



**Submission to: British Columbia Environmental Assessment Office regarding the
TransCanada Coastal GasLink Application.**

September 2014

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In the Matter of TRANSCANADA COASTAL GASLINK PIPELINE application to
BRITISH COLUMBIA ENVIRONMENTAL ASSESSMENT OFFICE (BC EAO).

Written submission of the Office of the Wet'suwet'en

Purpose

1. This submission from Office of Wet'suwet'en (**OW**) to the British Columbia Environmental Assessment Office (**BC EAO**) is a response to the Environmental Assessment report regarding the proposed TransCanada Coastal GasLink pipeline project (**CGL**).

PROJECT:

2. TransCanada Coastal GasLink Pipeline. Ltd. (Proponent) proposes to construct and operate an approximately 650 km long natural gas pipeline with a diameter of 1219 mm from near Dawson Creek in northeast BC to near Kitimat, BC. The proposed Project is a reviewable project under the *BC Environmental Assessment Act* and may also be subject to review under the *Canadian Environmental Assessment Act 2012*, in which case the assessment would be coordinated with the federal process in accordance with the Canada–British Columbia Agreement for Environmental Assessment Cooperation (2004).
3. The Office of the Wet'suwet'en submits the British Columbia Environmental Assessment Office (BC EAO) cannot recommend approval of the Project because the Environmental Assessment of the TransCanada's Coastal Gaslink Pipeline Project is incomplete. In our view, these deficiencies cannot be corrected by future studies, mitigation measures or conditions. The Office of the Wet'suwet'en on behalf of all Wet'suwet'en Clan and house members will be affected by the BC EAO's decision towards the TransCanada's Coastal Gaslink Pipeline (CGL) application.
4. In particular, the Office of the Wet'suwet'en submits that:
 - I. the environmental assessment fails to adequately define the environmental effects of the Project, and the significance of

these effects to Wet'suwet'en aboriginal title, rights and interests;

- II. the provision of future studies does NOT satisfy these deficiencies in the environmental assessment;
 - III. without a complete assessment of the Project's environmental effects based on their impact to Wet'suwet'en aboriginal title, rights and interests mitigation method will not suffice; and
 - IV. given these deficiencies, the EAO cannot in good faith recommend approval of the Project.
5. While environmental assessments are often initially incomplete and refined through the BC EAO process, the BC EAO was left with too many questions at the end of these regulatory Working Group meetings to properly assess the Project. The 180-day process does not allow for environmentally sound oversight. Since the environmental assessment fails to adequately identify which elements of the environment may be adversely affected and to what degree, the BC EAO can never fully answer whether there are significant adverse environmental effects let alone being in a position to evaluate the effectiveness of relevant measures towards Wet'suwet'en aboriginal title, rights and interests.
6. The short comings of the environmental assessment can be summarized into these discrete points:
- a. The baseline data for many of the species relied upon as key indicators for the purposes of the assessment is incomplete. Many of the studies done relied upon literature research as opposed to field studies. When field studies were done, they often lacked a complete picture of the species from either a seasonal or geographic standpoint. Raw data has not been made available in a format that allows analytical review or assessment;
 - b. The reference data failed to consider a shifting environmental baseline caused by other projects that effectively degraded the

environment. Consequently, the true cumulative effects of the Project are unknown;

- c. For the terrestrial component, Coastal GasLink used Terrestrial Ecosystem Mapping (TEM) models designed to assess potential environmental harm caused by timber harvesting from geospatial polygons within the forest industry. These specialized models cannot be simply transferred and reliably used for determining the environmental consequences brought about by a lengthy linear disturbance feature.
7. A report released by the Auditor General in July 4, 2011 titled: An Audit of the Environmental Assessment Office's Oversight of Certified Projects. Within the Summary of Recommendations it states:
- a. *"Clarify the post-certification monitoring responsibilities and compliance mechanisms for each commitment".*
Auditor General report states further:
 - b. *"The audit found that the Environmental Assessment Office cannot assure British Columbians that mitigation efforts are having the intended effects because adequate monitoring is not occurring and follow-up evaluations are not being conducted. We also found that information currently being provided to the public is not sufficient to ensure accountability".*

The Auditor's report suggested one of six recommendations

- c. *"Provide appropriate accountability information for projects certified through the environmental assessment process".*
8. In BC, wildlife habitat ratings are a relative measure of a particular ecological unit's capacity to support a species compared with the best available habitat for that species across the province. The concept, however, is inherently vague, given a reliance on an incomplete list of subjectively identified provincial benchmarks instead of well-defined measurable parameters. Also, the scale and resolution of mapping and assessment is arbitrary, introducing unquantifiable uncertainty to the rating process. The issue is that scale of interpretation matters.

