Wet’suwet’en Submission

Submission to: Canadian Environmental Assessment Agency

Pacific NorthWest LNG

March 2016

Reference Number: 80032

TO THE CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY FOR THE

PACIFIC NORTHWEST LNG PROJECT

Purpose

1. This submission from Office of Wet'suwet'en (OW) to the Canadian Environmental Assessment Agency (CEAA) is a response to the CEAA report regarding the proposed Pacific NorthWest LNG project near LeLu Island. OW has standing to comment and record our concerns due to our long-term stewardship roles and responsibilities over time immemorial as noted in the 1997 landmark ruling re *Delgamuukw* and *Gisdaywa* and including the following management activities that operate in the present:

- Management at the international level vis a vis the Pacific Salmon Treaty;
- Management at the Skeena Basin level re Skeena Fisheries Commission and umbrella agreements with Fisheries and Oceans Canada such as Aboriginal Fisheries Strategies and the Pacific Wild Salmon Policy;
- Management at the Bulkley and Morice sub-basin scale that pertains to salmon biodiversity, healthy populations, integral habitats, and ecosystem functioning;
- Management at the community level to ensure Wet'suwet'en cultural continuity and well-being.

2. The Office of the Wet'suwet'en has reviewed and assessed the CEAA report and the Environmental Assessment (EA) process, which has raised concerns about the potential direct and indirect adverse effects of the proposed Pacific NorthWest LNG facility project on Wet'suwet'en resources, including cumulative effects on Wet'suwet'en Title Rights and interests, and potential impacts to Wet'suwet'en socio-cultural structure including governance, and Wet'suwet'en spiritual , and cultural connection to salmon, and territorial values. This submission does not constitute a traditional use study.

3. The Wet'suwet'en are not opposed to commercial and economic development on their traditional territories or areas that impinge on their interests as long as the proper cultural protocol is followed and respect given. The Wet'suwet'en insist that every effort is made to ensure the protection of their traditional territories, resources, and cultural integrity from damage arising from developments.

4. The Wet'suwet'en were told that they were on the low end of the spectrum for the Duty to Consult regarding the Prince Rupert Gas Transmission Pipeline Project (BC EAO; Jan 2014. P.9). In terms of the proposed Pacific NorthWest LNG (PNW LNG) terminal facility project on Lelu Island, Wet'suwet'en Aboriginal Interests are, in our view, at the high end of the Duty to Consult.

5. In the letter addressed to the Wet'suwet'en, the description was only in terms of the pipeline project's proximity to Wet'suwet'en territory. What was not included was the proposed Pacific NorthWest LNG (PNW LNG) facility project on Lelu Island with a detailed descriptor that has ramifications to our migratory salmon species.

6. The Federal Government has failed to provide sufficient information regarding the proposed Pacific NorthWest LNG project to the Wet'suwet'en regarding the cumulative effects on Wet'suwet'en Rights and Title, and potential impacts to Wet'suwet'en socio-cultural structure including governance, Wet'suwet'en fish, and territorial values.

7. The Wet'suwet'en state there is simply too much risk involved with the proposed Pacific NorthWest LNG project in a sensitive, and a critical ecological area that has a detriment effect to Wet'suwet'en salmon stocks, which we rely on for our sustenance, cultural, and ceremonial needs. The Crown has failed to adequately consult the Wet'suwet'en regarding any significant adverse environmental effects to our salmon stocks that we rely on under Section 35(1) recognized and affirmed Aboriginal right to fish.

8. In light of the possible risks around Flora Banks and the inner estuary area, there could be long-term negative effects to Wet'suwet'en salmon stocks, some of which are now extirpated, threatened, and require serious re-building to bring stocks back to where the Wet'suwet'en can once again conduct Food, Social and Ceremonial (FSC) harvesting. These stocks are found to migrate through Flora Banks and surrounding area as noted by Bulkley chinook smolts and Morice and McDonnell sockeye smolts, which were caught and subsequently analyzed with 100% DNA assignation.

9. The Application fails to assess the significance of Morice and Bulkley migratory salmon stocks that comprise a high percentage of Skeena River salmon. The Application fails to properly consider the likelihood of Wet'suwet'en population loss of migratory salmon fry

due to the projects construction and operation. Furthermore, the proposed Pacific NorthWest LNG project failed to conduct an effects analysis with respect to impacts to the Wet'suwet'en peoples as contained in Section 5 (1) of CEAA 2012.

10. Pursuant to section 5 of *CEAA, 2012*, the environmental effects which CEAA must consider, include the effects that the Project will have on the current use of lands and resources by Aboriginal peoples for traditional purposes. (Emphasis added)

11. The Wet'suwet'en state that they were not treated equally as a matter of public record, due to the criteria included in the BC EAO letter received stating:

"*The proposed PRGT Project is not expected to cross Wet'suwet'en asserted traditional territory. The closest point would be approximately 3 km north of the northern tip of Wet'suwet'en asserted traditional territory, north of New Hazelton".*

And;

"Given the nature and locations of the proposed PRGT Project, EAO is of the initial view that the potential impacts to the Wet'suwet'en Aboriginal Interests are likely to be negligible for the proposed PRGT Project".

"Based on its initial assessments of strength of claims and the potential for impacts from the proposed Pipeline Projects, EAO has initially determined that its duty to consult the Wet'suwet'en is at the low end for the proposed PRGT Project".

12. The Office of the Wet'suwet'en accepts where the PRGT pipeline project has a low consultation aspect determination; unfortunately, where the proposed Pacific NorthWest LNG facility project is connected in the terms of consultation, the initial communications to the Wet'suwet'en did not detail all the major themes of interest or issue.

13. In communications with the Wet'suwet'en, it was expressed that they were one and the same for the EA process, BC EAO stating:

"The proposed Project would involve the development of a sweet natural gas pipeline system starting near Hudson's Hope in Northeast British Columbia (BC) and terminating on Lelu Island, near port Edward on the North Coast of BC". (BC EAO; Aug 28, 2013)

14. With the Honor of the Crown at stake, the Wet'suwet'en believed there was going to be no impacts to Wet'suwet'en health and socio-economic conditions. When reviewing the information supplied by CEAA we are now very concerned over the possibility of serious impacts to our way of life.

Introduction

15. The Wet'suwet'en are an Aboriginal people with Aboriginal rights guaranteed by Section 35(1) of the Constitution Act, 1982. There is strong evidence in support of Wet'suwet'en title to the area through which the Wet'suwet'en FSC salmon begin their life history; that strength is confirmed by *Delgamuukw/Gisdaywa* v. The Queen (*Delgamuukw*) court case. As the Supreme Court of Canada's decision in *Delgamuukw* made clear, Aboriginal title is based on and informed by the Wet'suwet'en people's special attachment or relationship to the land.

16. The Canadian Environmental Assessment Agency (CEAA) report repeatedly states that the proposed project is unlikely to have significant adverse effects on the natural environment and demonstrates no interest in investigating its potential adverse effects on Wet'suwet'en society, economy, and culture.

17. Wet'suwet'en hold constitutionally protected rights. The law requires potential impacts on those rights to be taken into account in project assessment.

