

MINISTRY OF ABORIGINAL RELATIONS
AND RECONCILIATION
BRIEFING NOTE

File: 280-20

Date: October 15, 2013
Ref. No. 32776

- I Prepared for the **INFORMATION** of Honourable John Rustad, Minister
- II **ISSUE:** Minister Rustad will be Meeting with Wet'suwet'en First Nation elected Chief Karen Ogen

III **BACKGROUND:**

The Wet'suwet'en First Nation (WFN), formerly known as Broman Lake Band, has 140 members and is located just east of Burns Lake. WFN is a member of the Carrier Sekani Tribal Council. ^{s.16}

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CN/ED____
ADM____
DM____

WFN is a member of the Pacific Trails Pipeline First Nations Limited Partnership. They signed a Forest Consultation & Revenue Sharing Agreement (FCRSA) in February 2012. ^{s.16}

s.16

IV **DISCUSSION:**

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- - -

In September, WFN presented a short film at the 5th Annual Northeast BC Natural Gas Summit that indicated WFN interest and support for pipeline and natural resource development. The information conveyed in the film provided a strong message of support for sustainable resource development, which WFN views as essential to the economic and social prosperity of the WFN community.

V CONCLUSION:

WFN is one of a number of political entities asserting to represent Wet'suwet'en Aboriginal rights and title interests. The Province has an interest in engaging the Wet'suwet'en as a larger collective that ideally includes the hereditary governance system. MARR will be contacting WFN in the very near future to arrange a meeting regarding an engagement approach.

The WFN would like to discuss the following on Oct 22:

- Provincial response to May 27 and August 9 letters from WFN (attached)
- Provincial efforts to support training for First Nations members seeking employment in pipeline projects
- Khyawood closure (Moricietown) and economic development options

Attachments: (1) Wet'suwet'en First Nation May 27th Incoming Letter
(2) Wet'suwet'en First Nation August 9th Incoming Letter
(3) Wet'suwet'en First Nation Map

Wet'suwet'en First Nation

PO Box 760, Burns Lake, BC V0J 1E0

Phone: (250) 698 7307 Fax: (250) 698 7480 Email: wfnchief@lakescom.net



May 27th, 2013

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

Dear Premier Clark:

Congratulations on your government's re-election!

I am writing on behalf of Wet'suwet'en First Nation to lend our Nation's support to your planned Asian LNG Trade Mission and to inquire regarding the make-up of the trade delegation.

By way of background, Wet'suwet'en First Nation has developed strong working relationships with several LNG proponents including Apache Canada Ltd. and Trans Canada Pipelines Ltd.

We believe that LNG projects are a potential win/win/win for government, industry and First Nations. These projects offer a once-in-a lifetime opportunity for our Nation and other Nations to build a brighter future for our members through skills and training development, long term well-paid jobs, economic development opportunities, and much needed infrastructure.

Through careful planning, we believe that these benefits can be achieved without jeopardizing the equally important environmental, cultural, and traditional values and interests of impacted First Nations.

However, these projects will not proceed without customers in Asian markets.

With this in mind we wish to inquire regarding the make-up of the Asian LNG Trade Mission and whether our Nation could be represented on the delegation.

It is important for potential customers to realize that BC's approach to LNG can and does have the support of government, business and First Nations.

We would appreciate receipt confirmation and we look forward to your reply.

Sincerely,

WET'SUWET'EN FIRST NATION

Chief Karen Ogen

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Linda Robertson, Manager, Skeena Region; 250-847-7504; G:\Negotiations & Regional Operations Division\North Team\280-20 Briefing Notes\Information Notes\Wet'suwet'en\32776_BN re. Minister Mtg with Chief K Ogen.docx

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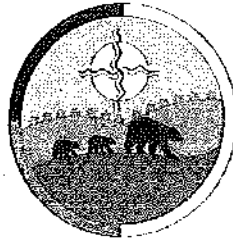
We would appreciate receipt confirmation and we look forward to your reply.

Sincerely,

WET'SUWET'EN FIRST NATION

A handwritten signature in black ink, appearing to read 'Karen Ogen', is written over the printed name of the Chief.

