



File: 30050-20/ENGP-10

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SENT VIA EMAIL

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Dear Mr. Carruthers and Mr. Paterson:

I am writing regarding the recent decision of the BC Supreme Court in *Coastal First Nations v. British Columbia* (BCSC Decision¹), which held that a portion of the Equivalency Agreement² between British Columbia's Environmental Assessment Office (EAO) and the National Energy Board (NEB) was invalid. Specifically, the Court ruled that British Columbia's *Environmental Assessment Act* applies to NEB projects to the extent that they require a Provincial Environmental Assessment certificate.

We have reviewed descriptions of the Enbridge Northern Gateway Pipeline Project (NGP) that Northern Gateway Pipelines Limited Partnership (Northern Gateway) has submitted to the Joint Review Panel as part of the federal Environmental Assessment process, and are of the view that NGP is a reviewable project under the Province's Reviewable Projects Regulation. In accordance with the BCSC Decision, and pursuant to Section 10(1)(c) of the *Environmental Assessment Act*, the Ministers of Environment and Natural Gas Development (Ministers) are required to

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¹ <http://www.canlii.org/en/bc/bcsc/doc/2016/2016bcsc34/2016bcsc34.pdf>

² http://www.eao.gov.bc.ca/EAO_NEB.html

make a decision on the issuance of a Provincial Environmental Assessment certificate to Northern Gateway for the NGP.

As a result, EAO will be issuing an Order under Section 10(1)(c) of the *Environmental Assessment Act*, which will stipulate that an Environmental Assessment certificate is required for NGP.

Although effectively amended by virtue of the BCSC Decision, the remainder of the Equivalency Agreement remains valid. Under the Equivalency Agreement, the Environmental Assessment process completed by the Joint Review Panel is substituted for the Environmental Assessment process under the *Environmental Assessment Act*. EAO will therefore accept the Joint Review Panel report as the assessment report.

Prior to referring NGP to Ministers for decision, EAO will consult with Aboriginal groups to inform our understanding of how the project may impact Aboriginal Interests (i.e. treaty rights and asserted or determined Aboriginal rights, including title), and whether any additional accommodation may be required. EAO will also review and evaluate any consultation that has occurred to date with any federal and provincial agencies, including the Joint Review Panel and the evidence submitted in that process, as well as any engagement with Northern Gateway. EAO will, in the near future, be contacting potentially impacted Aboriginal groups in British Columbia to inform them of the BCSC Decision, the issuance of the Section 10(1)(c) Order, and the opportunities for consultation prior to a Ministers' decision.

EAO understands also that the Ministry of Forests, Lands and Natural Resource Operations (FLNR) and other provincial regulatory agencies may be reviewing permit applications and consulting with Aboriginal groups on them. In accordance with Section 9 of the *Environmental Assessment Act*, and with the exception of investigatory permits, decisions will not be made regarding the issuance of permits related to the construction or operation of NGP until a decision on the Environmental Assessment certificate has been taken by Ministers. EAO will seek to coordinate Aboriginal consultation with FLNR and other provincial agencies, as appropriate.

The provincial process leading up to the referral to Ministers under Section 17 of the *Environmental Assessment Act* will commence once Northern Gateway contacts EAO and indicates its readiness to proceed. EAO will then be in communication with you in order to establish an appropriate process. That process may require you to provide EAO with any additional information necessary to support its consultation with Aboriginal groups. You may also wish to provide, in addition to the Joint Review Panel report, other relevant information for Ministers to consider.

Based on the Joint Review Panel report, the consideration of any additional information and Aboriginal consultation to date, EAO will identify any Provincial Environmental Assessment certificate conditions to recommend to Ministers. If an Environmental Assessment certificate is issued by provincial Ministers, any conditions they attach would become legally binding requirements for NGP. EAO will ensure that Ministers are provided the most complete and accurate referral package to inform their decision.

I have, under my authority as Executive Director of EAO, delegated statutory authority for the conduct of this Environmental Assessment process to Nathan Braun, Executive Project Director. If you would like to discuss this letter, the process described herein, and the next steps, please contact Nathan at 250 952-6507 or Nathan.Braun@gov.bc.ca or Alanya Smith, Project Assessment Officer at 250 387-2406 or Alanya.Smith@gov.bc.ca.

With best regards,

A handwritten signature in blue ink, appearing to read "Kevin Jardine". The signature is stylized and written in a cursive-like font.

Kevin Jardine
Associate Deputy Minister

cc: Nathan Braun, Executive Project Director, EAO
Nathan.Braun@gov.bc.ca

Alanya Smith, Project Assessment Officer, EAO
Alanya.Smith@gov.bc.ca