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November 3, 2015

ELECTRONIC FILING and REGULAR MAIL

National Energy Board  
517 - 10th Avenue SW  
Calgary, AB T2R 0A8

**Attention: Secretary of the Board**

Dear Sir/Madam:

**RE: Nova Gas Transmission Ltd. - 2017 NGTL System Expansion Project  
NEB File No. OF-Fac-Gas-N081-2014-20 02**

Further to the hearing of Woodland Cree First Nation's oral Traditional evidence on October 30, 2015 in Grande Prairie, please find enclosed a copy of the Woodland Cree First Nation Consultation Protocol in satisfaction of our undertaking to provide the same.

Yours truly,

**WITTEN LLP**

Per:

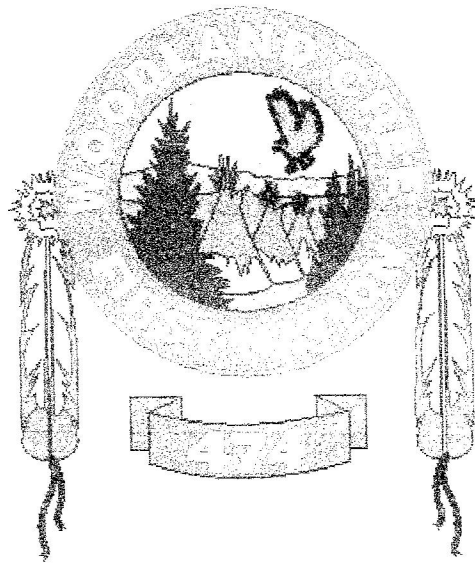


**Annemarie Clarke**

AC/mb

Enclosure

cc: All parties



## **WOODLAND CREE FIRST NATION CONSULTATION PROTOCOL**

## 1. Introduction

Woodland Cree First Nation ("WCFN") is concerned about the increasing impact of development on our traditional land. The ability to preserve our cultural heritage, exercise our inherent treaty rights and traditional land uses, and preserve our land for future generations is of the utmost importance to our Nation. As a result of increasing development and the desire to preserve our rights, culture and land, WCFN recognizes the need for an effective and efficient consultation process for all development activity within our traditional land.

Our community is located in the north Peace country on three reserves. Our traditional lands stretch along the Peace River and extend westward throughout the land that has been used by our ancestors for generations and which are currently used by our members for livelihood and subsistence as Cree people. A map of our traditional lands is attached as Schedule "A" to this Protocol.

WCFN is a signatory to Treaty No. 8 and through the determination of its people became the only band constituted pursuant to s. 17 of the *Indian Act*.

## 2. Mission Statement

***"We, the Woodland Cree people, will develop and maintain a self-supporting community for our children, which respects the individual, all people, the environment and other communities.***

***It is in the light of this mission statement that we will consult with government and industry. The intention of this Protocol is to protect and preserve our treaty and aboriginal rights. Nothing in this Protocol shall be interpreted so as to derogate or abrogate from our treaty and aboriginal rights, which are recognized and affirmed by s.35 of the Constitution Act, 1982. "***

## 3. Consultation Required

Treaty and aboriginal rights share significant legal protection in the Canadian Constitution. While these rights were recognized and affirmed by s. 35 of the *Constitution Act, 1982*, the primacy of these rights pre-date the entry of the western provinces into Confederation. At the foundation, Crown sovereignty in western Canada depends upon both treaty partners meeting their obligations. For this reason, any Crown legislation, decision or activity which infringes treaty or aboriginal rights is unconstitutional and of no force or effect.

When treaty or aboriginal rights may be infringed, the government has a duty to consult and accommodate Aboriginal peoples. This duty to consult is grounded in the honor of the Crown and has been defined and affirmed by a number of significant Supreme Court of Canada rulings. In *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69 (at para. 51), the Supreme Court of Canada commented as follows:

***"The duty to consult is grounded in the honour of the Crown...The honour of the Crown is itself a fundamental concept governing treaty interpretation and application that was referred to by Gwynne J. of this Court as a treaty obligation as far back as 1895, four years before Treaty 8 was concluded."***

The Courts have also found that, while the duty to consult and accommodate lies with the Crown, the Crown may delegate aspects of this duty to proponents. This Protocol aims to provide industry with a protocol to follow when entering into consultation with WCFN.