Chief Karen Ogen



Wet'suwet'en First Nation

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Delivered by Hand and E-mail

August 9, 2013

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

Dear Premier Clark,

Re: **Constitutional obligation to consult on establishment of a new industry – British Columbia Liquefied Natural Gas Export Industry**

I am writing on behalf of Wet'suwet'en First Nation to request a meeting with you in Vancouver during the week of September 9-13th, 2013. The purpose of this meeting is to begin Crown consultation regarding strategic planning and high level decision-making in relation to government plans to promote and develop a new British Columbia liquefied natural gas export industry (new LNG export industry).¹

The start of a new LNG export industry is a unique and rare opportunity to develop a resource strategically, with a broad and long view, to provide economic benefits, fulfill environmental responsibilities and honour Constitutional obligations to consult and accommodate Wet'suwet'en First Nation in the establishment of a new industry.

The balance of my letter sets out the reasons for this meeting request.

¹ Please note that this Crown consultation is separate and distinct from Crown consultation regarding individual pipeline applications.

New LNG Export Industry is an unprecedented high priority economic opportunity

Since the re-election of your government on May 14th, 2013 and your re-election on July 10th, 2013, you have made establishment of a new LNG export industry a very high priority by

- appointing Deputy Premier Rich Coleman as Minister of Natural Gas Development,
- establishing a new ministry for the sole purpose of natural gas development,
- making natural gas development a priority issue in other BC government ministries,
- planning an Asian LNG trade mission.

The June 2013 BC Ministry of Finance Update to the Budget and Fiscal Plan 2013/14 – 2015/16 re-confirms the exceptional outlook for this new LNG export industry:

British Columbia has an unprecedented economic opportunity and the potential for significant increases in revenues from liquefied natural gas (LNG) development.

The revenue can be used for the benefit of all British Columbians, both now and in future generations.

Independent experts retained by the BC government forecast that the new industry will bring in between \$4.3 billion and \$8.7 billion in extra government revenues each year.

Supreme Court of Canada mandates Crown consultation on strategic, higher level decisions

When establishing a new industry to be built upon and affecting lands and resources claimed by First Nations such as the new LNG export industry, the scope of the Crown's duty to consult is not limited to the individual and incremental decisions along proposed pipeline routes, the related regulatory permitting or physical impacts.

The duty to consult transcends this. The Crown's duty to consult requires high level consultation about what resources should or will be exploited, by whom and how.

The Gitksan and Wet'suwet'en brought the landmark aboriginal title case of *Delgamuukw v. The Queen*, [1997] 3 SCR 1010. In that decision, the Supreme Court of Canada held that aboriginal title encompasses the right to exclusive use and occupation of the land and the right to choose to what use the lands are put.

The Supreme Court also recognized that aboriginal title has an "inescapable economic component" and the uses of the land are not restricted to traditional uses. Aboriginal title includes the right to exploit the land and resources "for a broad variety of purposes" to meet the general welfare of the First Nation and present-day needs of the aboriginal community.

These fundamental statements by the Supreme Court of Canada about the nature of aboriginal title also apply to the nature and scope of consultation required when the Crown contemplates initiatives and activities that engage lands subject to aboriginal title or assertions thereof.

The "duty to consult extends to "strategic, higher level decisions" that may have an impact on Aboriginal claims and rights" (*Rio Tinto Alcan v. Carrier Sekani Tribal Council* 2010 SCC 43, para. 44). The Supreme Court of Canada lists examples of the sorts of high level strategic planning initiatives that require high level consultation—in our view, the proposed new LNG industry in British Columbia is just this sort of an initiative.²

Wet'suwet'en First Nation has a direct interest in the new LNG export industry

Our Nation asserts aboriginal title over lands (aboriginal title lands) that will be directly impacted and necessary to the new LNG export industry. Please refer to the attached map of aboriginal title lands.

In so far as the new LNG export industry depends upon pipeline transport through the core of the lands to which we claim aboriginal title, we must be appropriately consulted about this significant proposed new land use and its implications for our community. This goes beyond Crown consultation on individual pipeline proposals. The new LNG export industry is a unique and rare circumstance involving high level strategies and decisions to establish a new industry on aboriginal title lands.

