



GITXAALA NATION

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Federal Court Upholds Gitxaala Nation's Exclusion, but Canada Still Owes Gitxaala Deep Consultation in respect of the Northern Gateway Project

November 20, 2012, Kitkatla (Lachlan), British Columbia - The Federal Court has upheld one aspect of the Canada's review process for the proposed Northern Gateway Project. On Monday November 19, 2012, the Court ruled that the federal Crown did not breach its duty to consult with the Gitxaala Nation when it excluded them from a Transport Canada led review of the project's marine components.

Justice Barnes' decision recognizes how much is at stake for the Gitxaala Nation if the Northern Gateway Project is approved: "It is clear from the evidence before the Court that for thousands of years the Gitxaala Nation has occupied the lands and utilized the marine resources in the intercoastal area proposed for the transit of marine tankers servicing the Gateway marine terminal at Kitimat. In the result, the interests of Gitxaala stand to be significantly affected during the lifetime of the Gateway Project."

Justice Barnes also ruled that the Gitxaala are entitled to deep consultation in respect of the proposed Gateway Project, and that if the Crown does not ultimately discharge this consultation obligation, the Gitxaala Nation will have grounds to pursue a remedy in Court.

Gitxaala elected Chief Elmer Moody welcomes the Federal Court's recognition of his nation's aboriginal interests, its legitimate concerns about the Northern Gateway Project, and the deep consultation rights owed it in respect of the project. However, he is disappointed by Justice Barnes' conclusion that the current Joint Review Panel based process may be enough: "The federal government has recently amended its laws to impose time limits on the Northern Gateway Joint Review Panel process and give Cabinet final decision-making authority over whether the project proceeds. We are currently supposed to only have 3 months Crown consultation after the Joint Review Panel issues its report, along with the numerous other aboriginal groups who have a range of concerns about the project. At this point it is hard to see how such a narrow, eleventh hour consultation window could possibly deliver timely and meaningful consultation."

The Transport Canada led Termpol Review Process was a closed-door process in which federal government experts from key ministries reviewed information submitted by Northern Gateway Pipelines Limited Partnership and assessed the safety of the marine components of the Northern Gateway Project. In February 2012, the Termpol Review Committee issued a report concluding that the proposed shipping routes are appropriate and that the risks of the proposed shipping routes can be satisfactorily managed. The federal government has submitted its Termpol Report to the Northern Gateway Joint Review Panel for consideration. The Gitxaala Nation was excluded from the process, and strongly disputes the findings of the Termpol Report on the grounds that they are based on inaccurate and incomplete information.

For additional questions or comments, please contact:

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