in the case of a diluted bitumen spill
- Physical properties of diluted bitumen products fluctuate based on a number of factors
- Pipeline operators may not have detailed information related to products in the pipeline at the time and location of a release
- The lack of experimental data on the weathering behaviour of oil sands products limits the ability of spill response organizations to understand and predict the behaviour and fate of oil sands products in freshwater, estuarine, and saltwater environments

We expect to be discussing these reports and their findings fully in more detail with Canada during face-to-face consultation meetings.

#### **VI. AMENDMENT TO GOVERNOR-IN-COUNCIL DECISION TIMELINES IS REQUIRED**

A meaningful consultation process must be responsive, and may have to provide accommodation in the form of changing timelines. Canada, however, has constrained its timelines for consultation through legislative amendments, made after the JRP process commenced. This raises a real apprehension and a high likelihood that consultation will not be afforded the time required to allow it to be meaningful.

It is clear to the Haisla Nation that we are at the very earliest stages of consultation with Canada about the proposed project. The Haisla Nation's strength of claim and the potential impacts from the proposed project means the consultation that must occur is at the deepest end of the consultation scope.

It is clear to the Haisla Nation that the 45-day period within which Canada has unilaterally determined face-to-face meetings with all the Aboriginal groups potentially affected by the proposed project will occur is not an adequate amount of time to complete a meaningful consultation process. The Haisla Nation therefore requests Canada to extend the timelines for a decision on the proposed project, to allow meaningful consultation to occur.

Canada has the ability to extend the timelines for a Governor-in-Council decision on the proposed project under the legislation governing the review of the proposed project. The Haisla Nation urges Canada to take this step now. While extending the timelines is not a guarantee of a meaningful consultation process, it is required to at least provide the opportunity for a meaningful consultation process.

#### **RESPONSE REQUIRED:**

- **Please confirm that Canada will extend its timelines to provide an opportunity for meaningful consultation to occur.**

## **VII. MOVING FORWARD – WHAT MEANINGFUL CONSULTATION LOOKS LIKE**

Meaningful consultation must address the substance of the Crown decision that is being proposed. For the proposed project, Canada is considering directing the National Energy Board to issue a certificate of public convenience and necessity. This is essentially the first major decision on a proposed project that will have significant adverse effects on the Haisla Nation's aboriginal rights and title. All subsequent applications for permits associated with the proposed project will flow from and be justified on the basis of that certificate. Without that certificate, Northern Gateway would not have a basis for seeking to enter into land owner consent agreements or agreements with British Columbia for the acquisition of Crown land. Without that certificate, Northern Gateway would have no basis for seeking to destroy fish habitat and culturally important plants and plant habitat. Without that certificate, Northern Gateway would have no basis for seeking permits to destroy Haisla Nation CMTs.

Mr. Maracle's letter of January 29, 2014 states:

For clarity, these outstanding impacts refer to issues that have not been addressed by the proponent through project design or commitments, the Panel's proposed terms and conditions, and would not be the subject of consultations by federal or provincial governments, including further National Energy Board regulatory steps and/or requirements, during the permitting stage should the Project be approved.

Canada is applying the wrong analysis in considering what it must consult with the Haisla Nation about. The courts have recognized that consultation must occur at the earliest stage, and that decisions at the strategic planning level have the potential to have serious impacts on aboriginal rights and title. The certificate decision on the proposed project is not divorced from the effects of the proposed project as a result of a requirement for additional permits or regulatory decisions that must occur as part of project development. Thus, Canada is required to consult with us about all the effects that may flow from its certificate decision.

The Haisla Nation is concerned that Canada has pre-determined whether or not the Governor-in-Council should direct the issuance of a certificate and a positive decision statement for the proposed project. Public announcements by senior government ministers and by the Prime Minister himself suggest that Canada intends to approve the proposed project regardless of potential impacts on aboriginal rights.

Canada's engagement with the Haisla Nation to date is consistent with an approach aimed at creating the appearance of consultation without actually engaging in consultation. It has been one of providing information about the JRP process and using the JRP process to elicit information from the Haisla Nation. This is not meaningful consultation; it is at best a first step toward a consultation process.

The Haisla Nation attempted to obtain information from Canada to inform consultation through the JRP process - such as additional information about the Haisla Nation's

Comprehensive Claim and Canada's assessment of the Haisla Nation's strength of claim. Canada refused to provide this information.

