Verbal Submission to Expert Panel: Review of Environmental Assessment Processes
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Additional materials used during presentation: Map of CSTC territory impacted by Natural Gas pipeline proposals. Available at:
http://www.carriersekani.ca/images/docs/cstc/Map%20LNG_CSTC%20Feb%202014.pdf

PRESENTATION 1
Good Afternoon, my name is Karyn Sharp, and I am Denésuliné from Northern Saskatchewan. I acknowledge that I am on the unceded territory of the Musqueam, Squamish and Tsleil Waututh First Nations, and I thank you for expanding the engagement opportunity with yourselves on a Sunday.

I work as the Natural Resources Manager for the Carrier Sekani Tribal Council (CSTC), which I will refer to in short as the CSTC.

CSTC provides political and technical support to eight First Nations. The combined population of the CSTC's member Nations' is over 10,000 people. The combined area of our bands territories is approximately 78,700 sq. km - twice the size of Vancouver Island or 8.3% of BC. The member First Nations of the CSTC are:

- Burns Lake Band (Ts'il Kaz Koh First Nation)
- Nak'azdli Whut'en, who will be speaking for themselves later this afternoon
- Nadleh Whut'en
- Saik'uz First Nation
- Stellat'en First Nation
- Takla Lake First Nation
- Tl'azt'en Nation
- Wet'suwet'en First Nation

The Council is overseen by 8 Directors who are Chiefs from the member First Nations noted above and a Tribal Chief who is the Chair.

CSTC members are aligned through the philosophy and commitment reflected in our Declaration of Alliance, that states the CSTC member Nations:

- *the Yinka Whet'enne, have a common ancestry, language, land, way of life and Bahl'ats system and*

- *Acknowledge that their ancestors saw it wise to organize and conduct their personal, family, cultural, political and legal relationships through the Bahl'ats system.*

Over the past 10 years the CSTC member's territory has had to deal with 6 proposed major projects, 5 LNG projects and the Enbridge Northern Gateway oil pipeline. And about 2006 the CSTC filed for a Judicial Review for the Northern Gateway project, due to the EA process. And we saw the EA process changed dramatically for the LNG projects with the changes of CEAA 2012.

Our aim here is to speak with you about our experience with federal environmental assessment process, and our experience with Crown EA processes in general; so that you may start to improve a system that many in our communities feel is utterly broken. Our focus is on the lessons we have learned, through hard work, and that we have been forced to undertake to protect our rights and interests.

This is the first presentation of two from CSTC and I will be focusing on cumulative effects and impacts, but first I will start with basic principles.

From the point of view of the federal government consultation policy[1], the goal of consultation is **reconciliation**. New legislation must include reconciliation in any preamble to set out the purpose and intent of the federal law, and to recognize the complex historical context in which EA operates. This is our first recommendation.

The basic principles of reconciliation, as we all learned from the Truth and Reconciliation Commission[2], is to:

- Reveal the ***truth*** about historical harms and the ongoing legacy of Crown policy and practice and to ***document*** them thoroughly;
- Guide the process of ***truth telling*** and ***healing***, leading towards reconciliation between all parties;
- Renew relationships based on inclusion, ***mutual understanding***, and respect.

Our presentations identify two ***roadblocks to reconciliation*** that are part of today's EA process; specifically:

1) Cumulative and legacy impacts have never been properly documented, seriously considered by Crown officials or even remotely factored into EAs, making efforts at ***documenting*** and ***truth telling*** about past and legacy harms, out of reach.

[1] INAC (2011). *Aboriginal Consultation and Accommodation. Updated Guidelines for Federal Officials to Fulfill the Duty to Consult.*
[2] This summary is derived from pages 1-2 of The Truth and Reconciliation Commission of Canada (2012). *Interim Report.*

2) Most EA practitioners, federal government staff, and Proponents do not understand Indigenous Traditional Knowledge (ITK), making any renewed relationship based on *mutual understanding* impossible to achieve.

Most of this presentation will focus on real, workable solutions that government should adopt to remove these *roadblocks to reconciliation* from the EA process.

To gain our trust in a renewed EA process requires, first and foremost, a credible method for documenting and understanding the true **cumulative impacts** that have occurred to our people, lands, and resources. This *must* be the starting point from which we begin to assess cumulative effects.

For the purpose of this speech, the CSTC defines cumulative effects as the ***effects from all sources on our land, water, wildlife, fish, and impacts to community members' rights land based practices, which cause or contribute to adverse effects on the ability of our peoples to practice their Aboriginal or Treaty rights, or which impact on their title or other related interests.*** Our member Nations are affected by cumulative effects on a daily basis, yet most EAs find 'no significant adverse impacts' on the pre-selected Valued Components (VCs) that are integral to our way of life.