9. Expert knowledge served as the foundation for Coastal GasLink's habitat models and the resulting predictive maps. In contrast with the interpretations from specific experimentally based research studies, experts are expected to provide a combination perspective drawing on their own observations and those presented as published data.
10. Although expert-based models might be the only information available, there is no inherent assurance that model results portray reality. Part of the difficulty is that opinion and best estimates, when solicited from a number of experts, will vary considerably.
11. Variation can arise from simple disagreement on a value or ranking. Other sources of divergence such as vague concepts and loose terms, perceived but actual lack expertise, or social dynamics during group surveys can also lead to wide divergence in opinion.
12. Because Coastal GasLink was incapable of evaluating all species known or likely to occur along the right of way, species of management concern and individual species that were subjectively thought to represent the habitat requirements of other species were selected for detailed assessment. Species selected for the assessment were designated as key indicators (KIs).
13. Seemingly, this approach focused the assessment on the effects and species of greater concern. Eleven bird community selections, seven mammal species and three amphibian species were identified as KIs.
14. Key indicators belong to one or more of the following groups; species at risk, priority species in British Columbia's Conservation Framework, umbrella species, species of interest to Aboriginal groups, and socio-economic species.
15. One bird species of interest to the Wet'suwet'en and requested by the Wet'suwet'en is Clark's Nutcracker, a species **not** selected. The Clark's Nutcracker has a close association with the rare ecosystem species "Whitebark Pine" which is listed as endangered under Species At Risk Act (SARA).

16. Coastal GasLink, however, provided no cogent explanation of how KI umbrella species were selected from among the more than 360 vertebrate species known to occur in the Project region. The selection criteria for representative species were largely subjective, mostly vague, and lacked precise descriptions necessary for replication by others.
17. In the Wildlife reports, the implied primary purpose of KI species is to function as proxies for all other species that likely occur in the Project region, we are concerned that Coastal GasLink provides no analyses or measures of performance to support their objective.
18. Consequently, we cannot assess the effectiveness of the KI species chosen in providing umbrella coverage of critical habitats, other than assurances by Coastal GasLink that it is sufficient.
19. Further, identifying and attempting to quantify and safeguard critical habitats important for KI species cannot address the needs of all species that assumingly fall within their protective support. For example, as far as we can tell, Coastal GasLink's assessment did not adequately account for critical microhabitats, habitat inclusions, comparison of habitats, and connectivity of habitat.
20. Importantly, protection of critical habitat alone may not ensure persistence of small and isolated populations. This is particularly true when critical habitat is difficult to classify or incorrectly identified because of limited data and poor methods, which is the case here. In addition, proposed mitigating affected habitat may not be sufficient if the area needed for population persistence is not in the defined reports and the continuing habitat loss and fragmentation surrounding the pipeline are not considered.
21. Where the feasibility and effectiveness of proposed protection measures are admitted to be unknown or uncertain, such as is the case with caribou, grizzly bear, Coastal GasLink has relied upon recovery and compensation plans that have not been proven and which are very much theoretical in nature.