When questioned by the Haisla Nation, Canada was not prepared to inform the JRP how the aboriginal title claim of the Haisla Nation informed the information that was provided to the JRP by Canada. This is not honourable conduct.

To date Canada has not only refused to enter into meaningful consultation, but has undermined the very process it seeks to rely on to partially discharge Canada's consultation obligation by failing to provide relevant information in that process.

Canada's lack of meaningful engagement on projects such as the proposed project is confirmed in Mr. Eyford's Report to the Prime Minister. Mr. Eyford identified the concerns associated with Canada's whole-of-government approach to consultation through a regulatory review process and the imposition of strict timelines on those processes, and recommended that Canada's approach to consultation be refined.

Minister Kent's promise to share Canada's strength of claim and depth of consultation assessment was made nearly 20 months ago. We are still waiting for Canada to keep its promise. Canada has had our evidence on aboriginal rights and title in hand for over two years, through the dictates of the process that Canada unilaterally designed. Once we have your assessment of our evidence, we will need time to assess it, consult with our people and our experts and provide our response. We expect a good faith back and forth discussion; a discussion which cannot be constrained by arbitrary and artificial timelines.

#### **1. Information Required from Canada**

Meaningful consultation with the Haisla Nation has not yet commenced. To date, the only step that has occurred is gathering of information by Canada, through the JRP process, to assist it in assessing the Haisla Nation's strength of claim.

In a letter dated April 12, 2012, Minister of Environment Kent wrote:

Based on the significant evidence filed by the Haisla Nation in the joint review panel process, the federal government is currently updating its strength of claim and depth of consultation assessment and will provide a description of this analysis to the Haisla Nation once this work is completed and ready to be released. The results of this updated assessment will be shared with potentially affected groups prior to consultation on the Panel's environmental assessment report (Phase IV of the consultation process).

Given the critical role that the Haisla Nation's strength of claim will play in scoping consultation with the Haisla Nation, Canada should share its strength of claim assessment for the areas of Haisla Nation Territory which will be affected by the proposed project. This assessment should include a detailed list of all the information relied on by Canada in its assessment. In a letter dated December 12, 2013 to Mr. Maracle, the Haisla Nation requested that this letter be provided within 45 days of



the release of the JRP Report. To date, Canada has neither responded to this request nor provided its strength of claim assessment.

Further, the Haisla Nation needs to understand Canada's views of the role that future federal decisions might play for the proposed project. In its December 12, 2013 letter to Mr. Maracle, the Haisla Nation asked the federal government to provide a comprehensive list of the regulatory permits which would be issued by federal government decision-makers in Haisla Nation Territory in the event the proposed project is approved, and describe the consultation process that would occur prior to decisions being made on those regulatory permits, within 45 days of the issuance of the JRP Report. Mr. Maracle's January 29, 2014 suggests that the only future federal decisions on the proposed project which may entail consultation are specific watercourse crossings and fish habitat destruction permits to be issued by Fisheries and Oceans Canada. This confirms our conclusion that the decision on the National Energy Board certificate is the decision from which future impacts will flow.

## **2. Future Consultation Process**

Going forward, **at a minimum**, the following consultation steps still have to occur:

- the provision of adequate funding to the Haisla Nation to engage in a meaningful consultation process
- identifying potential impacts of the proposed project which have not been addressed, including impacts and risks to Haisla Nation fishing rights, hunting rights, trapping rights and gathering rights; impacts to Haisla Nation cultural heritage; and impacts to Haisla Nation aboriginal title;
- meeting to discuss a protocol for consultation and to identify the appropriate government representatives and Haisla Nation members to engage in that process;
- discussion of the Haisla Nation's strength of claim and the scope of consultation required;
- possible further refinement of the consultation process;
- exchange of information about potential impacts on Haisla Nation aboriginal rights, including to aboriginal title;
- consultation meetings to discuss impacts and potential accommodation, including declining certificate approval, adjustments to the proposed project, development of additional mitigation measures, additional terms and conditions to be attached to permit or authorization, financial compensation, and consideration of the rejection of the proposed project; and
- discussion of the suitability of potential accommodation and residual impacts that have not been accommodated.