To ensure cumulative effects are recognized in EAs, they cannot start with "current conditions" as the environmental context described, the environment is already **damaged**. Starting with the current conditions for an assessment of a project only masks the total effects already loading on a VC. In many parts of our territory, effects of past activities – such as mines, dams, logging roads, clear-cuts, utility right-of-ways - have accumulated over time, interacting across VCs, and have led to the damaged conditions we see in our members' food security; for example, in the quantity of caribou and the quality of water today. In some cases, VCs have already exceeded an acceptable threshold of change before a Project is considered for an EA. In these circumstances, a finding of "significant adverse effect" may be merited before the Project is even assessed and, in turn, the federal government should seriously contemplate a decision of **no development until the VC has adequately recovered**.

To put this in practice, the **temporal boundaries** must be defined in a way to show total effects loading on a VC. This methodological consideration must be made mandatory for the assessment of cumulative effects. Today, these boundaries are usually scoped around the Project timeline, starting from a damaged baseline and masking the change in the VC over time. For our member Nations, the 1950s may be a useful temporal starting point at minimum, because the Nechako River was relatively healthy, not yet damaged from the effects of the Rio Tinto-Alcan Kenny Dam that led to declines in our fish stocks and fishing practices. And it is around this time logging started to fragment terrestrial habitat so much so that culturally important and preferred species, like

caribou and moose, that truly define the *Bahl'ats* and who we are, were on the decline and making our people, our culture, our ability to exercise our rights vulnerable to change.

For cumulative impacts to be properly recognized and assessed in EA, the federal government must:

- Require appropriate temporal boundaries to be adopted in assessments so a comparison can be made between pre-damaged baseline conditions, current conditions, and predicted future cumulative effects conditions loading on the VC.
- Require a serious contemplation of no development until the VC has adequately recovered, especially when a VC has experienced an impacts load beyond an acceptable threshold of change even before the Project is assessed.

We have worked hard at the CSTC to identify and describe cumulative effects in EAs. Between 2012 and 2015, we were involved in several EAs related to five separate Natural Gas pipeline projects and the Enbridge Northern Gateway Project. We fought hard to have this issue heard in the EA process, applying culture and rights-based cumulative effects assessment tools to capture the magnitude and legacy of cumulative effects that the proposed Projects would be interacting with. This information was needed for CSTC member nations to make decisions, and to design and negotiate effective post-EA measures with the Crown and project proponents.

Current EA guidance is VC centered. When CEAA staff provides methodology guidance to proponents, on CEAA in their IRs, it appears to be little more than a *suggestion*. When the proponent doesn't comply with the guidelines, there are no consequences. Clearly it isn't a requirement.

The CSTC requests, that legislative and policy mechanisms direct CEAA staff to co-develop, with First Nations, **prescriptive direction to proponents on minimum requirements for cumulative effects assessments; especially as it applies to assessing impacts to First Nations rights land based practices.**

Despite sever underfunding to respond to projects by either the proponent or the government, the CSTC works extremely hard to get at least some of this information assessed within the EA, with minimal resources and time. The five proposed large export pipelines have the potential to severely limit the ability of our members to exercise their rights. And, yet, the federal government never adequately documented or assessed these effects. It was up to CSTC to commission several studies at that time in an attempt to document impacts.

In this work, we focused our efforts to address the question, ***"Will the Project result in a healthy abundance of resources to support the meaningful exercise of Aboriginal***

rights throughout the CSTC territory, or not? This is a more appropriate threshold of acceptable change for our membership to consider. To measure against this threshold we need to undertake an analysis of several priority VCs, use both science and ITK, and gather information from community members on - harvesting practices, food consumption patterns, community social and economic information, along other data. Our work has attempted to address the major flaws in federal and provincial EAs and, in the process, our submissions provide concrete solutions for the Panel to take and use, which we will provide later along with our written submission to the Panel.

