

MINISTRY OF ABORIGINAL RELATIONS
AND RECONCILIATION
BRIEFING NOTE

February 12, 2014
Ref. No. 33704

File: 280-20

- I Prepared for the **INFORMATION** of Honourable John Rustad, Minister and Honourable Christy Clark, Premier
- II **ISSUE:** Meeting with Carrier Sekani Tribal Council regarding the Eyford Report and Liquefied Natural Gas development in BC.
- III **BACKGROUND:**



At a January 21, 2014 meeting between provincial negotiators and member nations of the Carrier Sekani Tribal Council (CSTC) regarding Liquefied Natural Gas (LNG), CSTC demanded a meeting with the Premier and indicated a refusal to engage further with provincial staff in the absence of such a meeting. CSTC view this meeting as a symbolic government-to-government gesture wherein they expect the Premier to commit to negotiating an LNG benefit sharing agreement with them, and reinforce that the negotiation team will be representing the Province in these negotiations with CSTC (and/or member nations).

This led to a meeting on January 22, 2014 between CSTC, Minister John Rustad, and the Premier's Chief of Staff Dan Doyle, at which time the Province committed to setting an agenda for a meeting between CSTC and the Premier.

CSTC's January 21, 2014 letter requests a meeting with the Premier (as well as the Prime Minister) to discuss LNG and the Eyford Report, highlighting key themes of the Report.

IV **DISCUSSION:**

CSTC has been generally supportive of LNG development, subject to First Nation concerns regarding benefit sharing and environmental stewardship being addressed. CSTC is part of the First Nation Limit Partnership which is supportive of the Pacific Trails Pipeline.

Regarding additional pipeline proposals, capacity funding agreements have been tabled with all midstream First Nations with territories transected by proposed natural gas pipelines. Based on preliminary scoping discussions, key interests that need to be addressed in order to garner First Nations' support for LNG include:

- Ecosystem stewardship, including:
 - addressing long-term ecosystem stewardship issues of concern to First Nations and the Province that are beyond the scope of the project-specific regulatory framework and are aimed at investing in a positive environmental legacy from LNG; and,
 - territory specific issues, such as wildlife habitat protection measures and access management;
- Financial benefits; and,
- Investing in education, training, and First Nations business development.

A revised Capacity Funding Agreement (CFA) developed collaboratively with representatives of CSTC, addressing CSTC's specific interest in the development of a broader government-to-government relationship between CSTC member nations and the Province, has been tabled with CSTC regarding the three proposed natural gas pipelines.

This CFA is intended to serve as the mechanism through which the Province will provide capacity funding to CSTC member nations to engage in LNG benefit negotiations with the Province.

\$100,000 in capacity funding is available to each midstream First Nation to support their engagement in LNG benefit negotiations with the Province. As per the draft CSTC CFA, signing of the CFA triggers the first \$100,000 payment to CSTC; and, upon reaching agreement on the topics for discussion in the LNG negotiations, triggers payment of \$30,000 for each participating member nation. This is an additional step that is not included in other First Nations' agreements, but is important in order for CSTC to engage with member nations and address their concern that the agenda has been predetermined by the Province. The balance of the total capacity funding is to be paid by the Province following approval of a work plan.

Based on discussions with CSTC, the Province has included in CSTC's revised CFA certain provisions indicating that the Province will commit to engaging in negotiations aimed at reaching a broader government-to-government agreement and will provide an additional \$100,000 to CSTC to support its (and member nations') participation at that government-to-government table. These provisions will become effective when a minimum of six CSTC member nations commit to working together through CSTC in LNG benefit negotiations with the Province. In exchange, CSTC commits to concluding an LNG benefit agreement over the next six months as a priority. The total quantum of capacity funding available to CSTC, if all eight CSTC member nations negotiate collectively under the draft CFA, is \$900,000.

V KEY MESSAGES:

- The themes outlined in the Fyford Report (building trust, fostering inclusion, and advancing reconciliation) are consistent with the approach BC is already taking in engaging with First Nations regarding LNG. The Province is cautiously optimistic that the report will encourage greater participation from Canada on these themes. However, BC is not waiting for Canada's response to the report to move forward with LNG initiatives.
- I trust that this meeting between CSTC member nations, the Premier, and the Minister will fulfil the gesture desired by CSTC and reinforce that the negotiation team has already demonstrated flexibility by adapting the CFA to address CSTC's interest in broader government-to-government relationships.
- The Province looks forward to developing agreements with CSTC and/or its member nations in support of the development of LNG. Notwithstanding the technical advice that natural gas pipelines are safe and impacts are minimal, we recognize that the international market is competitive, and we must act quickly to seize this opportunity.
- While we expect the regulatory processes to do their best to the highest international standards, the Province is not waiting for conclusion of the regulatory processes prior

to engaging with First Nations to address broader concerns about their territories and work on sharing financial benefits. The Province is stepping up to work with you in a manner that is unprecedented. We are hoping you will do the same, so that we will both take advantage of this opportunity and use LNG as an historic stepping stone towards a positive relationship and transformative change.