18. The CEAA Report does not address the extensive oral and written concerns put forward by the Office and the Wet'suwet'en and the Wet'suwet'en community in the many different CEAA forums. The CEAA report does not address:

i) Wet'suwet'en title and rights;

ii) the project's adverse environmental effects on Wet'suwet'en health and socio-economic conditions;

iii) the Wet'suwet'en people's current use of lands and resources for traditional Wet'suwet'en purposes.

19. The Office of the Wet'suwet'en present this submission that is centered around real and current direct and indirect impacts to fish and their habitats, as well as any potential direct and indirect impacts from the proposed Pacific NorthWest LNG project on Wet'suwet'en interests. The Wet'suwet'en are concerned about any potential effects on Wet'suwet'en lands and resources, including cumulative effects on Wet'suwet'en Rights and Title, and interests.

20. The CEAA process is considered a morass of conflicting values and situations including the proposed Pacific NorthWest LNG project, Canada not taking decisive steps to build trust with the Wet'suwet'en people and advancing reconciliation in regard to the proposed development of west coast energy infrastructure, the BC EAO's particularly limiting process of consultation without seemingly understanding the goal of consultation that is commonly thought to be reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown[1], and identifying competing claims, interests, and ambitions prior to the commencement of regulatory processes.

21. The CEAA process seemingly failed to understand that Wet'suwet'en rights exist and have implications for the way in which governments, industry, and Aboriginal communities interact.

22. The Office of the Wet'suwet'en argue the CEAA erred in their process as follows:

i) That the EA process did not engage in meaningful consultation with the aim of addressing Wet'suwet'en interests and concerns;

ii) That the EA process did not conduct an environmental assessment of the project as set out in CEAA, 2012, Section 5 (1a, 1b, 1c) in respect of Environmental Effects. Section 5 (1c) notes:

- with respect to aboriginal peoples, an effect occurring in Canada of any change that may be caused to the environment on
- health and socio-economic conditions,

[1] McLachlin, C.J. *Haida Nation v. British Columbia (Minister of Forests)*, (2004) 3 S.C.R. 511.

- physical and cultural heritage,
- the current use of lands and resources for traditional purposes.

iii) That the CEAA failed to assess impacts to Wet'suwet'en title and rights in its public interest assessment;

23. The Wet'suwet'en title provides exclusive rights not only to their fisheries, but also to the aquatic ecosystem – streams, lakes, wetlands, water – on which they must rely on for their existence within their traditional territory. The context of Wet'suwet'en title contains an inherent limit in that lands so held cannot be used in a manner that is irreconcilable with the nature of the Wet'suwet'en attachment to those lands.

24. From the Wet'suwet'en perspective, the EA process failed the honor of the Crown. "The government's duty to consult with Aboriginal peoples and accommodate their interests is grounded in the honor of the Crown. The honor of the Crown is always at stake in its dealings with Aboriginal peoples… It is not a mere incantation, but rather a core precept that finds its application in concrete practices."[2]

25. Canada needs to adopt a broader approach rather than strictly satisfying the legal duty. Presently, the Crown is not even satisfying the legal duty to consult.

26. From the Wet'suwet'en perspective, there are aboriginal rights grounded in the Canadian Constitution with government obligations to protect and maintain water, wildlife, and fish, and their habitats. The potentially serious adverse impacts and proposed infringements by the proponent and the federal government to Wet'suwet'en fish, their habitat, and associated water quality and quantity issues are unacceptable to the Wet'suwet'en people.

Wet'suwet'en Territory, Social Structure & Institutions

27. The Wet'suwet'en territory includes the majority of the Bulkley River drainage and the northwestern headwaters of the Fraser Basin, an area used and exclusively occupied by the Wet'suwet'en before and at the assertion of Crown sovereignty over these lands. The

[2] McLachlin, C.J. *Haida Nation v. British Columbia (Minister of Forests)*, (2004) 3 S.C.R. 511.

Wet'suwet'en have lived there continuously for over 6000 years, and they continue to use and occupy these lands.

28. Wet'suwet'en territory comprises 22,000 km^2 with approximately 5,000 members covering 38 house territories. The Wet'suwet'en are a matrilineal society organized into a number of exogamous clans. Within each clan are a number of kin based groups known as Yikhs, often referred to as House groups. Each House is an autonomous collective that has jurisdiction over one or more defined geographical areas known as the House territory.

29. Wet'suwet'en House territories continue to be at the center of Wet'suwet'en life, culture and society. Fish form the basis of Wet'suwet'en sustenance and culture. Wet'suwet'en title and the integrally associated system of governance rely upon the relationship between the House group and the House territory. Healthy territories and healthy waterways are integral to feasting, and feasting is integral to the Wet'suwet'en identity and distinctive culture.

30. The Crown has had knowledge of the Wet'suwet'en strong *prima facie* Aboriginal title, rights, and interests in the territory since at least the constitutionalization of Aboriginal rights by subsection 35(1) of the *Constitution Act, 1982*. In 1984, 35 Gitxsan 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 jurisdiction (entitlement to govern by Aboriginal laws) over separate portions of territory totaling 55,000 km^2. This litigation is commonly known as *Delgamuukw*.

31. The territorial fish populations that would be directly and indirectly impacted by the proposed project are integral to Wet'suwet'en identity, governance, traditional practices of fishing and Baht'lats, and the passing on of traditional knowledge to future generations.

32. Wet'suwet'en authority on the land base has played an essential role in maintaining the strength of cultural identity among the Nation. Despite generations of assimilation efforts, the Wet'suwet'en have maintained a strong traditional hereditary governance structure integrated with the land and its resources.

33. The Wet'suwet'en relationship to their territories has been confirmed by the Supreme Court of British Columbia in *Canadian Forest Products Inc. v. Sam*, 2011 *BCSC 676.* It is the relationship to particular lands that defines the social structure of Wet'suwet'en society, that places the land as the foundation of cultural identity, and that determines the structure of governance. Madam Justice Dillon recognized Wet'suwet'en law when she stated:

> [16] "The *feast is central to Wet'suwet'en society and government. As acknowledged in Delgamuukw at para. 14, the feast has a ceremonial purpose but is also used for making important decisions. Today, it is used to make clear who has succeeded to the chiefs' titles, which are associated with jurisdiction over discrete Wet'suwet'en territories. Importantly, the feast confirms the relationship between each house and its territory and confirms the boundaries of each territory (Delgamuukw v. British Columbia (1993), 104 D.L.R. (4th) 470 at 608 (B.C.C.A.) [Delgamuukw BCCA]. It operates as a forum in which Wet'suwet'en law is both enacted and upheld. It is through the feast that the various houses and clans interact at an official level. Territories are important to the feast as the host clan gathers goods and food for the feast from its territories".* Canadian Forest Products Inc. v. Sam, 2011 BCSC 676. Para.16 (Dillon 2011)

34. To establish an aboriginal fishing right — apart from aboriginal title — Courts ask whether the right in issue is an integral part of the distinctive culture of the First Nation in question. Within this context, a number of specific aboriginal fishing rights arising from the facts raised in various cases have been recognized by the Courts including R. v. Sparrow, wherein the right to fish for individual and community food, social and ceremonial purposes was found to exist, and to have priority after conservation goals are met.