### 3. Commitments Required from Canada

In summary, it is clear that extensive consultation with the Haisla Nation is required before the Governor-in-Council can make a decision on the proposed project. At our first face-to-face meeting with Canada, we will request the following commitments:

- that Canada will provide funding to the Haisla Nation for consultation;
- that Canada will provide its strength of claim report;
- that Canada will provide additional information about its regulatory decisions;
- that Canada will agree that the JRP report does not signal approval of any specific terminal site or pipeline right-of-way and that the suitability of and justification for what Northern Gateway has proposed are matters for consideration during the consultation process;
- that Canada will amend its timelines for a decision to allow a meaningful consultation process to occur;
- that Canada will commit to a meaningful consultation process; and
- that Canada will work with the Haisla Nation to develop an appropriate consultation process.

In summary, the Haisla Nation has very significant concerns about the proposed project. None of these concerns have been addressed by the JRP Report. The Haisla Nation expects Canada to engage in a good faith meaningful consultation process in which those concerns can be fully considered and discussed. To approve the proposed project without such a process would be a breach of the honour of the Crown and would be illegal.

Yours truly,

HAISLA NATION COUNCIL

A handwritten signature in black ink, appearing to read 'Ellis Ross', followed by a horizontal line.

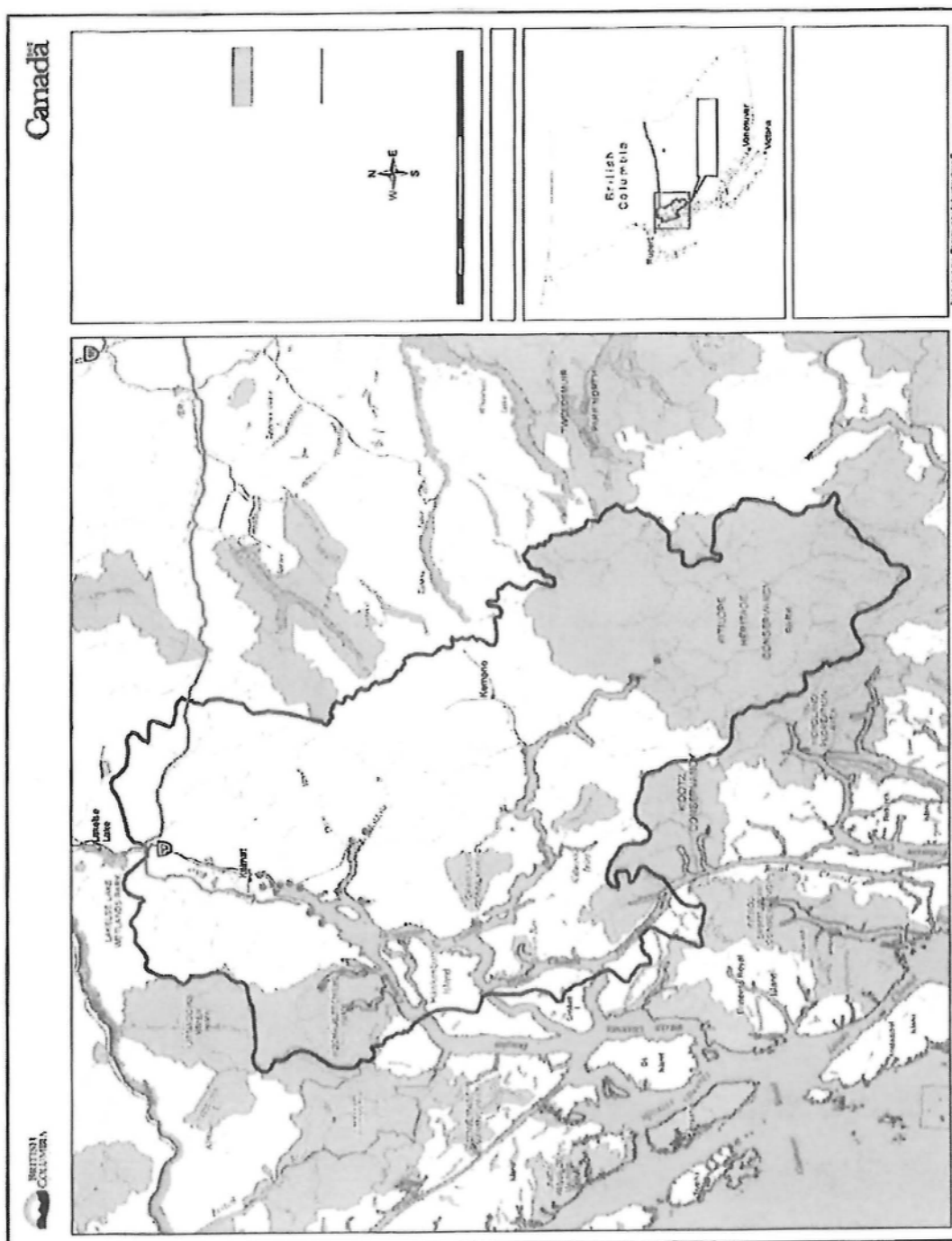
Ellis Ross, Chief Councillor

Enclosure

cc: The Honourable Christy Clark, Premier, British Columbia  
Fax: (250) 387-0087

- cc: The Honourable Steve Thomson, Minister  
Ministry of Forests, Lands, and Natural Resources Operations  
Email: FLNR.Minister@gov.bc.ca
- cc: The Honourable Mary Polak, Minister  
Ministry of the Environment  
Email: ENV.minister@gov.bc.ca

## APPENDIX I



## Jonker, Jennifer B ENV:EX

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**From:** s.22  
**Sent:** Saturday, December 21, 2013 10:26 AM  
**To:** OfficeofthePremier, Office PREM:EX  
**Cc:** Minister, ENV ENV:EX  
**Subject:** Fwd: Oil spills vs revenues: the math doesn't work

Copyright