22. When the baseline condition is already significantly degraded, the incremental effect of project disturbances can misleadingly appear as relatively minor. The existing state of the environment might already be affected to the point that thresholds for acceptable effects are exceeded, especially for some Wet'suwet'en house territories. This is possibly the case for some of the wildlife KI's, notably the Telkwa Caribou and the Grizzly Bear.
23. For the Telkwa caribou, no detailed description of the interaction with wolf populations or air traffic disturbance is provided. This raises numerous additional unanswered questions concerning the viability of the Telkwa Caribou population that would be affected by the project. A better understanding or assessment of wolf and caribou interaction, and air traffic disturbance would allow for a more reliable assessment of the cumulative impact. Clearing a pathway through Caribou habitat will allow easier access to wolves and other predators.
24. The Application only refers to caribou specific management objectives from LRMP/SRMP and cites various provincial orders designed to protect caribou habitats.
25. Coastal GasLink's commitments to do future studies do not rectify its incomplete environmental assessment. The decision of the Federal Court in *West Vancouver (District) v. British Columbia (Ministry of Transportation)* 2005 FC 593 is of some assistance in determining the proper context within which future reports and obligations may be conducted.
- a. *West Vancouver (District) v. British Columbia (Ministry of Transportation)* 2005 FC 593
<<http://www.canlii.org/en/ca/fct/doc/2005/2005fc593/2005fc593.html>> [*West Vancouver*].
26. In *West Vancouver*, the petitioner challenged the screening process performed by the federal responsible authorities ("RAs") with regard to the environmental assessment of the Sea to Sky Highway Improvement Project, which was initiated in part by the 2010 Olympic Winter Games.
27. The petitioner claimed that the federal assessment and screening process did not comply with the *CEA Act, 1992* because:

- a. *“The RAs in their environmental assessment failed to conduct a risk analysis of a material environmental effect, namely, the impact of blowdown or windthrow of trees likely to be caused by the construction of a new four-lane highway over the area adjacent to Eagleridge Bluffs and the Larsen Creek Wetlands”.*

28. Additionally, the TEM models used by Coastal GasLink in the reports were designed to assess for relatively large forest landscapes using generalized species-habitat relationships and stand-level vegetation inventory. These habitat models predict relative changes in habitat supply at the landscape level over long periods of time (100-200 years), for integration with forest management planning.

29. The models were **not** designed to provide accurate prediction of habitat suitability or use at the stand level. The authors of these models unequivocally caution that any attempt to use the models in a different geographic area or for other than the intended purpose should be accompanied by model testing procedures, verification analysis, and other modifications to meet specific objectives.

[BC Ministry of Environment, Lands and Parks Resources. 1999. British Columbia Wildlife Habitat Rating Standards. Prepared by Inventory Branch for the Terrestrial Ecosystems Task Force Resources Inventory Committee. Version 2. 97 pages. Available online: <http://www.for.bc.ca/ric>]

British Columbia Wildlife Habitat Rating Standards.

1.1 Purpose and scope of this manual

However, differences occur in the mapping process for methods such as the Vegetation Resources Inventory (VRI) and Predictive Ecosystem Mapping (using forest cover), due to different attributes in the inventory and the different spatial data layers available for analysis. The procedures for mapping wildlife capability and suitability values using these inventories are currently under development.

[British Columbia Wildlife Habitat Rating Standards.1999]

30. By recommending approval of the Project at this incomplete stage, BC EAO (and the Minister if he subsequently approved the Project) would err in law by:

1. not following the statutory mandate;
2. not acting according the principles of fairness to the parties;
3. encouraging similar projects to proceed on a piecemeal fashion; and
4. violating the precautionary principle.

31. This Project cannot be allowed to proceed when proponents such as Coastal GasLink submit incomplete environmental assessments or “works in progress” rather than complete, accurate reports. It is incumbent upon Coastal GasLink to have performed the work at the outset so that the final environmental assessment may be tested. Instead, Coastal GasLink has asked for approval of the Project, based on a promise to do further research without the oversight that comes through the BC EAO assessment process. This approach is wrong at law and deeply flawed.
32. In the case of PTP pipeline, this received an Environmental Assessment Certificate (EAC) in 2008. BC EAO has proven to be incapable of upholding the commitments attached to the EAC, which in part are largely towards fulfilling information gaps. To further approve similar projects without meaningful data is demonstrating that the lack of due diligence on behalf of the province of BC to conduct adequate risk and impact assessments.
33. The Office of the Wet’suwet’en submits that it would be unfair at law to allow Coastal GasLink to conduct research necessary to assess the environmental effects of the Project post-approval. This approach would curtail the rights of the Wet’suwet’en who are the caretakers of their territories and have the right to question the Project, and the process to assess such a project.
34. In the current matter, the First Nations, the public, and in particular the EAO accepts the application as framed by Coastal GasLink. It would prove to be a travesty by allowing Coastal GasLink to simply proceed to the approval stage without the necessary oversight that would be afforded as a result.
35. With so many further obligations left to future research and study, there is no opportunity for the above parties, including the Office of the Wet’suwet’en, to question the fundamental underpinnings of such research as well as the methodology that will be applied to drive the information and data which is used for risk, and impact assessments.