35. Common law coming out of *Delgamuukw* (1997) and subsequent litigation has helped define Wet'suwet'en title and the Wet'suwet'en–Crown relationship. This includes the need for reconciliation, especially regarding potential infringements to Wet'suwet'en title and/or rights and the justification for those infringements.

36. The government of Canada has not adequately consulted or accommodated the Wet'suwet'en in regards to this project. This effectively means the Wet'suwet'en are

presented with the call to make a decision regarding the proposed project, as well as ensuring that any decisions are respecting other nations, and respecting our FSC needs.

Wet'suwet'en Fisheries Management

37. The Wet'suwet'en occupy the vast majority of the Bulkley watershed and the Morice watershed drainage. The Bulkley River is a major tributary to the Skeena River and flows into its left bank at Hazelton, BC, 285 km upstream of the mouth. This salmon watershed is among the great salmon production areas of the North Pacific and along with freshwater fish, have sustained Wet'suwet'en since time immemorial.

38. The salmon fishery is and always has been a central focus of the Wet'suwet'en sustenance and trading economies. In the Bulkley drainage, chinook, sockeye, coho, pink and steelhead stocks were fished along with the anadromous eel, lamprey.

39. Wet'suwet'en laws governing the fish resource generally, and fishing specifically, are based on values from a conceptual reality founded on thousands of years of interacting with social, subsistence, and local environment dynamics. The majority of relevant fishing regulations were self-enforcing since they were founded on accepted community values shared by all its members.

40. These practices are in jeopardy due to the infringements by CEAA regarding the proposed Pacific NorthWest LNG project. The following section illustrates the past and current state of the Wet'suwet'en fishery, emphasizing the centrality of fish to Wet'suwet'en title and rights and the potential infringements to these title and rights by the proposed project. One of the focuses of this submission is on the threat of the project to our aquatic ecosystems, as the risks to our fish, and their habitat form some of the most substantial infringements to Wet'suwet'en title and rights.

Salmon Fishery Management

41. The large-scale utilization of the abundant and predictable salmon stocks formed the foundation of the economy. Arrangements for management of the fishery are deeply interconnected and woven into the fabric of Wet'suwet'en culture. Hereditary chiefs

exercise authority for management and decision-making. Principal management tools as noted by Morrell (1985) include:

- Ownership of specific sites with access allocation;
- Harvest of surplus to conservation needs on a stock-by-stock basis;
- Control of harvest techniques and timing that allowed selectively of species and non-retention when desired;
- Harvesting limitations imposed by processing capacity.

42. These management tools allow for optimal utilization of the salmon resource that was the core of the economy. They enable the fishery system to adapt to the variability of natural situations and conditions. These modes of management effectively facilitate allocation and regulation of the fishery, while encouraging habitat protection.

43. Fundamental conservation elements are practiced; waste is forbidden. Processing capacity was and is limited by smokehouse infrastructure, particularly the amount of space available on the lower poles, where fish were hung in the first stages of the drying process, and by the number of fish that could be dressed in the available time. When the daily processing limit is reached, fishing gear is removed from the water allowing salmon to proceed upstream. The predominant use of live-capture gear enable Wet'suwet'en fishers to selectively harvest desired species, with the remainder released unharmed (Morrell 1985).

44. The first salmon, the early upper Bulkley chinook run, usually reaches the area in early to mid-June, and marks the start of the fishery. This is the occasion for celebration and thanksgiving with the First Salmon Ceremony, in which the salmon are ritually prepared to ensure and herald an abundant harvest. At the majority of Wet'suwet'en fishing sites, springs are readily caught in season, as the strong river currents during the spring freshet concentrate them at particular points.

45. The sockeye runs follow the spring salmon. Sockeye is the most desirable fish for the Wet'suwet'en owing to a fat content that facilitates smoke-drying. They were fished heavily until sockeye needs are met, which typically signal the beginning of berry picking and high country hunting. Major sockeye harvest and processing locations include Hagwilget Canyon, Moricetown Canyon, Morice Lake outlet, Nanika River outlet, Bulkley Falls, Maxan and Bulkley lake outlets.

46. Coho and steelhead migrate into the Bulkley watershed in early to mid-August though coho are harvested to a lesser degree. The main coho fishery occurs later in the many smaller, though important, tributary streams on the territories. In the past coho were especially useful to the people who did not go to the mainstem, but stayed out at their villages or camps on the remote territories. Due to their widely dispersed nature throughout the watershed, coho were often harvested and processed in headwater locations.

47. At the turn of the century, the Federal Department of Fisheries and Oceans (DFO) administrators directed pressure against native fishers, Wet'suwet'en fishing management patterns, and traditional harvesting techniques that principally relied on weirs and traps, but included dipnets, ice fishing set nets, and spears. Pushed to abandon their traditional gear and means of production, which over millennia had sustained a diverse and healthy fishery, traditional Wet'suwet'en fisheries found it difficult to continue feeding their people compared to the past.

48. According to Wet'suwet'en Knowledge, dispersed fisheries operating on the Bulkley mainstem included nine camps between Boulder Creek and Moricetown Canyon and eleven camps upstream of the canyon to the Telkwa River confluence (Wet'suwet'en Fisheries 2003). These dispersed fisheries that mainly targeted coho and steelhead were often positioned at tributary mouths to easily exploit the fish resource. Dispersed fisheries away from the Bulkley mainstem included the fisheries at the outlets of Toboggan and lower Reiseter lakes (Rabnett et al. 2001).

49. Wet'suwet'en salmon fisheries continue into the present at Sde Keen Teezdlii and Keel Weniits Tl'oogh K'et on Laksilyu territory in the upper Zymoetz (Copper) drainage. Sde Keen Teezdlii is located on the north shore of McDonell Lake at the outlet, and Keel Weniits Tl'oogh K'et is located at Six Mile Flat close to the outlet of Dennis Lake.

50. The Wet'suwet'en salmon fisheries at Hagwilget Canyon and Moricetown Canyon were some of the largest aboriginal fisheries on the Skeena system, and rank alongside the large fisheries located at Kisgegas and Wud'at on the lower and upper Babine River respectively. In and downstream of Moricetown Canyon, the Wet'suwet'en fished twenty-two known trap and net sites. In 1928, DFO blasted the big rock and several "steps" into the main falls at winter low water. (O'Donnell 1987) During 1950 to 1951, DFO blasted and constructed concrete vertical-slot fishways on both banks to provide fish passage around the falls. (DFO 1950) This 'habitat improvement' interfered with the food fishery, and destroyed some Wet'suwet'en Hereditary fishing holes by the blasting rock filling-in the salmon holding areas, and the Fish Ladders replaced fishing holes.

