

RR 2 3A-492 Arrow. Rd Invermere, BC, V0A-1K2 Ph: 250.341.3678 Fax: 250.341.3683

June 10, 2016

The Right Honourable Justin Trudeau, Prime Minister of Canada
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2

The Honourable Rachel Notley, Premier of Alberta
Office of the Premier
307 Legislature Building
10800 - 97 Avenue
Edmonton, Alberta T5K 2B6

The Honourable Christy Clark, Premier of British Columbia
Office of the Premier
West Annex, Parliament Buildings
Victoria, BC V8V 1X4

Attention: The Right Honourable Justin Trudeau, The Honourable Rachel Notley and The Honourable Christy Clark

Dear Mr. Trudeau, Ms. Notley and Ms. Clark

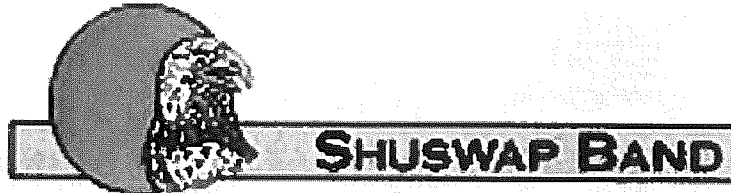
Re. Consultation, Indigenous Consent and the Trans Mountain Expansion Project

We are a collective of Indigenous leaders representing Nations impacted by Kinder Morgan's Trans Mountain Expansion Project (TMX). As you know, on May 19, 2016, the National Energy Board recommended the conditional approval of TMX subject to 157 conditions.

We are writing to advise you that engagement of our Nations with respect to TMX has been woefully inadequate and not in line with your respective governments' constitutional and international obligations.

Domestic Law

Based on *Haida Nation* and other related court decisions, the law in Canada is clear that prior to proof of Aboriginal rights and title, your governments have an obligation to consult with our Nations whenever you *contemplate* a decision that *may* impact our asserted Aboriginal rights and title. The content of this duty varies with the circumstances, but the evidence is clear that TMX could have a significant adverse effect



RR 2 3A-492 Arrow. Rd Invermere, BC, V0A-1K2 Ph: 250.341.3678 Fax: 250.341.3683

In addition to the requirements established by Canadian courts, the federal government has recently adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In the words of Indigenous Affairs Minister Carolyn Bennett, Canada is "now a full supporter of the declaration, without qualification." In some cases, full and good faith implementation of UNDRIP requires the federal government to seek or work in good faith to obtain the free, prior and informed consent (FPIC) of Indigenous people.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 32.2

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources....

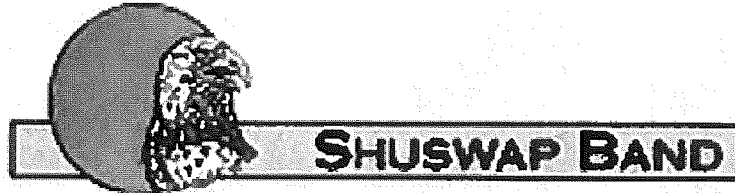
Importantly for TMX, which will involve the transportation and storage of hazardous materials on our territories, Canada's obligations under Article 29.1 of UNDRIP go further than a mere need to "seek" or "consult and cooperate in good faith ... to obtain" our consent. Article 29.1 of UNDRIP requires you to take effective measures to ensure that bitumen and other petroleum products are not stored on our territories without our consent.

Article 29.1

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

All of these consent requirements are prospective: in order for Canada and the Provinces to issue any approvals for TMX, you must first seek and obtain our consent. However, there is also the issue of the development of the original Trans Mountain Pipeline, which occurred without our consent. In this regard, these historic confiscations and use of our lands require redress, restitution and compensation:

Article 28.1



RR 2 3A-492 Arrow. Rd Invermere, BC, V0A-1K2 Ph: 250.341.3678 Fax: 250.341.3683

compliance, we intend to propose creating an Indigenous led independent safety and environmental oversight body with participation from all Nations affected by the existing pipeline and the TMX. It is clear to us that the NEB cannot be entrusted to protect our Nations' interests and there are ample precedents for successful Indigenous led oversight throughout various industries and jurisdictions.