36. The BC EAO cannot recommend approval of the Project in the absence of a complete environmental assessment because to do so violates the precautionary principle. In the context of the Coastal GasLink, a requirement by the BC EAO to exercise its powers in a manner that applies the precautionary principle.

37. As articulated in Principle 15 of the *Rio Declaration on Environment and Development*, the precautionary principle is as follows:

a. “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”.

b. The Rio Declaration was adopted by Canada.

Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and Development, 3-14 June 1992, UN Doc. A/CONF. 151/26/ (vol. I)
<<http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>>.

38. This was also similarly quoted by the Province of BC in their Final Argument during the JRP Hearing for Enbridge Northern Gateway at para 109 followed by:

110. It is also, we submit, entirely in keeping with the principles underlying environmental assessment. *Friends of the Oldman River Society v. Canada (Minister of Transportation)*, [1992] 1 S.C.R. 3 LaForest J.A. states that: Environmental Impact assessment is, in its simplest form, a planning tool that is now generally regarded as an integral component of sound decision-making. Its fundamental purpose is summarized by R. Cotton and D.P. Emond in “Environmental Impact Assessment”, in J. Swaigen, ed., *Environmental Rights in Canada* (1981), 245, at p.247:

The basic concepts behind environmental assessment are simply stated: **(1) early identification and evaluation of all potential environmental consequences of a proposed undertaking; (2) decision making that both guarantees the adequacy of this process and reconciles, to the greatest extent possible, the proponent’s development desires with environmental protection and preservation.** [Emphasis added]

Submission of the Province of BC Final Argument at para 109-110. Joint Review Panel Hearings Enbridge Northern Gateway Pipelines project.

39. Approving the Project would violate the precautionary principle because the Project poses threats of serious or irreversible damage. Furthermore, there is a lack of scientific certainty regarding the risk of these threats. The Project threatens to seriously damage the environment. The impacts on species at risk, including Caribou, Grizzly Bears, and Bull Trout, are potentially devastating. The risks of landslides are poorly understood. If a landslide ruptured any of the pipelines, the ecological consequences could be dire.
40. Since the Project threatens to cause serious damage, the precautionary principle requires the BC EAO to recommend against approval of the Project. The BC EAO cannot recommend approval of the Project given the uncertainty regarding the risks associated with the Project and the lack of identified technically and economically feasible measures to address these serious impacts, or to address impacts to First Nations Title, Rights, and interests.
41. The Office of the Wet'suwet'en submits that the Project will result in significant unjustified adverse environmental effects. The Office of the Wet'suwet'en further submits the potential risks to Clan house natural resources, and future burdens of the Project impacts far outweigh the potential benefits to title holders.
42. The Office of the Wet'suwet'en submits that Coastal GasLink failed to adequately identify the potential significant adverse environmental effects of the Project as discussed above, failed to provide adequate data to allow for meaningful assessment, by delaying critical studies until post approval. The company has failed to demonstrate how the benefits of the Project outweigh the burdens and risks and has failed to justify these potential significant adverse environmental effects. Specifically, the Office of the Wet'suwet'en submits that:
- I. Coastal GasLink's reliance on future research and future planning prevents the BC EAO from properly assessing the potential adverse environmental effects of the Project;

- II. The Project will cause significant adverse environmental effects on rare ecosystems, wildlife, and fish habitat on which Wet'suwet'en depend for sustenance, spiritual renewal, and cultural protocols;
- III. Coastal GasLink has failed to adequately identify and address the potential impacts on salmon and the potential impacts on the cultural uses of salmon.