51. The Wet'suwet'en fished twelve sites on the Bulkley River left bank at Hagwilget (Gitxsan Wet'suwet'en Tribal Council 1987). During the winter of 1958-59, DFO blasted the rocks in Hagwilget Canyon that served to concentrate fish close to the canyons walls. None of the twelve Wet'suwet'en fishing sites were used again. The fishery was destroyed. DFO demonstrated bias against the Wet'suwet'en fishery because they were largely ignorant about Wet'suwet'en fisheries and their significance to the culture. Relative to its history, the Hagwilget Canyon fishery currently functions on a very small scale. The only documented benefit to the Hagwilget rock removal was that a new population of pink salmon was established in the Bulkley system upstream of the canyon.

52. Historically, sockeye returning to the Morice watershed numbered on the order of 50,000 to 70,000 fish and comprised as much as 10% of the total Skeena River escapement (Brett 1952). In 1954, the population collapsed and in the following thirty-five year period, 1955-1990, an annual average of 2,660 sockeye returned annually to the Morice watershed. Since 1954, and other than a few years in the mid-1990s, sockeye abundance has fluctuated at low levels.

53. From the late 1950s to 2000, the Moricetown Canyon fishery fulfilled much of the food, social, and ceremonial (FSC) needs of the Wet'suwet'en. However, since 2001, sockeye escapements in the Morice and upper Bulkley systems have been so low as to preclude Wet'suwet'en sockeye fishing. This 15-year voluntary conservation measure by Wet'suwet'en has imposed further hardship on Wet'suwet'en members. This is a testimony to Federal mis-management of the salmon stocks within Wet'suwet'en territories.

54. The shift from indigenous Wet'suwet'en to Federal control and management had adverse impacts on Wet'suwet'en culture, communities, and sustenance economics. In general, government fisheries policies in the upper Skeena watersheds during the 100-year period between 1880 and 1980 resulted in a legacy of over-fished stocks, conflict, and marginalization of aboriginal people. The effects of these policies can be clearly seen in the present, with the diminished abundance of Nanika, Copper, Bulkley, and Morice sockeye stocks limiting food fishing. Currently, the relatively small amount of Wet'suwet'en salmon that are harvested for food, social, and ceremonial use (FSC) are harvested with dipnets.

55. Over the last 120 years, federal management has transformed the community based, stock specific salmon fishery to a highly centralized, mixed-stock fishery that is relatively indiscriminate on impacts on species, runs and stocks. Besides the impacts from the industrial fisheries, salmon and freshwater fish habitat across the territory has been degraded by relatively massive industrial development.

Fisheries Management Summary

56. The Wet'suwet'en salmon resource formed the core of the economy. Not only has salmon nourished Wet'suwet'en people for thousands of years, but salmon are articulated in many aspects of the non-material culture. The role of salmon to the Wet'suwet'en appears to have been underestimated by non-Natives.

57. The Canadian government prohibited Wet'suwet'en traditional fisheries technology, then demanded that the food fish permit policy be adhered to. This essentially determined where and when Wet'suwet'en food fishing could be exercised. Since 2001, the Wet'suwet'en have not directed a food fishery on the Morice-Nanika sockeye stocks due to a lack of abundance. This has had profound effects including generations growing up without this essential knowledge and the means to pass that knowledge to younger generations.

58. Canada has fallen short regarding their efforts to manage the Wet'suwet'en fishery. These efforts are viewed as part of the wider effort to colonize and assimilate Wet'suwet'en into Euro-Canadian society that failed. The spectrum of Section 35 constitutionally protected aboriginal rights recognized and affirmed by Canadian courts established the legal foundation for direct participation by Wet'suwet'en in the protection, management, allocation, and benefits of fisheries resources within the territory.

59. A willingness on the part of Canada to change the status quo and engage in meaningful consultations that address and accommodate Wet'suwet'en title rights and interests is necessary. Only then will reconciliation of Wet'suwet'en and Crown interests that Section 35 is intended to achieve, be possible.

60. From the Wet'suwet'en perspective, there are aboriginal rights grounded in the Canadian Constitution with government obligations to protect and maintain water, wildlife, and fish and their habitats. The Wet'suwet'en are concerned with the potentially serious adverse

impacts and infringements to Wet'suwet'en fish, their habitat, and associated water quality issues caused by the proposed project and the potential CEAA approval.

61. Twenty six of the thirty-eight Wet'suwet'en territories drain into the southeastern portion of Skeena watershed. These territories support salmon runs, except for the two territories upstream of the impassable Clore Canyon on the Zymoetz (Copper) system.

62. All the territories support freshwater fish communities. Anadromous fish presence includes chinook, pink, chum, coho, and sockeye salmon, and steelhead, and pacific lamprey. Freshwater fish presence includes kokanee, bull trout, burbot, lake trout, mountain whitefish, suckers, northern pikeminnow, dace, sculpin, lake trout, Dolly Varden, chub, and rainbow trout.

Wetzin Kwah Watershed

63. Wetzin Kwah watershed is known in English as the Bulkley River watershed. The three current Wet'suwet'en sockeye stocks in the Bulkley watershed include:

    - Morice Lake sockeye with the Nanika River and Morice and Atna Lake subpopulations;
    - Upper Bulkley sockeye stocks with the Bulkley and Maxan subpopulations;
    - Sockeye stream spawners in the Morice and Bulkley rivers and their tributaries.

64. Wet'suwet'en Knowledge documents three sockeye stocks now extinct that formerly used Toboggan, Owen, and Lamprey lakes as nursery lakes. These relatively small sockeye salmon stocks have been greatly affected by coastal mixed-stock fisheries and by a series of habitat alterations which have mostly affected water quality and stream channels, but as well, have had impacts to holding, migrating, spawning, incubation, and rearing habitats.

65. In addition, the abundance of Wet'suwet'en sockeye salmon has been significantly diminished by an average 60% harvest rate since 1880 on Skeena sockeye runs from intensive Alaskan and Canadian commercial coastal mixed-stock fisheries (Gottesfeld and Rabnett 2008). This relatively high exploitation rate has had adverse effects on the Bulkley sockeye stocks in regard to abundance, rearing environment, and productivity.

66. Morice–Nanika sockeye are the largest and most important sockeye stock in the Bulkley Basin. Morice-Nanika sockeye were a large part of the Wet'suwet'en food fishery for at least the last 6,000 years. Relatively large Wet'suwet'en fisheries targeting these sockeye were conducted at Tse Kya (Hagwilget Canyon), Kyah Wiget (Moricetown Canyon), and to a lesser extent, Tsee Gheniinlii (Morice Canyon), Bii Wenii C'eek the (Morice-Owen confluence), Lhet Lii'nun Teezdlii (outlet of Morice Lake), and Neenekeec (Nanika River).

67. The Morice-Nanika sockeye were a large part of the Wet'suwet'en aboriginal food fishery. Moricetown Canyon was the site of the major Wet'suwet'en food fishery until 1824, when a large rockslide in Hagwilget Canyon shifted the fishery location there (Brown 1826). Both canyons had strong food fishery operations until the rock removal in Hagwilget Canyon in 1959 effectively eliminated that location. The most productive fishing was conducted by various basket traps and dipnets, but other harvest methods were productive as well, such as the stone trap. Basket traps and dipnets were banned in 1935 (Palmer 1964) and gaffing was introduced and promoted as the legal and primary fishing method up until the mid-1990s.