This concept of Indigenous oversight is presented on a without-prejudice basis, and you should not infer that accepting it will result in our consent or that it, in and of itself, will be acceptable to our constituents. Rather, we include it in this letter to demonstrate the type of potential mitigation initiatives that could begin to satisfy your constitutional and international obligations to our Nations.

For the purposes of this initial engagement, please address all communication to the leaders listed below who have been identified as the initial members of our engagement working group:

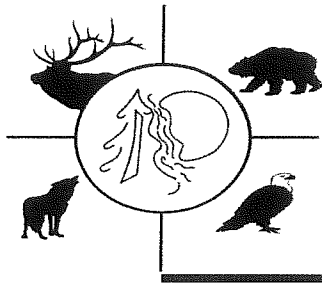
Chief Aaron Sam
Lower Nicola Indian Band
181 Nawishaskin Lane
Merritt, BC V1K 0A7

Chief Ernie Crey
Cheam First Nation
52130 Old Yale Road
Rosedale, BC V0X 1X1

We look forward to hearing from you on or before July 15, 2016.

Yours Truly,

Chief Barb Cote
Shuswap Indian Band
RR2, 3A - 492 Arrow Rd
Invermere BC V0A 1K2



Coldwater Indian Band

#301-230th Street Coldwater Reserve
P.O. Box 4600 Stn Main Merritt, BC V1K 1B8
Phone: (250) 378-6168 Fax (250) 378-6153

June 15, 2016

Chief Aaron Sam
Lower Nicola Indian Band
181 Nawishaskin Lane
Merritt, BC V1K 0A7

Chief Ernie Crey
Cheam First Nation
52130 Old Yale Road
Rosedale, BC V0X 1X1

Dear Sirs:

Re: Consultation, Indigenous Consent and the Trans Mountain Expansion Project

I write on behalf of the Coldwater Indian Band (“Coldwater”) to express our support for the concerns you raise in your June 15, 2016 letter, endorsed by various Bands and other First Nations groups, to Prime Minister Justin Trudeau and Premiers Rachel Notley and Christy Clark regarding the Trans Mountain Expansion Project (the “Project”).

The proposed Project runs through Nlaka’pamux Territory, including the Coldwater Valley and directly through the back yards of many Coldwater members on Coldwater Indian Reserve No. 1. As a result Coldwater, too, has grave concerns about the impacts of the proposed Project on our rights and interests.

We share the concerns expressed in the letter that engagement with First Nations with respect to the proposed Project has been woefully inadequate and not in line with the federal and provincial governments’ constitutional and international obligations to First Nations. This has certainly been Coldwater’s direct experience. We agree that, as a first step, the governments of Canada, BC and Alberta should be seeking the free, prior and informed consent of First Nations for the Project.

In addition to the concerns outlined in your June 15th letter, Coldwater has a number of serious, outstanding concerns with the proposed Project, and its impacts on Coldwater’s rights and interests, including with respect to Project routing through the Coldwater Valley and impacts on our drinking water supply. We have raised these concerns with both the federal and provincial Crowns and intend to continue to engage directly with them to address Coldwater’s concerns with the proposed Project, including the legal and procedural concerns outlined in your letter. As such, while we fully support the position you take in the letter, we will

not be signing on to it directly. Nonetheless, I am hopeful that we may be able to work together with you and other First Nations groups as your plan for developing a process by which the federal and provincial government might meet their legal obligations to First Nations moves forward. Please keep us informed on your plans and progress with your engagement work so that we may pursue such opportunities as they arise.

Respectfully,



Chief Lee Spahan
COLDWATER INDIAN BAND

cc. Justin Trudeau, Prime Minister of Canada (justin.trudeau@parl.gc.ca)
Rachel Notley, Premier of Alberta (premier@gov.ab.ca)
Christy Clark, Premier of British Columbia (premier@gov.bc.ca)

MISSION STATEMENT

To enhance and sustain our quality of life through wellness and culture, and to utilize and preserve all our resources for now and future generations.