43. The Office of the Wet'suwet'en also found that Coastal GasLink did not adequately describe how the Project elements and activities may have effects on the existing geology, terrain conditions and geohazards. Coastal GasLink has not determined how geohazards will increase or decrease or if the occurrence, frequency and intensity of landslide events would remain the same as a result of the proposed Project.

44. The Office of the Wet'suwet'en submits that the assessment of the geohazard risks along the pipeline route has not been completed to the level that permits the BC EAO to determine the significance of this risk.

45. As stated in CGL EA Application:

"Site-specific design details are only available during final detailed engineering design, which is complete when the Application review process has been complete". [CGL Application Sec. 5; 5.1.2 Terrain Integrity (#15,16,17)]

46. With respect to geohazard risks along the proposed pipeline route, **Natural Resources Canada stated that its review of Enbridge's Northern Gateway assessment of potential landslide effects on the pipeline corridor could not be completed without additional mapping of the geohazards along the pipeline route. This is a similar proposed route along the proposed Coastal GasLink route. [**Submission of Natural Resources Canada, (22 December 2011), Exhibit E9-6-30 at para 74. Joint Review Panel Hearings Enbridge Northern Gateway Pipelines project.]

47. The Office of the Wet'suwet'en submits that the assessment of the terrain integrity along the pipeline route has not been completed to the level that would permit the BC EAO to determine the significance of that risk. Regulations towards terrain were only in draft form, which does not give credibility.

48.As stated in CGL EA Application:

- a. *17. Coastal GasLink is not aware of any regulations for terrain.*
- b. *21. Based on these Acts, regulations were drafted*
[CGL Application Sec. 5; 5.2.2 Terrain Integrity (#17;21)]

49.Has Natural Resources Canada prepared a landslide susceptibility map for the proposed Project pipeline route? If not, then Coastal GasLink's Application is not complete.

50.This evidence demonstrates that Coastal GasLink has not completed a sufficient assessment of landslide susceptibility along the proposed pipeline route. Further, Coastal GasLink has not assessed the potential impact of the Project itself on existing geology, terrain conditions and geohazards.

51.Coastal GasLink has also not considered the potential impact of pine beetle damage, harvesting, and climate change on the future landslide risks.

Example:

- a. By removing or modifying forest cover, mountain pine beetle infestations can affect the pipeline through alterations of hydrology and soil stability. Infestations have the potential to increase peak water flows, adversely affect erosion, flooding, channel migration, and spring break-up of ice, while increasing the likelihood of landslides and avalanches.
- b. How and where this will manifest along the pipeline route and supporting infrastructure is uncertain. However, the frequency and severity of these disturbances will likely be exacerbated by climate disruption. The probable increase and severity of landslides and avalanches linked to loss of forest cover, and impacts to First Nations title rights and interests are not addressed.

Areas affected by forest pests and pathogens, particularly the mountain pine beetle, may have altered hydrologic conditions. Reclamation activities are conducted with the goal of returning affected lands to a stable, non-erosive, pre-construction capability. This goal may be more

difficult to reach given the erosion-prone state of regions affected by the mountain pine beetle-affected regions. [CGL Application Sec. 22; 22.7.3 Effects of the Environment (para.# 15-19)]

52. The BC EAO cannot adequately assess the geohazard risk and the subsequent environmental consequences of landslides and slopes failures without a landslide susceptibility assessment of the proposed pipeline. Coastal GasLink's commitment to conduct additional geohazard surveys post-approval does not address this inadequacy. The BC EAO is required to assess the potential environmental effects prior to, rather than after, approval of the Project.

Sudden downslope soil mass movement or movement of a disaggregated mass of rock may cause loading, deformation, exposure or rupture of pipe at identified areas of instability. Further field investigation work and additional post-processing are planned to improve the definition of terrain and soil characteristics, and depth to bedrock as part of Coastal GasLink's ongoing geohazard assessments. [CGL Application Sec. 22; 22.5.1 Hazard Identification (para.# 8-13)]

53. The Bulkley Valley Research Centre addressed hill slope and fluvial processes along the proposed pipeline corridor, specifically from Burns Lake to Kitimat in West Central British Columbia. Specific geographic locations and corresponding geological features with known and potential landslide risk were identified. Also identified were numerous historic and recent events including six large rockslides since 1978 (four since 2002).