68. As noted above, since 2001, the Wet'suwet'en have not directed a food fishery on the depleted Morice-Nanika sockeye stocks. The Native Brotherhood of BC, in conjunction with the United Fisherman and Allied Workers Union, north coast gillnet groups, fish processing companies, as well as the Gitxsan, have supplied the Wet'suwet'en with some on a periodic annual basis since 2001. The Wet'suwet'en are thankful for these fish. However, they have suffered in numerous ways due to government mismanagement of the

coastal fishery and their in-river fisheries that limited their ability to fish, limited their ability to feed their families, and prevented the transfer of knowledge to younger generations.

69. Morice-Nanika sockeye are critically important for food, social, and ceremonial (FSC) needs. Morice-Nanika sockeye stock restoration is a high priority to the Wet'suwet'en, as it is the last significant anadromous sockeye salmon population remaining on their traditional territory.

Morice Sockeye

70. The Morice sockeye stock is composed of two sub-components: Nanika River spawners and Morice and Atna lakes beach spawners. Morice sockeye spawn and rear in the Gitdumden–Lhudis Bin territory and the Gilseyhyu–C'iniggit Nenikekh territory. Morice sockeye are commonly termed Morice-Nanika sockeye as the majority – roughly two-thirds – spawn in Nanika River and rear in Morice Lake.

71. Historically, sockeye returning to the Morice Watershed numbered on the order of 50,000 to 70,000 fish and comprised as much as 10% of the total Skeena River escapement (Brett 1952). Six years of escapement records from 1945 to 1963, show annual averages of 42,600 sockeye with a range from 7,500 to 75,400 fish. In 1954, the population collapsed and in the following thirty-five year period, 1955-1990, an annual average of 2,700 sockeye returned to the watershed. Average annual returns in the 1980s were 2,500 fish, while the annual average returns in the 1990s were 21,500 fish. This robust increase in the 1990s fell off in 2000. Since 2000, returns to the Nanika appear to be decreasing; escapements have ranged between 3,000 to 10,000 sockeye with an annual mean of 6,685 sockeye.

72. Since the mid-1950s, Morice-Nanika sockeye abundance has mostly fluctuated at levels below historical escapements with low fry densities in relation to the juvenile sockeye

rearing capacity in Morice Lake. Constraints to sockeye abundance stem from the high exploitation rates in the Alaskan, Canadian, and First Nation fisheries and low production from the ultra-oligotrophic Morice Lake. The Morice Lake sockeye stock's spawning and rearing habitat is in its natural condition; it has not been impacted by land-based development activities.

73. Morice-Nanika sockeye usually reach the mouth of the Skeena in late-June to mid-July with a peak in the first week of July (Cox-Rogers 2000). When sockeye were counted past the Alcan counting tower near Owen Creek, the peak migration occurred in early to mid-August (Farina 1982). The main sockeye run usually hold and school in Morice Lake before ascending the Nanika River to the 3 km reach downstream of Nanika Falls where the principal spawning grounds are located (Robertson et al. 1979).

74. Secondary Nanika River spawning grounds are scattered downstream to Glacier Creek. Shepherd (1979) notes that Nanika River sockeye peak spawning occurs during the third week of September. Shepherd (1979) presents age data from 1965 to 1975 for Nanika River sockeye, which indicates the majority of spawners were five and six year old (90%), both having spent two years (86%) in freshwater. In all study years, egg retentions were low in Nanika sockeye spawners (Shepherd 1979).

75. Morice Lake sockeye spawners, who are thought to be composed exclusively of beach spawners, utilize scattered beach spawning grounds at the south end of the lake. The main beach spawning occurs for 3 km north of Cabin Creek (Vernon 1951, Bustard and Schell 2002).

76. Finnegan (2006) reports recent sockeye abundance estimates have been generated from the Wet'suwet'en Fisheries mark-recapture program located at Moricetown Canyon. Beach seining at Idiot Rock below the canyon, and by dipnet at the fishway allows T-bar anchor tagging, which are stratified by weekly periods utilizing numbered tags. Recapture is at the fishway and tag recovery on the various spawning grounds. The aggregate escapement is determined from the Nanika River visual and swim surveys, and population

estimation. The marked to unmarked ratio is determined in the upper Bulkley, on the Nanika River spawning grounds, and in Morice and Atna lakes to account for lake spawners (Finnegan 2006).

77. Following emergence, sockeye fry emigrate from spawning beds into Morice Lake from late-May to late-July, usually prior to or coincident with peak annual flows (Shepherd 1979). Morice Lake serves as the freshwater rearing lake for sockeye spawned in the Nanika River, Morice Lake, and possibly an unknown amount from Atna Lake. Morice Lake sockeye juvenile studies were conducted primarily in the 1960s, 1970s, and early 1980s and reported on by Palmer (1986b) Crouter and Palmer (1965), Shepherd (1979) and Envirocon (1984a, 1984b).

78. Shortreed et al. (1998, 2001) and Shortreed and Hume (2004) report on more recent sockeye juvenile sampling conducted in 1993 and 2002. Lake rearing habitat capacity and fry production relationships are presented in Cox-Rogers et al. (2004). In Morice Lake, understanding is still evolving in regard to juvenile sockeye rearing and smolt production dynamics such as age and growth, distribution and abundance, movement timing, and predation.

79. Due to the low nutrient input into Morice Lake, phytoplankton and zooplankton biomass levels are relatively low, resulting in very slow growth rates for sockeye fry (Costella et al. 1982). In contrast with other Skeena sockeye stocks, which spend one year in freshwater, over 85% of Nanika River sockeye spend two years in Morice Lake, and 90% return as four- (42's) and five- (53's) year-olds (Shepherd 1979). Age-0 fall fry are the smallest in any sockeye nursery lake in BC. The large percentage of two-year-old smolts in Morice Lake is also indicative of its low productivity (Shortreed et al. 1998). Sockeye smolts migrate out of Morice Lake from late April to August with a peak migration in May (Shepherd 1979, Smith and Berezay 1983).

80. Morice sockeye salmon returning as adults from the sea to spawn and die provide a very important nutrient link between the marine and freshwater environment. These salmon

accumulate over 90% of their biomass during the marine phase of their life cycle (Groot and Margolis 1991). Considerable research has highlighted the important role of anadromous salmon in importing marine-derived nutrients (MDN) to freshwater and riparian ecosystems. These subsidies support diverse food webs and increase the growth and survival of juvenile salmon during their freshwater residency (Scheuerell et al. 2005).

81. Recent research and reviews (Quinn 2005, Reimchen et al. 2003, Wilson and Halupka 1995) reveal that entire ecosystems benefit in direct and indirect ways from decomposing salmon. Wilson and Halupka (1995) term salmon a keystone species in recognition of salmon's special role enriching otherwise nutrient-poor systems. Different sockeye life history stages likely play different roles in the various habitats they occupy throughout their life cycle. The intrinsic importance of salmon to ecosystem functioning prompts concern for adequate escapement from an ecological perspective. The abundance of returning Morice sockeye spawners is critical to maintenance of fish populations rearing in streams and lakes. It follows that salmon are important components of numerous freshwater and marine food webs throughout their life history.