We are currently aware of three potential projects that involve transporting natural gas by pipeline laid through our aboriginal title lands in proximity to our Indian reserves. Based on your public statements and the government's plans, we recognize that these pipeline projects are integrally connected to government initiatives to promote and develop the new LNG export industry and, based upon these initiatives, will likely be followed by further proposals to use our aboriginal title lands.

Our aboriginal title includes the right to choose the use to which our aboriginal title lands are put, and the right to the use and benefit of the land and resources within those lands. Failure to consult and develop a model of shared decision making with us would "be to deprive the Aboriginal claimants of some or all of the benefit of the resource. That is not honourable": Supreme Court of Canada, *Haida Nation* para. 27.

Crown consultation on the new LNG export industry must take place before, not after, the new industry is established

Over the past year, your government has released at least three strategy documents related to the development of the new LNG export industry and as noted above, since your re-election in July 2013, establishment of this new industry has been made an even higher priority.

² The examples listed by the Court include: a) the transfer of tree licences which would have permitted the cutting of old-growth forest, b) the approval of a multi-year forest management plan for a large geographic area, c) the establishment of a review process for a major gas pipeline, and d) the conduct of a comprehensive inquiry to determine a province's infrastructure and capacity needs for electricity transmission. (B.C.U.C.)."

Wet'suwet'en First Nation has not been consulted on the establishment of this new LNG export industry.

The Supreme Court of Canada's decision in *Haida Nation v. British Columbia*, 2004 SCC 73 made clear, the Crown cannot unilaterally take up and manage our lands pending resolution of our claims. Proceeding unilaterally, the government:

- deprives our Nation of choosing the use to which our land can be put;
- deprives our Nation of the use, value and benefit of our aboriginal title lands;
- deprives our Nation of using our lands for the modern needs of our community;
- is much more likely to cause negative physical impacts to the lands, resources and environment on our aboriginal title lands.

Premier, you have said that a new LNG export industry in British Columbia "is right around the corner," and that companies that want to participate must get "in the game now." Therefore we seek consultation now, before any meaningful participation in the choices and planning for our aboriginal title lands is effectively eliminated.

Our people suffer to this day from the direct and incidental effects of government policies and industrial development established without prior consultation. Let us work together to avoid the repetition of this province's past, that is, a history where lands and resources were unilaterally taken up, without prior consultation, for the primary or exclusive benefit of a population that excluded indigenous people.

Proposed Meeting Agenda and Timing

We request that Crown consultation on the establishment of this new LNG export industry commence immediately.

Recognizing the speed with which you hope this new industry will develop and the need for meaningful Crown consultation, we ask for a meeting with you in Vancouver during the week of September 9-13th, 2013. At this first meeting we wish to discuss the establishment of a consultation process that will address:

- Wet'suwet'en participation in the planning of the industry design and development—including whether any natural gas transmission for export should be authorized, and if so, the strategic timing, location and quantity for maximum community benefit;
- The means by which to address the cumulative environmental effects and impacts on Wet'suwet'en aboriginal interests at an industry level, rather than merely a project by project level. We are very concerned that the very significant effects this new industry

will have upon our territory and for our people not be conceptually minimized by being limited to incremental decision-by-decision consultation;

- Wet'suwet'en's role in decision-making for the life of the industry, if it goes ahead;
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- The possible participation of other First Nations in the process arising from our discussions and the basis and possible framework for such participation;
- The establishment of a royalty and taxation regime for LNG development which accommodates Wet'suwet'en interests;
- Other common interests.

We look forward to your reply to our meeting request and to meeting with you and establishing a process for consultation on strategic planning and high level decisions regarding this unique and rare circumstance – the establishment of a new LNG export industry.

Mess'ih



Chief Karen Ogen

CC:

The Honourable Rich Coleman
Deputy Premier and Minister of Natural Gas Development and
Minister Responsible for Housing

The Honourable John Rustad
Minister of Aboriginal Relations and Reconciliation

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