54. Notably, three of the six rock slides severed natural gas pipelines. The report emphasizes that recent climate trends for west central BC are likely to increase landslide rates. Specifically, *"the rate of landslide occurrence will likely increase and thus the likelihood of landslide impact to a pipeline will increase"*. The reports executive summary underscores the risk from landslides noting, *"the unstable mountainous terrain across west central B.C. is not a safe location for pipelines. Eventually a landslide will sever a pipeline"*

[James W. Schwab, Hillslope and Fluvial Processes Along the Proposed Pipeline Corridor, Burns Lake to Kitimat, West Central British Columbia, Bulkley Valley Centre for Natural Resources Research & Management Smithers, BC, September, 2011, Available at: <http://bvcentre.ca/files/research_reports/11-03Schwab_Pipeline-geomorphology_Sept2011.pdf >.]

55. Misleading models that result in environmental damage because of ill-informed decisions constitute risk, which is a major concern. Clearly, the rigor of BC EAO's assessment should reflect the severity of the consequences originating from the full range of potential project related and cumulative disturbances.
56. Accordingly, biological information was obtained from one season of fieldwork, previous studies conducted in the area, and data inferred from studies conducted elsewhere but considered relevant and applicable. Because the best local available information and data derived from fieldwork were sparse and insufficient, Coastal GasLink relied primarily on regional biophysical data to parameterize their expert-derived spatial habitat models.
57. The Office of the Wet'suwet'en had recommended that the Proponent review and draw information from the *Delgamuukw/Gisdaywa v. The Queen (Delgamuukw)* Supreme Court Transcripts and Affidavits in regards to Traditional Ecological Knowledge (TEK), and Traditional Use Studies (TUS) were not followed.
58. The Office of the Wet'suwet'en rather than do an ATK study, it commissioned a Rights and Title analysis which is consistent with the Wet'suwet'en position before the Courts in *Delgamuukw v. The Queen, the Inter-American Commission on Human Rights* and in its efforts at treaty negotiations. The Wet'suwet'en are far beyond the Traditional Knowledge Study stage which they worked on prior to the *Delgamuukw* trial commenced in 1987.
59. In 1984, 35 Gitksan and 13 Wet'suwet'en Hereditary Chiefs instituted proceedings against the Province of British Columbia. Both individually and on behalf of their respective Houses, they claimed ownership (un-extinguished Aboriginal title) and resulting jurisdiction (entitlement to govern by Aboriginal laws) over separate portions of territory totaling 58,000 square kilometers. This litigation is commonly known as *Delgamuukw*.

60. The Land subject to the Aboriginal rights and Aboriginal Title of the Wet'suwet'en are contained within the external boundary of Map 5 of *Delgamuukw*, and was proved by four types of evidence. There was also a wealth of documentary evidence supporting the Wet'suwet'en assertions of ownership. The four types of evidence were:

1. Places and topographic features in the House territories are identified by Wet'suwet'en names. The names and topographic features were recorded in 35 Wet'suwet'en territorial affidavits;
2. The territory and fishing sites of the appellants and their ancestors are shown by the activity and presence of chiefs and their House members on the land. Emma Michell. Chief Liiloo of the Wet'suwet'en House of Namox said: "We travelled throughout the territory, went to different places during trapping season. Sometimes we'd spend the winter in the Kilwoneetz country, also the Telkwa River area, and sometimes at Sam Goosley Lake, which is my mother's territory."
3. The oral histories record habitation of territories, boundaries, and place names throughout the territories and are noted in various court transcripts and exhibits;
4. Over 50 chiefs testified that they know from oral statements their ancestors own this land. The evidence of oral declaration of ownership was given through affidavits. The chiefs' ancestors expressed these assertions of ownership in the 1800's and the early part of this century.

61. While understanding of the connection, and relationship of the Wet'suwet'en to the land and water evidenced within the *Delgamuukw* transcripts, one must also remember what is stated within the Constitution Act of Canada. Section 35(1) of the Constitution Act, 1982 recognizes, affirms, and protects existing aboriginal and treaty rights of the Aboriginal peoples of Canada. The Supreme Court of Canada held that Section 35

requires the reconciliation of pre-existing Aboriginal title and rights with asserted Crown sovereignty through good faith negotiations.