82. Decreased availability of salmon carcass material can significantly reduce the nutrient influx to natal streams and nursery lakes, and over time, diminish productivity. The resulting decrease in juvenile fish size can reduce freshwater and early marine survival, reduce the number of returning adults, and further reduce stream and lake productivity (Bilby et al. 1996). Runs of adult Morice sockeye may continue to decline, returning fewer nutrients to already nutrient deficient streams and lakes, particularly if combined with overfishing or reduced ocean productivity of the now, diminished stock. Thus a negative feedback loop from nutrient-food chain impacts can be very significant to lake and stream rearing species.

83. Understanding marine derived nutrient loss helps to explain the continuing decline of Morice-Nanika sockeye. It is clear that sockeye escapement needs to increase to enable primary and secondary production in Morice Lake.

84. The abundance, productivity, and carrying capacity status of Morice sockeye are rated as poor. The decline of Morice-Nanika sockeye due to high exploitation rates and low-productivity issues in Morice Lake has deeply impacted the Wet'suwet'en and their culture. The Wet'suwet'en FSC 15-year fishing moratorium of this stock is proof of their governance system, and any alteration or destruction to the fish and fish habitat is an infringement of Wet'suwet'en title and governance.

Upper Bulkley Sockeye

85. Sockeye salmon used to spawn in Maxan Creek and most likely in Bulkley and Maxan lakes, which lie in Laksilyu–Tasdlegh territory. Recorded escapements ranged between 50 and 600 until 1978. The stock or stocks then appear to have collapsed and records in the 1980s show few or no fish returning.

86. In 2001, several sockeye were spotted at the coho counting weir in Houston that may have been heading upstream to Bulkley Lake. Recent observations by Finnegan (pers comm, 2011) indicate sockeye spawning in the Bulkley mainstem downstream of McQuarrie Creek. It is unknown if these are displaced Bulkley–Maxan sockeye so a separate stream spawning population. There is little information concerning upper Bulkley sockeye life history, such as run timing, age structure, persistent spawning locations, and productivity.

87. The Upper Bulkley River runs downstream for 57 km from Bulkley Lake across the subdued, rolling Nechako Plateau before joining the Morice River. The valley bottom is characterized by relatively intensive land use in the way of highway and rail corridors, and agricultural and rural residential development. Impacts to salmon habitat include loss of riparian areas, confinement of the river channel between the valley wall and the rail and highway corridors, loss of floodplain connectivity, degraded water quality and quantity from cattle feed lots, water withdrawals, and adverse effects from mineral and forest development activities.

88. Fish access issues involve the Bulkley Falls, which at low flows can impede upstream fish passage, as well as beaver dams, high stream temperatures, and infrequent avulsions. Maxan Creek does not have sufficient flow to allow sockeye passage in some summers. Joseph (pers comm, 2001) noted this was reportedly the case in 2001, a relatively wet year.

89. The two principal reasons why sockeye are not spawning in the upper Bulkley are:

- Lack of long-term escapement due to high exploitation rates in the coastal mixed-stock fishery;
- Severely degraded habitat.

Upper Bulkley sockeye are at high risk of extirpation and require a fully resourced recovery plan.

Upper Zymoetz Sockeye

90. Sockeye salmon spawn in the upper Zymoetz (Copper) River and rear in the headwater lakes chain, which lies in Laksilyu–Cel Winits territory. Two significant Wet'suwet'en communities, Sde Keen Teezdlii and Keel Weniits Tl'oogh K'et were supported by the sockeye fishery. Sde Keen Teezdlii was located on the north shore of McDonnell Lake at the outlet and connected by the grease trail to Kyah Wiget, to Tsee Hodiin'aa Biit (Jonas Flats), and beyond to Lhet Lii'nun Teezdlii on Morice Lake (Naziel 1997). Keel Weniits Tl'oogh K'et is located at Six Mile Flat close to the outlet of Dennis Lake.

91. Sockeye enter the Zymoetz River in July, spawning primarily during the months of August and September in the upper watershed. Important spawning areas are in the Zymoetz River mainstem from Serb Creek to McDonnell Lake, and the reaches upstream of McDonnell Lake to Aldrich Lake, notably the 3 km reach upstream of Passby Creek.

Upstream of McDonnell Lake, the meandering low gradient reaches, as well as the lakes themselves, are stable with moderated flow and temperature regimes and this area supports the majority of the spawning.

92. Several inlet streams to McDonnell, Dennis and Aldrich lakes, as well as lower Silvern and lower Passby creeks, are reported to be also used for spawning (DFO 1991b). The upper Copper sockeye stock rears in three co-joined headwater lakes: McDonnell, Aldrich and Dennis lakes. Cox-Rogers (2010) notes that the optimum escapement for the upper Copper sockeye nursery lakes is McDonnell–3,600, Dennis–550, and Aldrich–1,100 sockeye for a system total of 5,250 sockeye.

Morice Chinook

93. Morice River chinook salmon are an important salmon stock to the Wet'suwet'en. Morice chinook contribute approximately 30-33% of the total Skeena system chinook escapements in the 1990s. In the recent past, this stock has constituted as much as 40% of the total Skeena River chinook escapement (DFO 1984). In the late 1950s, an estimated escapement of 15,000 Morice River chinook spawners was recorded. From 1960 through to the mid-1980s, an average of 5,500 spawners returned, after which chinook spawner escapement increased; this is attributed to the reduced catch provisions in the Pacific Salmon Treaty. The 1990s and 2000s returns averaged 17,900 and 10,600 respectively and is similar to the late 1950s returns (~15,000).

94. Adult chinook salmon begin their migration into the Morice River system about mid-July and spawn from August to October; peak spawning was observed by Shepherd (1979) to be mid-September and ending by mid-October. Approximately 80% or more of Morice chinook spawning occurs principally in the upper 4 km of the Morice River downstream of the lake outlet.

95. Morice chinook mostly spend less than one year in freshwater and return mainly as four or five-year-olds (85% in 1973 and 1974). In comparison with other Skeena chinook stocks, Shepherd (1979) notes the Morice River produces more six-year-olds than other systems in the Skeena (12% average versus 3% average) and fewer two and three-year-olds (3% versus 17%).

96. Chinook fry migrate or are displaced downstream upon emergence between mid-April and early-July, though typically peak emergence is in late-May to early-June. Downstream movement of the one-year-old smolts occurs between mid-April and mid-August, though it appears to peak in early June. Survey results from Smith and Berezay (1983) indicates that chinook fry overwinter throughout most of the Morice River mainstem. However, Reach 2 located between Thautil River and Owen Creek, with abundant side channels and large woody debris is considered the most productive rearing area.

97. The Wet'suwet'en believe that there is a connection between our ancestors and the salmon that ensure community well-being and health. Wet'suwet'en laws regulating human behavior toward the salmon strengthen the moral fiber and the social order. Any change to chinook abundance, behavior, and habitat due to industrial activity, including the Pacific NorthWest LNG project, will be an infringement to the Wet'suwet'en title and the integrally associated rights of management and governance.