----- Forwarded message -----

**From:** "Will Horter, Dogwood Initiative" <dogwood@dogwoodinitiative.org>  
**To:** s.22  
**Cc:**  
**Subject:** Breaking: JRP approves Enbridge  
**Date:** Thu, 19 Dec 2013 21:10:29 -0500

s.22

Copyright



If you no longer wish to receive email communication from Dogwood Initiative you may  
[http://dogwoodinitiative.org/unsubscribe\\_page?org=354&email=](http://dogwoodinitiative.org/unsubscribe_page?org=354&email=;cam=659&ou=0&lea=10184701&ite=6434&lvl=0)  
[;cam=659&ou=0&lea=10184701&ite=6434&lvl=0](http://dogwoodinitiative.org/unsubscribe_page?org=354&email=;cam=659&ou=0&lea=10184701&ite=6434&lvl=0)  
unsubscribe.

s.22

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Using Opera's revolutionary email client: <http://www.opera.com/mail/>



## Jonker, Jennifer B ENV:EX

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**From:** Cory Paterson [Cory.Paterson@enbridge.com]  
**Sent:** Friday, December 20, 2013 1:53 PM  
**Subject:** Third Party Support for Joint Review Panel NGP Report  
**Attachments:** NGP Post JRP Release Dec 19.pdf



December 20, 2013

### What's being said in response to the Joint Review Panel Report

#### Canadian Chamber of Commerce

Copyright

Link: <http://www.chamber.ca/media/blog/131219-northern-gateway-is-in-canadas-national-interest/>

#### Canadian Council of Chief Executives

Copyright

Link: <http://www.ceocouncil.ca/news-item/ccce-encouraged-by-northern-gateway-pipeline-approval>

## Canadian Manufacturers and Exporters

Copyright

Link: <http://www.cme-mec.ca/?action=show&lid=JCKNC-E742G-1W6JA&cid=W37LU-VQB4I-6YIMX&comaction=show>

**Pipe Line Contractors Association of Canada**

**Labourers International Union of North America**

**International Union of Operating Engineers**

**International Brotherhood of Teamsters**

**United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada**

Copyright

Link: <http://www.newswire.ca/en/story/1283107/positive-northern-gateway-joint-review-panel-recommendation-is-good-for-canada>

## BC Chamber of Commerce

Copyright

Link: <http://www.newswire.ca/en/story/1283125/bc-chamber-welcomes-joint-review-panel-approval-of-northern-gateway>

## BC Chamber of Shipping

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Link: <http://www.cosbc.ca/>