62. A necessary component of this reconciliation process is to consult and accommodate Wet'suwet'en title, rights, and interests in order to protect them prior to final reconciliation. The Wet'suwet'en Nation maintains Aboriginal rights, including title, over their entire territory and its resources and it seeks the Crown and industry to respect, recognize and accommodate those rights, including the recognition of their traditional system of governance.

63. The Wet'suwet'en have never relinquished or surrendered Wet'suwet'en title and rights to the lands and resources within Wet'suwet'en territory and continue to occupy and use the lands and resources and to exercise, enjoy and depend on existing title and rights within our territory. We have an inherent right to govern ourselves and our territory according to our own laws, customs, and traditions. This was affirmed in the Supreme Court of Canada *Delgamuukw* decision.

64. But how is this understanding of aboriginal title significant, because the *Delgamuukw* decision and the Canadian constitutional law on aboriginal title requires the Crown to recognize the special fiduciary relationship between the Crown and aboriginal peoples. According to *Delgamuukw*, the fiduciary relationship between the Crown and aboriginal peoples may, in potentially infringing circumstances, be satisfied by the involvement of aboriginal peoples in the decisions with respect to their lands. The Court ruling also forces the Crown to acknowledge that there is always a duty of consultation and, in most cases, the duty will be significantly deeper than mere consultation.

65. All evidence to support Wet'suwet'en claim is public record, available, and it's up to the Crown representatives and TransCanada Coastal GasLink to ensure that they have this evidence available to them in relations to the strength of the *prima facie* case in support of the Wet'suwet'en title rights and in relation to that portion of the Wet'suwet'en traditional territory that

will be affected by the proposed project, as well as assess the potential impacts to the rights of title from the proposed project.

66. Even before the EA process begins, the Wet'suwet'en have realized that the proponent had all along assumed that if it concluded that its Project is unlikely to have significant adverse effects on the Wet'suwet'en natural environment, it could then immediately conclude that (whatever changes its Project might cause in the natural environment) there would be no significant adverse effects on Wet'suwet'en society, economy, and culture. A necessary component of Wet'suwet'en reconciliation process is to consult and accommodate Wet'suwet'en title, rights, and interests in order to protect them prior to their final reconciliation.

67. To the Wet'suwet'en's frustration, in its dealings with the proponent, resting on its assumption, demonstrated no interest in investigating its Project's potential adverse effects on Wet'suwet'en society, economy, and culture and the significance of those effects.

68. Thus, when describing its dealings with the Wet'suwet'en and asserting its conclusions specifically in regard to the Wet'suwet'en people and territory, they have speculation and generalities about Aboriginal societies, economies and cultures, and next to nothing about what makes Wet'suwet'en territory, society, economy, culture and even current use distinctively Wet'suwet'en.

69. In review of the Proponent Consultation report there is no mention of the requested review of the Delgamuukw/Gisdaywa Supreme Court Transcripts and Affidavits in regards to Traditional Ecological Knowledge (TEK), and Traditional Use Studies (TUS). Nor was there any indication that a review was conducted, this compounds Wet'suwet'en concerns regarding inconsistencies and inadequacy of the BC EAO regulatory process, particularly where Wet'suwet'en aboriginal title and rights are overlooked and denied.

70. What the Court said in *Delgamuukw* was that Aboriginal title confers upon its holder the exclusive right to decide land use, exclusive of provincial and

federal governments and thus of third parties such as Enbridge; who rely on permits from the federal or provincial governments. The uses to which the Canada may put Aboriginal title lands are thus infringements of the right and as such cannot proceed absent constitutional justification.

71. The Wet'suwet'en's case for Aboriginal title is strong and was not rejected by the Supreme Court of Canada in *Delgamuukw*.
72. It is the view of the Office of the Wet'suwet'en that it is impossible to achieve a "significance" finding for adverse effects utilizing the evaluation framework within the Coastal GasLink Environmental Assessment. The Wet'suwet'en characterization within the Consultation Report has very limited relevance to the unique legal context of Wet'suwet'en title, rights, and interests. The significance findings cannot accurately be inferred to reflect Wet'suwet'en values and interests, and therefore is infringing on Wet'suwet'en governance, and culture.