Attachments:

1. Eyford Report – BC's Response
2. Carrier Sekani Tribal Council – Background Information
3. Info on Alex Grzybowski, Lead Negotiator
4. Letter from CSTC to the Premier re: EAO consultation process (January 27, 2014)
5. Letter from Saik'uz First Nation re: consultation on LNG
6. BN re: Wet'suwet'en First Nation & LNG consultation (February 13, 2014)

Jasmine Dadachanji, negotiator, 250 356-1280

s.15; s.17

APPENDIX I:

Eyford Report – BC's Response

- While BC should encourage Canada to act quickly and meaningfully on the report recommendations, BC must be clear that LNG is our priority opportunity and is time sensitive. In this context, BC should not make commitments that would risk losing the opportunity if Canada is not prepared to act quickly on the report.
- It remains to be seen how quickly and to what level Canada will respond to the report.
- BC should encourage Canada to act on recommendations that:
 - Best support BC's LNG priorities;
 - Ensure BC is not excluded from future discussions between Canada and First Nations regarding energy development; and
 - Forward MARR's strategy for enhanced federal engagement.
- Canada's attention to the report is an opportunity to capitalize on BC and Canada's shared interest in jobs and economic growth by attempting to secure greater federal participation in agreements that support LNG. This could include:
 - Federal participation in a Coastal Region First Nations Trust;
 - Extending the federal-provincial treaty framework to include non-treaty and economic agreements;
 - Meaningful dialogue on skills training, environmental stewardship, marine safety and response, shared decision making, and federal revenue sharing; and,
 - Federal participation in consultation agreements.

APPENDIX II:
Carrier Sekani Tribal Council –
Background Information

- The following are CSTC member nations:
 - Nadleh Whut'en First Nation
 - Nak'azdli Band
 - Stellat'en First Nation
 - Saik'uz First Nation
 - Tl'azt'en Nation
 - Ts'il Kaz Koh First Nation
 - Takla Lake First Nation
 - Wet'suwet'en First Nation (WFN has expressly indicated to the Province that they will not be working with CSTC with respect to LNG benefit negotiations, so information regarding this nation is not included in this Briefing Note – see Attachment #6 for information regarding WFN)
- As of January 21, 2014, Nadleh Whut'en Band, Nak'azdli Band, and Stella'ten First Nation have signed Band Council Resolutions indicating that they will be represented by CSTC for the purposes of LNG benefit negotiations with the Province.
- Lake Babine Nation is not a CSTC member nation but has been attending meetings between the Province and CSTC, and is expected to attend the February 17, 2014 meeting.
- The following proposed natural gas pipelines (with which the Province is engaging in benefit negotiations with First Nations), transect the territories of one or more CSTC member nations:
 - TransCanada's Coastal GasLink;
 - Spectra's Westcoast Connector Gas Transmission; and,
 - TransCanada's Prince Rupert Gas Transmission System.
- The proposed Pacific Trails Pipeline project transects territories of some member nations; all affected CSTC member nations have signed a benefit agreement with the Province regarding this project through the First Nations Limited Partnership.

APPENDIX III:
Info on Alex Grzybowski, Lead Negotiator

Chief Negotiator Alex Grzybowski has been appointed to lead negotiations on natural gas pipeline benefit sharing with CSTC. Alex has extensive experience negotiating and mediating natural resource issues with First Nations in BC, as well as broad experience in international negotiations working for the United Nations. He reports to Minister Rustad and the Premier through Deputy Minister Steve Munro and works very closely with Deputy Minister Steve Carr to ensure that Minister Coleman is directly involved.

Carrier Sekani Tribal Council



REPLY TO:

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☐ HEAD OFFICE

Wet'suwet'en First Nation
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January 27th, 2014

The Honourable Christy Clark
Premier of British Columbia
Box 9041 Stn Prov Govt
Victoria BC V8W 9E1

Brian Murphy, Executive Project Director
Environmental Assessment Office
2nd Floor, 836 Yates Street
Box 9426 Stn Prov Govt
Victoria BC V8W 9V1

Dear Brian:

Re: Environmental Assessments of Liquefied Natural Gas Pipelines

We are writing on behalf the Carrier Sekani Council and its member First Nations. Our Nations have unsundered Aboriginal rights and title to their traditional territories, and continue to exercise their Constitutionally-protected Aboriginal rights across these territories..

This letter should be considered alongside Tribal Chief Terry Teegee's letter of September 20, 2013.