## **Association of Consulting Engineering Companies - Canada (ACEC)**

Copyright

Link: <http://www.newswire.ca/en/story/1283069/northern-gateway-important-opportunity-for-canada>

## **Canadian Steel Producers Association**

Copyright

Link: <http://canadiansteel.ca/2013/cspa-applauds-northern-gateway-recommendation-pipeline-project-can-benefit-canadian-steel-producers-economy-as-a-whole/>

## **Canadian Energy Pipeline Association**

Copyright

Link: <http://www.cepa.com/canada-reaches-important-milestone-with-the-release-of-joint-review-panel-recommendations>

## **EVRAZ**

Copyright

Link: <http://www.newswire.ca/en/story/1283111/evraz-welcomes-northern-gateway-ruling>

## Canadian Association of Petroleum Producers

Copyright

Link: <http://www.marketwired.com/press-release/northern-gateway-decision-supports-oil-market-diversification-1864440.htm>

Sincerely,

**Cory Paterson**

Senior Manager, Public & Government Affairs, Western Access

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Contact:

Media line: 1-888-992-0997

[media@enbridge.com](mailto:media@enbridge.com)

## **Northern Gateway Project Backgrounder**

### **The pipeline's route:**

A twin pipeline will run 1,177 km from Bruderheim in northern Alberta, through northern British Columbia, to the deep-water port of Kitimat British Columbia at the head of the Douglas Channel.

### **The pipeline's capacity:**

The westbound 36" diameter pipeline will carry up to 525,000 barrels of oil per day. The eastbound 20" diameter pipeline will carry 193,000 barrels of condensate per day, which is a product used to thin oil for pipeline transport.

### **The transfer from land to marine operations:**

The Kitimat Marine Terminal will include two ship berths and 19 tanks for oil and condensate. While docked at the Terminal, tankers loading export oil will be surrounded by a containment boom. The forecast is for the terminal to serve around 220 ship calls per year.

### **Care taken along the land route:**

70% of the pipeline route will utilize previously disturbed land. The pipeline will be dug deeper under watercourses for added protection. Ten pump stations will be powered by electric pumps to limit noise and greenhouse gas emissions.

### **Economic benefits:**

The Northern Gateway Project will bring significant, lasting benefits to the Canadian economy including:

- Over \$300 billion in GDP over 30 years
- \$300 million in employment and contracts for Aboriginal communities and businesses;
- \$4.3 billion of labour-related income across Canada during construction;
- \$2.6 billion in local, provincial and federal government tax revenues (\$1.2 billion in BC);
- 1,150 long-term jobs throughout the Canadian economy (560 in BC)

### **Invaluable input from experts:**

A team of over 200 experts and scientists conducted a comprehensive environmental assessment of the project route. Their findings have been incorporated into our planning.

## Jonker, Jennifer B ENV:EX

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**From:** Polak.MLA, Mary LASS:EX  
**Sent:** Monday, January 13, 2014 9:40 AM  
**To:** Minister, ENV ENV:EX  
**Subject:** FW: The system is flawed...needs fixing !  
  
**Importance:** High

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**From:** s.22  
**Sent:** January 9, 2014 10:55 AM  
**To:** Coleman.MLA, Rich; Polak.MLA s.22 Enbridge Northern Gateway Pipelines  
**Cc:** s.22  
**Subject:** Fw: The system is flawed...needs fixing !  
**Importance:** High

The system is flawed...needs fixing !

Upon completion of the National Energy Board(NEB) public hearings for the proponent (Enbridge ;Northern Gateway Project) application ,we anticipated a recommendation ,based on clear public DEBATE of complex issues ! We received an NEB recommendation based primarily on the proponents 'expert' material — The public 'expert' input was not apparent !  
Further ,many very controversial 'public issues' were NOT decided .... instead we were left the '209 conditions ' --for later resolution ?

What to do ?

A publicly funded advocate system must be created which would allow THE PUBLIC to offer THEIR 'expert' prepared material ... for NEB evaluation. As it stands now we see primarily the proponents 'expert prepared' material . The public offer their CONCERNS—but with little or no expertly prepared supporting EVIDENCE .....which leaves the NEB in an awkward position .  
Significant public funds are required to hold HEARINGS...for the benefit of the proponents basically !

The politicians tell us that the NEB exists to protect the public interest ?  
..the public deserve better!

s.22

s.22