Clarity is need on this subject:

Salmon

73. Fisheries and Oceans Canada indicated that the management of freshwater recreational fisheries for anadromous fish has been delegated to the provinces. Is it honest to say that Fisheries and Oceans Canada are anticipating that the Provinces of British Columbia would submit evidence relevant to the management of those fisheries to the BC EAO.
74. Has the Provinces of British Columbia submitted any evidence to the BC EAO with respect to the management of freshwater recreational fisheries, if this has been done the Office of the Wet'suwet'en require the information for analysis and determine its relevance to the Wet'suwet'en territories proposed to be crossed by the pipeline Project.
75. What is known is that Fisheries and Oceans Canada's primary tool to mitigate fish habitat loss is the requirement to create compensating habitat under the no-net-loss principle. Fisheries and Oceans Canada suggests that habitat compensation is typically only 60 to 80 percent effective.

76. Coastal GasLink has not undertaken any studies of the effectiveness of habitat compensation. If site specific fish habitat management plans were to be reviewed by the BC EAO, they should have been submitted. However, Coastal GasLink has deferred detailed habitat surveys and site specific fish habitat management plans until after Project approval. Therefore, the BC EAO cannot assess the potential effectiveness of the planned mitigation measures.
77. The Office of the Wet'suwet'en submits that the BC EAO cannot adequately assess the potential impacts of the Project on salmon given the lack of baseline data on populations, diversity and habitat, and the uncertainty surrounding Coastal GasLink's mitigation plans.
78. Given the importance of salmon to the Aboriginal, commercial and recreational fishery in British Columbia and the ecological importance of salmon, this is not an area where the BC EAO can accept significant uncertainty as to the risks and consequences of the potential adverse environmental effects.

Recommendations

79. Complete a review of the Environmental Assessment process to establish ways of making the Environmental Assessment: less confrontational and more science based; easier for Wet'suwet'en members to get involved; easier for First Nations to understand the information being considered; more responsive to the concerns and questions of First Nations; less reliant on industry derived information; and more reliant on standardized information required by Federal and Provincial Government, First Nations, and affected stakeholder groups.
80. Determine alternatives suggested by First Nations on their territories. Directions with respect to alternatives to the proposed project, project route, monitoring will come from the above listed groups rather than relying upon information derived by the Proponent.

81. The Environmental Assessment must consider more than just the specific Project, but rather how best to incorporate all existing, proposed and potential projects to minimize negative effects.
82. Proponent information often has proprietorship restraints necessitating other interested Parties or government agencies to collect duplicate information and is used as a reason to restrict the sharing of the information with the public. Require confidentiality agreements for sharing of raw data for in-depth analysis review.
83. Reduce the reliance on industry self-regulation, monitoring, and self-reporting on the compliance of the Project. Incorporate First Nations recommendations and suggestions with determinations as to how they are utilized or not.
84. We have identified a series of issues that must be the topics of meaningful consultation and government-to-government discussions and negotiations that satisfy constitutional and common law requirements. These discussions must be completed and the issues addressed in a manner that ensures project and cumulative impacts will be avoided.

Conclusion

85. Coastal GasLink has failed to provide a complete environmental assessment application as required by the CEA Act 2012
86. Coastal GasLink has deferred research and studies necessary to complete the environmental assessment to the post approval stage; The BC Environmental Assessment Office cannot recommend approval of the Project in the absence of a complete environmental assessment
87. Coastal GasLink is relying on mitigation measures that are theoretical and unproven, that may likely to cause significant adverse environmental effects and damage to Wet'suwet'en Title, and Rights that cannot be justified

88. The Office of the Wet'suwet'en, and in accordance with Wet'suwet'en law, submits that the BC Environmental Assessment Office must recommend against approval of the Project as it stands.

89. For the Wet'suwet'en there is simply too much at stake and too much to lose.

All of which is respectfully submitted this 5th day of September, 2014.