From our hard work at finding solutions to the problems we face with federal cumulative effects assessment, we strongly recommend that federal EA:

- Require all steps of the cumulative effects assessment process be developed in collaboration with affected First Nations, this includes the selection of which VCs are assessed, the characterization of the VC conditions over time, spatial and temporal boundaries, and significance thresholds of acceptable change.
- Require a truly VC-centred approach so the focus of the assessment is on the cumulative stress-loads on VCs, against the above-referenced threshold of acceptable change, rather than focusing on the mere 'project contribution' of the effect. This change must be documented and, even if the Proponent is not responsible for the totality of effects. The federal government needs this information in their decision processes to manage these effects appropriately.
- In consultation with First Nations, the federal government should identify key types of information that must be collected in order to assess cumulative effects on potentially impacted band members e.g. current use of lands and resources for traditional purposes and culture, as well as on Aboriginal rights.
- Do not accept proximate biophysical information as "surrogate" for the required information. For example, misinformed Proponents commonly use wildlife assessments as a surrogate to assess hunting viability. Information must be focused on characterizing the VC at hand.
- Provide Proponents with prescriptive direction, not just permissive suggestions as is currently the case, on how to assess cumulative effects on VCs that are in decline or threatened, where thresholds (or benchmarks) have already been surpassed, e.g. SARA-listed species, that, due to industrial logging practices, do not allow for harvesting practices to occur at present.
- Ensure there is a centralized federal oversight committee who can consistently monitor, assess, and manage cumulative effects.

Currently the CSTC and seven of our member bands are working together through a bilateral agreement with the Province to establish a new co-managed cumulative effects

stewardship process regarding major projects in the territory. However, this is not enough. The federal Crown should be involved in undertaking, in collaboration with our nation, the province, **cumulative effects-focused regional environmental assessments** so that when future projects, such as energy pipelines, are reviewed through project-specific EAs, there is pre-existing and mutually agreed upon set of measures and thresholds related to the existing condition of the environment within our nations' territory.

In addition, in order to move beyond 'assessing' to 'managing' for cumulative effects, greater integration between land-use planning, monitoring, management, and EA is required. Canada must fund, jointly run regional monitoring and stewardship programs collaboratively with First Nations to effectively tie together what are currently run as entirely separate stewardship initiatives. Cumulative effects need to be monitored so any future EA can be based on credible information.

For cumulative effects to be managed, federal EA must:

- Formalize legal requirements for regional cumulative environmental assessments when projects put a way of life at risk. There needs to be a linkage between the consultation process and legislative requirements for these regional assessments.
- Fund jointly-run programs to integrate provincial, federal, and First Nation stewardship initiatives. Currently, disparate bodies that do not effectively communicate are generating monitoring data and management direction. Planners and EA practitioners for all governments would benefit from greater access to this information and to the people who are involved.

Conclusion

My presentation is the first of two presentations from Carrier Sekani Tribal Council. I focused on the problem of **cumulative and legacy impacts in EA**. The federal government does not properly document these impacts, nor are they adequately factored into federal decision-making that leads to theses impacts. We believe this is a serious and substantial *roadblock to reconciliation*. Work must be done immediately to document the true harm that Crown decisions have had on Indigenous peoples, their lands, and resources so that reconciliation may begin.

In conclusion, we presented several solutions to:

- Include working towards reconciliation, as one of the key objectives of the new federal EA Act in recognition of the complex historical context that EA must set out to document;

- Properly capture cumulative effects in the EA by requiring temporal boundaries that extend to a pre-damaged baseline;
- Assess cumulative effects using a VC-centred approach with methods developed with First Nations, and specific guidance on how to assess VCs that have already exceeded a threshold of acceptable change; and,
- Manage cumulative effects by formalizing regional cumulative effects assessments and jointly run programs aimed at integrating stewardship initiatives across the federal, provincial, and First Nation governments.

My colleague will be following up shortly on further issues and recommendations to the Panel. And, as our organization operates with guidance from all the member bands, Elders and leaders I would like to request that I write the questions the panel has, so I can bring them back to our organization and an appropriate written response be provided before the deadline of Dec. 23rd.

Thank you.

CSTC Presentations to Expert Panel for Federal EA Process Review

PRESENTATION 2

TOWARDS UNDERSTANDING INDIGENOUS TRADITIONAL KNOWLEDGE (ITK) FOR ASSESSING RIGHTS AND CULTURE

My name is Jaime Sanchez. I would like to acknowledge that we are on unceded territories of the Musqueam, Squamish and Tsleil Waututh peoples.

I work as a Natural Resource Advisor for the Carrier Sekani Tribal Council, and have been doing so for the last 11 years.

I present to you as a messenger. We operate as a team of community experts, Elders and leaders. I would ask that any questions you have for me are provided in writing, as we will work to have them answered to you in writing.

The CSTC will also be making a written submission to this Panel.

The topic of my presentation is **Indigenous Traditional Knowledge in EA**.

I am here today to speak with you about our experience in working hard to address the problems in federal EAs in order to assist with the protection of our member Nations' rights, interests and title.

Our work is challenging especially because of what my colleague calls the *roadblocks to reconciliation*.