We write to notify you of our continued concerns with the Province's reliance on the environmental assessment ("EA") process to discharge its duty to consult and accommodate. Although courts have held that one of the key goals of the *Environmental Assessment Act* (the "Act") is to provide a framework for First Nations' consultation, the Environmental Assessment Office ("EAO") has failed to take adequate good faith efforts to understand our concerns and move to address them. By repeatedly failing to uphold its constitutional and legal duty to us, the EAO has failed to give the requisite shape to the duty to consult. The development boom across our territories, and the Province more broadly, is clearly overwhelming the EAO. This has led to a deficient and ineffective process that limits First Nations' participation and threatens the viability of and long-term benefits from, these projects.

We have serious concerns about the EA processes carried out to date on the liquefied natural gas ("LNG") pipelines that are proposed across our traditional territories -- in particular, the:

- PNG Looping Project (Pacific Northern Gas Ltd.);
- Prince Rupert Gas Transmission Project (TransCanada Pipelines);
- Natural Gas Transmission System – Northeast BC to the Prince Rupert Area Project (Spectra Energy); and
- Coastal GasLink Pipeline Project (TransCanada Pipelines),

(Collectively, the "Pipelines").

The current boom of existing and proposed projects across our territories, which include many other projects in addition to the above-listed Pipelines, is a significant drain on our resources and a heavy burden on our members and families. The Province has repeatedly championed the extensive benefits that the LNG industry will bring to British Columbia. However, there remains no provincial LNG strategy to ensure that the benefits from this new industry are adequately captured and shared with First Nations' members and families, on whose traditional territories the bulk of this development will occur.

As some of the citizens most directly impacted by this new industry, we remain concerned about the lack of support provided to our member Nations to adequately evaluate the Pipelines, as well as the lack of clear commitments from the Province by way of government-to-government agreements to ensure resource revenue sharing adequately benefits our members and families. We are also concerned of the lack of sufficient mechanisms to effectively assess the cumulative environmental, social, cultural and local economic effects of all these projects across our territories and on our rights and title. Until the outstanding issues described herein are adequately resolved through government-to-government discussions and agreements, there can be no certainty on the development of the LNG industry in British Columbia.

Lack of Meaningful Consultation

The Supreme Court of Canada ("SCC") has clearly recognized that consultation in some meaningful form is the necessary foundation of a successful relationship with Aboriginal peoples (*Beckman*). Consultation that excludes from the outset any form of accommodation is meaningless (*Mikisew*). In addition, to be meaningful, consultation must take place when the project is being defined and continue until the project is complete (*Kwikwetlem*).

The purpose of consultation is to ensure that in keeping with the honour of the Crown, asserted Aboriginal interests are given proper consideration and respect when the Crown disposes of property or grants regulatory approvals (*Louis*). Meaningful and genuine consultation requires an exchange of views that gives the First Nation some meaningful input into the decision-making process (*White River*). The Crown must also seek to substantially address First Nations' concerns (*Haida*).

Even at the low end of the spectrum, the constitutional duty requires a full and fair consideration of all views presented (*Beckman*). The duty owed to First Nations cannot simply be discharged by providing a venue for First Nations to be heard. It is not merely a check-in procedure; rather, a key requirement in honourable consultation is responsiveness (*Taku River*). Meaningful consultation requires testing and being prepared to amend proposals or modify the governments' substantive position in light of information received (*Haida*; *White River*). Wherever possible, First Nations' concerns should be demonstrably integrated into the proposed plan of action (*Mikisew*). In addition, where mitigation measures are adopted in response to First Nation's concerns, these should be developed in consultation with that First Nation (*Mikisew*).



SAIK'UZ FIRST NATION

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January 20, 2014

The Honourable Christy Clark
Premier of British Columbia
Box 9041 Station Prov Govt
Victoria, BC V8W 9E1

VIA Email

Dear Premier Clark:

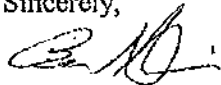
RE: Constitutional Obligation to consult on establishment BC LNG export industry

I am writing on behalf of Saik'uz First Nation to request a meeting to begin Crown consultation regarding strategic planning and high level decision making in relation to government plans to develop a British Columbia liquefied gas export industry. This request will provide economic benefits, fulfill environmental responsibilities and honour the constitutional obligations to consult and accommodate Saik'uz First Nation.

We have been awaiting such meetings based on Wet'suwet'en First Nation's letter to you in August 2013 and now see a media release today that there has been no reply to this request. Saik'uz First Nation has been patient and restrained, however cannot stress enough the need for high level discussions of the issues that must be resolved.

We look forward to a timely reply to this request.

Sincerely,

for 

Chief Stan Thomas
Saik'uz First Nation

PC Minister's Coleman and Rustad
CSTC Chief's