



**Xaxli'p**  
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March 31, 2017

**Re: Xaxli'p comments on National Energy Board modernization**

Dear NEB Expert Review Panel Members:

Introduction

Xaxli'p, formerly known as the Fountain Band, is a member of the St'at'imc Nation and is located in the Central Interior-Fraser Canyon. Xaxli'p remains persistent in protecting our Title and Rights in our survival territory. Since time out of mind, we have worked diligently to maintain control of our land and resources by implementing ecologically and culturally sustainable land use. Through careful maintenance and restoration of the integrity of the land, the Xaxli'p people will be able to continue to live with, respect, and utilize the plants, animals, and water to meet the needs of our current and future generations.

We protect our Title and Rights by evaluating whether any proposed development within our territory represents the best use of Xaxli'p lands, and whether the proposed benefits will supercede the various impacts (social, environmental, cultural). Xaxli'p is guided by our natural laws, the Declaration of the Lillooet Tribe, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). These must have bearing on any project being contemplated in Xaxli'p territory—especially where the principle of Free, Prior and Informed Consent (FPIC) is concerned. When we speak of FPIC, we base such discussions on Article 25 of UNDRIP, which states that: “Indigenous peoples have the right to maintain and strengthen their distinctive relationship with their traditionally owned or otherwise occupied and used lands, territories, waters, coastal seas and other resources and to uphold their responsibilities to future generations in this regard”.

We believe that the recognition of Xaxli'p ownership and jurisdiction can be accomplished through just and honourable nation-to-nation negotiations. In this submission, we outline a variety of concerns about the current National Energy Board process and legislation as well as recommendations that we urge be adopted in an improved NEB system.

Governance

We are greatly concerned that the National Energy Board Act has no requirement regarding knowledge of Indigenous law or expertise in Indigenous issues. It is most disturbing that the current NEB membership is representative of industrial oil and gas interests. A core group of NEB members need to have qualifications in a range of Indigenous issues (i.e. Title and Rights, international standards, etc). There must also be a minimum of two Indigenous people on the NEB. Members that are not Indigenous should be required to have cultural and Indigenous awareness or to take training. The membership must strike a balance in

representation based on geography and coverage of various sectors, including public, government and industry. There must be transparency in the selection process for NEB members,

## Mandate

We urge a complete overhaul and rebuilding of the entire NEB system through new legislation that includes substantive change relative to Aboriginal Title and Rights. Key to this is the full implementation of UNDRIP as has been promised by Prime Minister Trudeau. To build a nation-to-nation relationship, FPIC must be included as a core principle in the structure of the legislation. In a nation-to-nation approvals process, without the consent of both the Indigenous Nations and the Crown, there would be no project. To implement UNDRIP and FPIC a separate body should be created that is distinct from but feeds into the NEB to address Title and Rights.

## Additional recommendations:

- The duty to accommodate obligation must be clarified in terms of who is to consult.
- Establish an improved funding mechanism for participation by Indigenous peoples. Currently submissions from First Nations that are shouldering significant costs themselves are weighed against well funded industry submissions.
- Environmental assessment must be removed from the NEB and put into the CEAA.
- Establish more project specific advisory and monitoring committees,
- Indigenous peoples must be included in the design and decision scoping, characterization, assessment of residual effects, and monitoring,
- Broaden the scope of the NEB to include sustainable energy and consideration of Canada's climate change commitments. This includes consideration of community impacts and upstream/downstream effects.
- Include a Purpose Clause in the Statute that refers to UNDRIP and Canada's climate change commitments. There is an important linkage between energy consumption and greenhouse gases that should be more clearly reflected.
- Both rail and shipping must be included in the mandate.
- The energy needs of isolated communities should be addressed in the NEB advisory function.

## Decision Making

A process is necessary to determine how projects consider the fact that Aboriginal title and rights exist. To support the spirit of reconciliation, there must be a mutual consent-based decision-making process with an ability for First Nation assessments to be enabled. A more

consensus-based, less adversarial process is necessary with shared decision-making as the goal. It should be a requirement that if NEB members are making a decision they go through a traditional ceremonial process with the people living on the land that will be affected. A better funding mechanism is needed for intervenors to enable participation of affected Indigenous peoples.

It is necessary to move to a planning approach that establishes regional goals before making project specific decisions. First Nations should decide the geographical, spatial and temporal scope of assessments. Criteria must also be put in place for consideration of climate change impacts.

First Nations must be a part of every decision rather than having to respond to industry specific protocols. In our survival territory, the Declaration of the Lillooet Tribe and UNDRIP must guide the decision-making process that incorporates Indigenous law. St'at'imc Nation is part of the University of Victoria's RELAW program on revitalizing Indigenous Laws to apply to projects. The RELAW approach is an available model for how to integrate Indigenous Law into decision-making.

The NEB must be responsible for making decisions. We are concerned that Cabinet currently has the decision-making authority and can claim Cabinet privilege. This undermines the ability of the courts to hold the government accountable.

### Legislative Tools

The new legislation that must be developed needs to guide the NEB to ensure that there is a mechanism that protects aboriginal rights that is articulated and exercised. Clear legislative tools are needed to assess First nations traditional knowledge, Title and Rights. UNDRIP needs to be folded directly into what is suggested by the Expert Panel. The legislation must guide the NEB to dictate the depth and width of the consultation it takes on and how far it reaches and First Nations must be able to decide if it is acceptable. There is also a need for clarify regarding the engagement mechanism. It must be ensured that issues of transparency are dealt with. For example, Emergency Response Plans should be put into the public domain.

A policy framework needs to be developed on the basis of a guardianship model. On March 22, 2017 the federal government announced support for a national Indigenous Guardians Network. This network, that should guide the development of the policy framework, will be built on a nation-to-nation basis to help protect and enhance our lands, waters and natural resources.

### Indigenous Engagement

Guiding principles developed by First Nations should be used to convey how the NEB will engage with Indigenous peoples. First Nations need to be involved in projects early to identify all potential impacts. Areas that must be considered include historical context, traditional knowledge, traditional land and resource use, cumulative effects, and socio-economic effects related to any proposed project. Strength of claim analysis must be done by Indigenous peoples and not the Crown. Timeframes should allow First Nations to be informed and prepared. There is a need for a political/technical table where First Nations are adequately resourced to participate in the extremely technical and complicated processes.

Culturally appropriate mitigation and monitoring conditions must be developed and a stricter enforcement component must be developed. Indigenous land use planning must be undertaken before the approval of projects.

#### Public Participation

Funding needs to be provided for local governments and rural First Nations so that they are able to achieve regional goals for all development.

Thank you for the opportunity to present our concerns and solutions. We look forward to working with the review panel to significantly improve the NEB process and legislation.

Sincerely,

A handwritten signature in blue ink, appearing to be "D. Bob", written over a horizontal line.

Chief Darrell Bob  
Xaxli'p