Upper Bulkley Chinook

98. The 57 km long Bulkley mainstem upstream of the Morice River confluence is termed the upper Bulkley. The upper Bulkley River is an important migration route for two chinook stocks: the spring run that passes through to the upper Bulkley above the Bulkley Falls and a summer run. The spring and summer chinook run timing at the Moricetown Canyon appears to split at about July 30th (Peacock et al. 1997). The upper Bulkley early run is genetically distinct and of a smaller size than the typically more abundant and later runs. The status of the early Bulkley run is unknown.

99. Bulkley tributary Buck Creek supports a small chinook population ranging from 12-100 spawners recorded since 1970 on a discontinuous basis. Spawning is scattered throughout the mainstem as far upstream as the falls at the top end of the second canyon (Reach 8, ~36 km). The series of cascades in Reach 3 at 7.3 km is impassable in some years due to water conditions. Byman Creek has historical references to chinook spawning, and juveniles have been recorded in Reach 1 up to the highway crossing (DFO 1991e). Current escapement status is unknown.

100. Richfield Creek historically supported moderate numbers of chinook spawners, ranging from 0-100 in the lowest reach close to the Bulkley confluence (Hancock et al. 1983). There is no recorded escapement since 1964, and current escapement status is unknown.

101. There are serious issues with upper Bulkley chinook habitat, which overall, is regarded as the most degraded salmon habitat in Skeena watershed. The valley bottom has been impacted by a century of agricultural and rural residential development, and also by the highway and rail corridors that pass through the floodplain. Impacts to salmon habitat include loss of riparian areas, confinement of the river channel between the valley wall and the rail and highway corridors, loss of floodplain connectivity, degraded water quality and quantity from cattle feed lots, water withdrawals, and adverse effects from forest development activities.

102. Upper Bulkley River chinook abundance is thought to have been diminished by heavy exploitation rates in the coastal mixed-stock fishery and to have been adversely affected by significant habitat modifications. Wet'suwet'en have serious concerns regarding the diminished chinook abundance and the state of the spawning and rearing habitat. Additional cumulative effects will cause impacts to the chinook stock and its habitat, this is considered a serious infringement to Wet'suwet'en culture.

103. No adult coho have been recorded in Maxan Creek since 1972, and juvenile sampling efforts from 1987-90 did not record coho presence (Pendray 1990). Wet'suwet'en have

concerns regarding the depressed coho abundance and the degraded state of coho spawning and rearing habitat. Upper Bulkley coho abundance is rated as threatened.

104. Any imposition by government and industry that would impede or make it impossible to pursue our traditional practices and use of our resources is a direct and potentially significant infringement to Wet'suwet'en title.

Morice Coho

105. Since 1950, the relative contribution of coho from the Morice River system to Skeena coho escapement as a whole is approximately 6% (Bustard and Schell 2002).

Morice and Bulkley Steelhead

106. In recent years, the Bulkley-Morice likely accounts for 30% to 40% of the total Skeena steelhead escapement based on population estimates, genetic markers, and data from the Tyee Test Fishery (Beacham et al. 2000, Mitchell 2001b).

107. Most Morice steelhead remain in freshwater for three (24%) or four (70%) winters prior to smolting, which is a longer freshwater residency time than in the six other summer-run steelhead rivers studied in the Skeena system (Whately 1978). The upper Bulkley steelhead population is considered poor and at high risk. The habitat is considered severely degraded at the sub-basin level.

Bulkley–Morice Lamprey

108. Pacific lamprey are present in the Skeena mainstem upstream from Lakelse River with presence noted in the Lakelse, Kitsumkalum, Kispiox, Babine, and Bulkley watersheds. Within Bulkley system, lamprey are present throughout, though especially abundant in the Morice and upper Bulkley systems.

109. Lamprey are an important food fish for the Wet'suwet'en, who harvest them in the Bulkley mainstem, primarily at Hagwilget and Moricetown canyons with dipnets, and also on a variety of tributaries using traps and nets. Lamprey fisheries on these tributaries were conducted at Owen, Lamprey, Houston Tommy, and Gosnell creeks and Thautil River in the Morice system, and in Byman, Richfield, and Ailport creeks in the upper Bulkley system.

110. Wet'suwet'en fishers have noticed a sharp decline in this food resource. There is no current data towards abundance. The key component of Wet'suwet'en management regarding lamprey is to ensure their sustainability and well-being remains intact for FSC purposes. Lampreys are sensitive to environmental change, especially in regards to water quality. Any adverse change to this Wet'suwet'en management mandate is an infringement to Wet'suwet'en title and governance.

Wetzin Kwah Watershed Salmon & Habitat Status

111. The abundance, productivity, and carrying capacity status of Morice sockeye are rated as poor. The current decline of Morice–Nanika sockeye due to high exploitation rates and low-productivity issues in Morice Lake has deeply impacted the Wet'suwet'en and their culture. The Morice-Nanika Sockeye Recovery Plan currently appears to be stalled due to a lack of resources and commitment. Morice–Nanika sockeye are rated as threatened and will become endangered if limiting factors are not reversed.

112. The Toboggan, Owen, and Lamprey sockeye stocks are considered extirpated.

113. The upper Bulkley sockeye stocks – Maxan and Bulkley – are in imminent threat of extirpation resulting from lack of escapement due to high exploitation rates in the coastal mixed-stock fishery and degraded habitat. These upper Bulkley sockeye stocks require a fully-resourced recovery plan. The FSC fishing 15-year moratorium by Wet'suwet'en of the Morice-Nanika and upper Bulkley sockeye stock is a start in recovery; however,

mixed-stock fisheries and habitat management issues require management intervention by the federal and provincial agencies along with the Wet'suwet'en. The current abundance, productivity, and carrying capacity status of upper Copper sockeye is rated as low to moderate, but stable.

114. Morice chinook spawning and rearing habitats are currently intact and the relatively productive stock is considered stable. Upper Bulkley River chinook abundance is thought to have been diminished by heavy exploitation rates in the coastal mixed-stock fishery and to have been severely affected by habitat modifications. The upper Bulkley chinook stocks are rated as threatened and require a fully-resourced recovery plan initiative.

115. Wet'suwet'en have concerns regarding the diminished upper Bulkley coho abundance and the degraded state of their spawning and rearing habitat, and rate them as special concern and require recovery planning. Morice coho abundance is depleted and sensitive to human activity and natural disturbance events. Morice coho are rated as special concern and may require recovery planning.

116. Morice steelhead abundance and productivity are considered stable; however, their juvenile rearing habitat is rated at moderate to high risk. There are issues with steelhead abundance and their habitat in the upper Bulkley with their status currently considered uncertain due to insufficient information. Steelhead habitat in the upper Bulkley is severely degraded.

