



File: 7409643
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July 23, 2013

Chief and Council
Nak'azdli First Nation
PO Box 1329
Fort St James, BC V0J 1P0

Dear Chief Fred Sam:

The Province of British Columbia is informing the Nak'azdli First Nation that the Province intends to proceed to a decision on the three applications for Temporary Use Permits for investigative purposes, first brought to your attention May 15, 2013.

PROPOSAL: Temporary Use Permit Industrial-General
APPLICANT: Northern Gateway Pipelines Limited Partnership (Enbridge)
LOCATION: Stuart River, Muskeg River, and Salmon River crossings.
RESPONSE is requested by: July 26, 2013

The Province would like to extend a final opportunity for the Nak'azdli First Nation to provide comments relating to the Applications for Temporary Use Permit and associated authorizations. The table lists the authorizations that decision makers will proceed to evaluate.

Authorization	Agency Decision Maker	Agency Responsible
<i>Land Act</i> - Temporary Use Permit 7409644; 7409645; 7409643	Director, Authorization Omineca Region	Ministry of Forests, Lands and Natural Resource Operations
Other Associated Crown Applications for this Activity		
<i>Forest Act</i> Occupant Licence to Cut L49680 L49676 L49670	District Manager, Fort St James Natural Resource District District Manager, Prince George Natural Resource District	Ministry of Forests, Lands and Natural Resource Operations
<i>Forest Practices Code of British Columbia Act</i> Special Use Permit (temporary access) S25710 S25705 S25700	District Manager, Fort St James Natural Resource District District Manager, Prince George Natural Resource District	Ministry of Forests, Lands and Natural Resource Operations

I have reviewed the letter of June 4, 2013 from the Yinka Dene Alliance to the Premier that was copied to me. In that letter concerns were raised about the scope of consultation and the proposed approval of any permits relating to the Northern Gateway Pipelines project. As you are aware, the Province has identified five requirements that must be met before the Province will support any heavy oil pipeline project, which include addressing legal requirements arising from the duty to consult, and providing First Nations with the opportunities, information and resources necessary to participate in and benefit from a heavy-oil project. In the letter of May 24, 2013, the Premier has stated that following cross-examining by the provincial government during the Northern gateway Pipelines hearings, it was made clear that the five conditions had not been met.

As mentioned previously, with projects of this nature, it is common practice for proponents to undertake investigative activities well in advance of, or during review. Consideration of the Temporary Use Permits is separate from the review by the Joint Review Panel (National Energy Board and Canadian Environmental Assessment Agency) of the Northern Gateway Pipeline project. Given the uncertainty of the outcome of the federal review and decision making process, the Province is of the view that it is appropriate to limit the scope of consultation to the impacts of the Temporary Use Permits. If the proposed project is approved by the federal government, Enbridge will need to apply for additional provincial authorizations and further consultation will be conducted at that time, at the appropriate level.

The Province recognizes it has a duty to consult with each First Nation that may be adversely affected by a proposed decision. The Province has been communicating directly with the Nak'azdli Chief and Council as the representatives of the Nak'azdli First Nation. While the June 4, 2013 letter asks the Province to contact a Yinka Dene Alliance representative to set up a meeting, that letter does not indicate that the Yinka Dene Alliance has the authority to consult on behalf of the Nak'azdli First Nation. Until the Province receives a letter from the Nak'azdli First Nation authorizing the Yinka Dene Alliance to consult with the Province on behalf the Nak'azdli First Nation, the Province will continue to contact the Nak'azdli Chief and Council in consultation matters.

When considering potential impacts on Nak'azdli Aboriginal rights and interests in previous consultations, the usual response the Province receives is that the proponent needs to become familiar with the Nak'azdli Stewardship Policy and that consultation must involve the Keyoh holders or traditional stewards who will identify Aboriginal rights and interests. The preferred method that has been identified in those prior consultations is for the proponent and government representatives to meet with the Keyoh holders along with Nak'azdli Natural Resource staff for an exchange of information.

Our office sent the original consultation packages on the Temporary Use Permit to Chief and Council on May 15, 2013 via Canada Post and emailed Nak'azdli Natural Resource referral staff the same consultation packages on May 17, 2013. Although a meeting with your Natural Resource referral staff was scheduled between May 23 and May 28, that meeting did not occur. The Province received an email from Chief Fred Sam on May 30, 2013 stating that a meeting with the Ministry would not be occurring regarding the authorizations requested by Enbridge and that the Nak'azdli legal team was reviewing these application and these applications would be dealt with at a higher level.

On July 9, 2013 the Province sent an email to Chief Fred Sam introducing him to Dave Francis, Director of Authorizations, Omineca Region with an offer to meet a Senior Government official regarding these applications. A letter from the Province reiterating this offer was emailed shortly thereafter. On July 10, 2013 the Province received an email from Chief Sam asking for clarification on the identity of the Senior Government official. In the Province's response, a request to meet was again offered. On July 10 and 12 the Province also left messages for Chief Sam asking to convene a meeting. No response from Chief Sam has been received to date.

In the initial consultation package, a summary of potential environmental impacts was provided to allow the Nak'azdli First Nation to understand the scope of these proposals. When assessing the consultation level required for these Temporary Use Permits consideration was given to the following information: the total amount of area impacted for the three separate sites (2.06 ha, 0.3175 km of trail, and 361m³ of brush and timber harvested), the length of time the impact will occur (days), the possibility of exclusion of First Nations (none), the impact to water (minimal) and the impact to fish and wildlife (minimal if any).

Based on all the above considerations, we remain of the view that notification level consultation is appropriate. Given the minimal impact of these proposals, and that we have not received any specific information from Nak'azdli First Nation about potential impacts, or suggesting the potential impacts to the Nak'azdli Aboriginal rights and interests requires deeper consultation, we feel that our attempts to engage with Nak'azdli First Nation have been reasonable in the circumstances and discharged the duty to consult at the appropriate level.

If no additional information about impacts to Nak'azdli First Nations Aboriginal rights and interests is provided by 3:00 pm on July 26, 2013, our intent is to provide this request to the appropriate decision makers.

Yours truly,

A handwritten signature in black ink, appearing to read 'Beryl Nesbit', followed by a large, stylized checkmark or flourish.

Beryl Nesbit
Senior Advisor, First Nations Relations
Regional Operations Division
Omineca Region

Pc. Evan Prince, Natural Resource Assistant Co-ordinator, assistantcoordinator@nakazdli.ca
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