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Hadih Rachel Shaw,

The Wet'suwet'en Nation is in the heart of the Central BC, we have since time immemorial relied upon our territorial resources for food, livelihood, and our way of life. Having access to our resources is crucial to our well being as Wet'suwet'en peoples.

**Fiduciary duty**

It is the fiduciary duty of federal and provincial governments to consult with First Nations, they have yet to talk to the Wet'suwet'en on the Justification of Infringements issue. Fast tracking projects may result in overlooking important details can have detrimental consequences. It is important to point out that the diligence required post-certification to ensure that impacts and effects on important resources are prevented or avoided is not satisfactory. This leaves the burden and legacy of any impacts from the project to be borne by the Wet'suwet'en.

We have invested considerable time and resources in the BC EAO review only to find that the level of detail required pre-certification leaves far too many unanswered questions critical for ensuring environmental effects and identification of potential infringements to our Title and associated rights from the project are avoided or minimized. We have requested that all the detailed information and ensuing activities that would follow post-certification be reviewed by the working group since the responsible agencies rely heavily on the judgment of proponent. The Wet'suwet'en feel the assessment of resource importance within their territory should not rest with non-native institutions that are driven by Western industrialized value systems and standards, there needs to be balance, taking in Wet'suwet'en values and concerns.

The Federal agencies failure to meaningfully consider and consult with the OW regarding the pipeline is a significant omission in the consultation process that must be remedied before any operational permits are issued. The OW has a strong case for title and rights to the Morice river watershed, as confirmed by *Delgamuukw 1997*. The deep consultation required by our strength of claim necessitates that our concerns about our fisheries and Wet'suwet'en rights be addressed prior to permitting.

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The Wet'suwet'en Hereditary Chiefs, have a strong evidence of title; we want to improve the current economic, political and environmental relations with British Columbia. The OW have to ensure that resource ministries must now consider the existence of Wet'suwet'en title when they contemplate decisions which have the potential to impact on Wet'suwet'en title lands.

### **Wet'suwet'en concerns**

The Office of the Wet'suwet'en exercise governance over the management of resources, and the assessment of resource importance should be placed with Wet'suwet'en decisions that were made; other concerns of the project are changes of 36 inch pipe to a 42 inch pipe, stockpile site in the Chisholm, Cultural Heritage loss to the Wet'suwet'en, and Bull Trout and Pacific Lamprey issues has never been discussed. Wet'suwet'en concern is generated by the fact that Enbridge pipeline and other mega projects are proposing to occur in the same general area which need to be assessed for cumulative impacts, and that a recovery plan must be developed with Wet'suwet'en input and concerns.

The loss of culturally significant identified areas are of grave concern to the Wet'suwet'en along the proposed route. The Wet'suwet'en are seeking a Communications Engagement Agreement (CEA) with the proponent, this is required by the Wet'suwet'en to ensure adequate information is being shared, and that our interests and concerns are being addressed. Without a CEA in place, there is no discussion taking place for Wet'suwet'en hereditary and cultural interests.

We are seeking confirmation that the Crown's obligation not to infringe on Wet'suwet'en title and Wet'suwet'en rights unless stringent test for justification set out by the courts is met\*\*, and further, the ongoing obligation to consult fairly with the Wet'suwet'en is honored, as is the duty to accommodate. The Wet'suwet'en feel the high importance of salmon spawning and rearing habitat of the Upper Morice Watershed requires the high level of importance of the justification test to ensure our protection of our Fish needs. *\*\*In Sparrow, the Court laid down a strong two-part test for justifying infringements of constitutionally protected Aboriginal rights. Such infringements would be legally justified only if the Crown could show both that there was a valid legislative objective behind the infringing measure and that the government action upheld the honour of the Crown: case-by-case basis of prima facie infringement determination.*

The Wet'suwet'en Hereditary Chief's strong interest in, and concern about the pipeline, and in particular its potential impacts to the Morice River watershed which contains fisheries and fish habitat of critical importance to our people. We have also underscored the fundamental importance of our traditional use and occupation of this area, including the impact on our Wet'suwet'en rights. The regulatory process needs to incorporate Wet'suwet'en authority and decision-making principles.

### **Monitoring of Compliance**

The Wet'suwet'en feel it is premature to accept and assess the amendments to the pipeline without first reviewing the data of all recent studies, and studies that have yet to be completed that were in the conditions set by the certificate released in 2008. Monitoring of whether the proponent adheres to the requirements of the Certificate is left to third party monitors without direct oversight by the responsible agencies or discussed with First Nations in which the studies were done within their territorial boundaries. The Wet'suwet'en feel in-depth analysis of previously agreed to commitments have yet to be addressed is a high concern, we need accountability to those commitments, as such, the Regulating Authorities (RA) need to sign off in writing giving their assent to the listed commitment reports to ensure due diligence is practiced. The Wet'suwet'en want the assurances that the RA's have reviewed the data for sufficiency and that they have weighed and assessed the level of infringement to the Wet'suwet'en along the proposed

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route. Wet'suwet'en have Commitments that were agreed to within the Certificate that have yet to be completed, assurances of working together to complete those Commitments is a priority of both the proponent and the Wet'suwet'en.

**Face-to-Face meeting**

In conducting a teleconference with the "working group" is not considered consultation, there needs to be a face-to-face meeting to have reasonable outcome. The Office of the Wet'suwet'en are trying to establish a reference state for high value salmon resources that the Wet'suwet'en and others depend on, from the information gathered there may be additional studies required within the proposed route amendments. There have been repeated attempts to inform and educate both the BC EAO and the proponent (PTP) on the efforts and intent of the Wet'suwet'en. There has also been on the record statements that the Morice Watershed has unequalled significance not only to the Wet'suwet'en, but to the surrounding communities at large, both culturally and economically.

In Closing, the Crown and industry proponents must respect, recognize and accommodate, Wet'suwet'en title and associated rights over the entire 22,000 km<sup>2</sup> of our territory and its resources, including the recognition of our traditional system of governance.

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David de Wit  
Natural Resources Manager  
Office of the Wet'suwet'en

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