Specific Wet'suwet'en Concerns

- Proposed development such as the Pacific NorthWest LNG project creating additional cumulative impacts;
- Continuing lack of habitat management in relation to the upper Bulkley and Morice salmon stocks;
- Coastal mixed stock and in-river fishing leading to over fishing small and less productive salmon populations;
- Changing ocean conditions, PNW LNG Project has potential to alter marine conditions, which could be expressed in poor marine survival rates for Morice and Bulkley stocks.
- The lack of meaningful consultation and accommodation;
- CEAA seemingly not hearing nor responding to Wet'suwet'en concerns regarding adverse impacts to Wet'suwet'en House territories and consequently affecting the ability of those House members to exercise and protect their Section 35 recognized and affirmed rights of the Canadian Constitution;
- Lack of discussion with the Wet'suwet'en regarding justification of infringement issues in regard to Section 35 recognized and affirmed rights;
- The proposed project will potentially impact most important Wet'suwet'en salmon stocks that are relied on by all of our Nation's members. These said stocks are currently fluctuating at low levels of abundance and require recovery plan implementation;
- Wet'suwet'en seeking justification from the federal government for potential infringements to our rights and title resulting from the proposed project;
- The lack of response from DFO in providing salmon escapement data relevant to the Morice/Nanika stocks that illustrated their diminished abundance and sensitivity to habitat modifications, as well as noting the self-imposed sockeye conservation

strategy and the inability of Wet'suwet'en to meet their constitutionally protected food, social, and ceremonial (FSC) needs;

- Wet'suwet'en concerns regarding inconsistencies and the inadequacy of the current CEAA regulatory process, particularly where Wet'suwet'en aboriginal interests are overlooked and denied;
- The Wet'suwet'en need for the federal government to address these issues with immediate and direct action.

117. 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. 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 their final reconciliation.

118. 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 existing title and rights within the 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.

119. This submission shows that Wet'suwet'en have an intricate cultural relationship to their lands, resources, and environment. This long-standing relationship encompasses social, cultural, spiritual, economic, political, legal dimensions, and connections to the environment. Salmon populations that migrate from Wet'suwet'en territories require recognition to their plight, and enhancement efforts. For the Wet'suwet'en, any loss of irreplaceable salmon stocks is seen as an infringement to our recognized and affirmed rights.

120. It is clear that past and present development both within and external to Wet'suwet'en territories have had adverse effects on:

- Wet'suwet'en health and socio-economic conditions;
- Physical and cultural heritage;
- The current use of lands and resources for traditional purposes.

121. These cumulative effects have significantly affected the sustainability and well-being of the Wet'suwet'en, their communities, and culture. More specifically, they have affected Wet'suwet'en cultural expression associated with harvesting and processing activities, language transfer, spiritual teachings, and respect for the environment.

122. It is important to note the above stated development and subsequent adverse effects have occurred without good faith negotiations, treaties or agreement, consultation and accommodation, or free, prior, and informed consent. This situation is in conflict with the principles and findings of the Canadian Constitution, the Canadian courts, and international law. This is an infringement on Wet'suwet'en rights.

123. In regard to the proposed project, the Office of the Wet'suwet'en, on behalf of the potentially affected Clans, Houses, and members, has carefully reviewed the Environmental Assessment Report. The Environmental Assessment results indicate that major key components related to the report are in deep conflict with core Wet'suwet'en laws and values.

124. Neither Canada nor its agencies, such as CEAA, nor the proponent, have disclosed information with any depth of understanding regarding potential direct and indirect impacts on the Wet'suwet'en title rights and interests. This information should enable meaningful consultation regarding the significance, duration, and value of singular impacts and cumulative effects. This information should form the foundation of which potential adverse effects to Wet'suwet'en title and rights are assessed.

125. The Wet'suwet'en note that the domestic tools available to manage lands and resources such as Canada's and British Columbia's acts and legislation were developed prior to the recognition of Aboriginal rights in the Canadian Constitution. Hence the tools needed to address and resolve aboriginal rights infringements are yet to be developed, and the Office of the Wet'suwet'en has been and are currently seeking solutions to this issue.

126. Aboriginal rights, is an example is where a right to fish implies water quality and habitat supportive of the fishery. But, the level of environmental protection varies with ecosystem in which aboriginal peoples live. For the Wet'suwet'en, our historical practices, customs, and traditions are integral to our culture around the availability of fish resources. The conservation and management of our Wet'suwet'en resources is consistent with our Wet'suwet'en aboriginal beliefs and practices, and with the enhancement of Wet'suwet'en aboriginal rights.

127. Through the courts it states that: the burden of justifying any interference with that right is on the Crown. The fiduciary duty on the Crown, is not restricted to the Crown in right of Canada. It applies as well to the Crown in right of British Columbia to varying degrees in accordance with the situation prevailing. The government is required to bear the burden of justifying any legislation that has some negative effect on any aboriginal right protected under Section 35 (1).

128. Section 35 (1) did not create Aboriginal Rights; it accorded constitutional status to those rights, which were "existing" in 1982. Aboriginal title was a common law right recognized well before 1982 (ie. *Calder [v. Attorney-General of British Columbia, (1973) S.C.R. 313*].

129. In *Delgamuukw*; when speaking towards Aboriginal rights and the right of the broader Canada Chief Justice Lamer said:

"Aboriginal rights are a necessary part of the reconciliation of aboriginal societies with the broader political community of which they are part; limits placed on those rights are, where the objectives furthered by those limits are of sufficient importance to the broader community as a whole, equally a necessary part of that reconciliation" Delgamuukw: 1107-08 (para. 161).

130. The Wet'suwet'en are looking for such measures at the broader scale to prevent serious impairment of Wet'suwet'en aboriginal rights of present and future generations regarding our salmon populations and access. The Wet'suwet'en claim that regardless of the consultation process, nothing prevents them from challenging the validity of authorizations that has detriment to our way of life.

131. The Wet'suwet'en maintain as the adequacy of consultation is only one factor to consider in the determination of whether Crown infringement is constitutionally justifiable. It was expressly recognized in Haida at para. 56 that third parties could be liable to aboriginal peoples. Also, Lambert J. specifically concluded in Haida Nation v. British Columbia (Minister of Forests), 2002 BCCA 462 at paras. 75-76, that an aboriginal claim in trespass may be founded on a good prima facie case for aboriginal title against anyone who violates the title once conceded or proven.

Recommendations

132. The Wet'suwet'en state that the proposed Pacific NorthWest LNG Project has a cumulative effect to Wet'suwet'en culture, and mortality to fish. The Crown is required to consult as required under subsection 5 (1) of CEAA 2012. The Crown has knowledge towards Wet'suwet'en right, and contemplates conduct that might adversely affect that right. The Wet'suwet'en state that the lack of information from BC EAO regarding the proposed Pacific NorthWest LNG Project has skewed the adequacy of consultation with the Wet'suwet'en regarding their salmon resources, and will have an adverse effect to Wet'suwet'en interest.

133. The Wet'suwet'en see the nature of the duty, and any possible remedy for its breach depends on the level of duty to consult with the Wet'suwet'en in this regard. The Wet'suwet'en have in this submission provided information that highlights the level of concern for our salmon stocks, and the cultural reliance to them.

134. Considering the possible magnitude of cumulative environmental effects on Wet'suwet'en culture, and the lack of recovery plans or strategies to address those effects. The Office of the Wet'suwet'en require the governments of British Columbia, and Canada to sit down with the Wet'suwet'en to find resolution.

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