The new federal EA law much include reconciliation as one of the main purposes of the Act.

Our presentations to you today identified two *roadblocks to reconciliation* that are part of today's EA process.

1) My colleague presented on lack of documentation or understanding of true cumulative effects and legacy of past harms in EA.
2) My presentation will consider how most EA practitioners, federal government staff, and Proponents do not understand ITK, making any renewed relationship based on *mutual understanding* impossible to achieve.

To gain our trust in a renewed EA process requires education and capacity within the federal government (CEAA and NEB specifically) to communicate effectively with

Indigenous peoples, including understanding and using Indigenous Traditional Knowledge (ITK).

The CSTC supports the full implementation of the UNDRIP.

The federal government has also signed the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* and has asked this Panel to identify ways that the UNDRIP makes specific reference to ITK, stating that "***respect for indigenous knowledge, cultures, and traditional practices contributes to sustainable development and equitable development and proper management of the environment***". More ITK in EA will lead to better social and environmental outcomes.

What is wrong with use of ITK in EA today? The overarching problem is power imbalance. This applies to differences in power between our member Nations' and their citizens, to Proponents, to the federal and provincial governments, to the EA process itself. This problem permeates all aspects of EA. As a result, EA is understood to be extremely unjust and is not a process we can trust. This imbalance, the real and perceived inequities faced by our nations when attempting to participate in Crown EA processes need to be tackled head on. This presentation will examine the three most important ways this imbalance relates to ITK in EA.

First, ethical problems persist in EA when Proponents and government use ITK. The problem of consent to collect, to store, and to use ITK is still a problem. The federal government must issue clear, legally-binding requirements on (a) collecting and including ITK in the EA and (b) on the basic principles for how ITK and knowledge holders must be treated. Any legal requirement must require that ITK:

- be given ***freely***,
- take place ***prior*** to any federal government decisions,
- include enough ***information*** so the context and relevance of the ITK can be understood, and
- be provided with ***consent*** of the knowledge holder[3].

This recommendation advises the federal government to adopt the principles of *Free, Prior, and Informed Consent,* or FPIC for short, in the process of collecting and using ITK in the EA process. The recommendation is to introduce a legal requirement for Proponents to proactively reach out to communities to collect ITK, as well as traditional use information, well before the scoping of EA, before baseline studies begin using a range of ethical, best practice methods. If a Proponent has not demonstrated this effort, the federal government must not permit an EA to begin. A good measure of the

[3] Ideas derived from Olsen et al. (2016). *Framework for Consideration and Integration of Indigenous Traditional Knowledge in Federal Environmental Assessment.*

Proponent's intention is whether they have agreed to sign an ITK Protocol Agreement with our nations.

The second most important way the power imbalance in EA is apparent is the general lack of understanding by federal staff and project proponents of ITK or how to properly collect and use ITK in EA. These misunderstandings may occur face-to-face, between EA practitioners and community members, but may also take place at the upper management level. Such lack of capacity and education relating to ITK and Indigenous ways of knowing by the federal regulators themselves invariably results in an ineffective process. Valuable ITK is inevitably overlooked, ignored or dismissed, and knowledge-holders are regularly frustrated. They expend their valuable time and resources speaking to EA practitioners, to outside researchers, and, in the end, do not see the results of their work incorporated into the analysis of effects on VCs, or reflected in final EA decisions.

Research has shown this to be a standard problem across Canada where ITK is intended to be included in decision making[4]. The Proponents are usually even more at a loss with understanding ITK, especially within their management ranks. Indeed, they may not agree with the federal government that it is important, or even "believe" that ITK exists or has any value. Such disrespectful views are apparent when we engage in EAs. The federal government therefore must have properly qualified staff, authorized to give mandatory direction (e.g., through handbook for proper collection and incorporation of ITK into EA) to Proponents to work collaboratively with our nations to ensure that that is collected and interpreted in an effective manner.

In this regard, we recommend that the federal government, perhaps in partnership with other governments, industry, and NGOs, provide funding and organizational support for groups of Nations to partner and form Regional ITK Quality / Resource Committees. These committees would inform EA process and post-EA management and monitoring work. There *are* examples of these, like the AMAK[5] "council of Elders" used in Northern Ontario in relation to mining[6]. Similar ideas are gaining traction like a national Indigenous Guardians Network[7], and my colleague's recommendation to have jointly run, regional integrated stewardship programs. These organizations would provide clear direction to all parties on what is acceptable research practice, protecting the knowledge holders, and offer solutions for protecting sensitive confidential information while making it effective for EA practitioners and decision-makers. The program can provide funding and capacity to support Nations to develop protocols on how ITK can be

[4] Nadasdy, P. (2003). *Hunters and bureaucrats.* Vancouver: UBC Press.
[5] *Anishanaabe Maamwaye Aki Kiigayewin*
[6] McCarthy, D. D. P., M. Millen, M. Boyden, E. Alexiuk, G. S. Whitelaw, L. Viswanathan, D. Larkman, G. Rowe, and F. R. Westley. 2014. A First Nations-led social innovation: a moose, a gold mining company, and a policy window. *Ecology and Society* **19**(4): 2. Available online here: http://www.ecologyandsociety.org/vol19/iss4/art2/#Timmins
[7] http://ottawacitizen.com/opinion/columnists/amos-time-to-fund-the-indigenous-guardians-network

collected and used, and ensure all parties, including Proponents considering development in the area, are provided with these protocols. Issuing protocols from a jointly run, federal and First Nation-run program, would ensure the basic guidance – something in place for wildlife for example, but remains a major gap in federal EA for human receptor VCs and traditional use – are in place.

These new regional committees may help to inform government hiring policies and training programs to ensure that government staff involved in decisions that may involve infringements on Aboriginal rights are properly qualified to interpret and incorporate ITK into EA assessment. Professional development programs exist for this and can be expanded with federal government support.

The federal government should also ensure the process steps and methodological requirements for future EA processes include (at minimum), the following steps[8]:

- Establish Indigenous community-based VCs, spatial, and temporal boundaries
- Use ITK to shape baseline study design, project design decisions, alternatives, effects predictions, VC selection, methods, including effects characterizations, significance determinations, mitigations, follow-up, and monitoring
- Ensure temporal boundaries for particular VCs (e.g. harvested resources or social and health values) extend across longer periods of time relevant to ITK lens
- Require that ITK be verified with Indigenous communities prior to submission to the Agency to ensure protection of confidential information and misinterpretation.
- Ask Proponent to consider using alternative submission formats (e.g. recordings or video)
- Require that the Proponent not limit everything to do with Indigenous peoples in a single section of the report
- Include requirement for relevant circumstances to include ITK in identifying existing and predicted sensory changes to environment.

Another approach for resolving the issue of capacity gaps with the federal EA and regulatory system is by establishing a collaborative process where affected CSTC nations and the federal government co-manage the EA process itself. At this time, several of our member Nations have an agreement with the BC Environmental Assessment Office to do just that.

For an ongoing mining EA, we sit with the Province, across from the Proponent in an effort to collaborate and find consensus on key decision points through the process. This

[8] Derived from CSTC Nov 29 2016 workshop notes and Appendix A of Olsen et al. (2016) *Framework for the Consideration and Integration of Indigenous Traditional Knowledge in Federal Environmental Assessment.*

has changed the tenor of the process from an adversarial one to a less adversarial, working relationship. This is an important step. There is a very long way to go.

However, by establishing a commitment to a collaborative structure and approach, our nations have an opportunity to engage directly and provide a much-needed education to provincial staff about the importance of our ITK and its critical value in the assessment of project impacts.

We strongly recommend that the federal government consider this collaborative consensus model, but more must be done to find a true middle ground at each decision point. This must take place at the very start of the EA process to set out how the EA will take place. For these processes to work, timelines cannot be imposed.
If the federal government wants to keep the timelines introduced by the Harper government, a mechanism must be available to First Nations to stop the clock, as it is equally available to the Proponent and the federal government. A commitment must also be made that, beyond very basic legal requirements, the federal EA process must be able to accommodate for a First Nations' approach to EA, such as effects assessment criteria, emphasis on consideration of Indigenous approaches to economic development, ITK, heritage and culture, social issues important to our communities, and traditional use values.

Conclusion
In conclusion, we strongly recommend a suite of changes, both in legislation and processes, to ensure that in future that our ITK is properly respected and meaningfully incorporated into Crown assessments of proposed projects within our nations' territories. This in the end will not only better serve to protect our rights and territories, but also in the end benefit all Canadians.

We hope that our efforts, and those of other First Nations, are seriously considered in revising all the federal regulations you and other panels are reviewing;

Otherwise the fight will continue in these venues, in board rooms, in the courts, and on the land and waters – the other alternative is for us to issue our own processes, under our own laws, for reviewing projects to make informed decisions.

I've also been asked to invite the Panel and the Ministers to come to Carrier Sekani country to present to our people, BEFORE decisions are made on how our voices will be included. We will be making this request directly to the Ministers, and the Prime Minister of Canada.

Thank you.
Does the Panel have any questions? (NOTE TO DRAFT: Questions will be answered in the formal written submission)