#### **4. The Process**

##### **(a) Notice**

*"Haida Nation sets the framework for dialogue prior to the final resolution of claims by requiring the Crown to take contested or established Aboriginal rights into account before making a decision that may have an adverse impact on them. The duty is prospective, fastening on rights yet to be proven."<sup>1</sup>*

Written notice of a proposed development should be provided to WCFN when a proposed development is initially contemplated within WCFN's traditional land. The notice should be addressed to Woodland Cree First Nation, General Delivery, Cadotte Lake, Alberta, T0H 0N0, fax (780) 629-3898, Attention: Lands Department, with a copy sent to Witten LLP, Suite 2500, 10303 Jasper Avenue, Edmonton, Alberta, T5J 3N6, fax (780) 429-2559, Attention: Aboriginal Law.

##### **(b) Provision of Information**

*"The Crown's duty to consult imposes on it a positive obligation to reasonably ensure that aboriginal peoples are provided with all necessary information in a timely way so that they have an opportunity to express their interests and concerns, and to ensure that their representations are seriously considered and, wherever possible, demonstrably integrated into the proposed plan of action."<sup>2</sup>*

In order to allow adequate time for the consultation process to be completed, courts require the timely provision of information to First Nations. As early during the planning stage as possible, we ask that the following information be provided:

- Non-technical, plain language description of the proposed project including its size and duration;
- Clear identification of potential short and long-term adverse impacts of the project;
- Photos of project locations;
- Maps of appropriate scale;
- Traditional land use assessments (completed or proposed);
- Environmental assessment work (completed or proposed);
- Technical reports (completed or proposed);
- Historical studies (completed or proposed);
- Environmental management strategies;
- Habitat and wildlife protection plans;
- Reclamation plans;
- Possible socio-economic benefits (e.g. jobs, contracts);
- Detailed site survey maps/plans of the project area; and
- Copy of the applicant's information package and government agency applications.

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<sup>1</sup> *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, at para. 35.

<sup>2</sup> *Halfway River First Nation v. B.C. (Minister of Forests)*, 1999 BCCA 470, at para. 160.

(c) *Review Process*

After WCFN has had the opportunity to review the proposal, it may contact the proponent to discuss further requirements, which may include:

- A meeting to further discuss the proposal with proponent.
- Mitigation of potential negative impacts.
- Pre-Disturbance Assessment ("PDA")

A Pre-Disturbance Assessment establishes the baseline soil and vegetation conditions for a project area and provides site-specific conservation and reclamation measures to ensure equivalent land capability after reclamation i.e., it investigates soil, vegetation, rare plants and wetlands on all areas to be disturbed and is submitted for review and authorization before any land disturbance (*Environmental Protection and Enhancement Act*).
- Pre-Construction Traditional Knowledge Assessment ("Pre-Construction TKA")

A Traditional Knowledge Assessment done on a development footprint before clearing and construction activities have occurred at a site.
- Post-Construction Traditional Knowledge Assessment ("Post-Construction TKA")

A Traditional Knowledge Assessment done on a development footprint after clearing and construction activities have occurred at a site.
- Traditional Knowledge Monitor

Traditional Knowledge personnel that provides on-site Traditional Knowledge monitoring services during clearing and construction activities.
- Traditional Knowledge Study ("TKS")

A Traditional Knowledge Study focuses on identifying areas of traditional significance to a Nation within their Traditional land. It is usually large in scope.
- Traditional Site Survey ("TSS")

Its purpose is to assess resources of traditional significance at a previously identified site due to a change in the land use activity, which could lead to alteration, damage or destruction of the culturally significant site.
- Historical Resources Impact Assessment ("HRIA")

The Historical Resources Act provides the framework for HRIAs and mitigative studies.
- Environmental Monitoring

On-site monitoring during clearing and construction activities to ensure adherence to sustainable environmental management practices supported by WCFN.
- Constraints Mapping

Delineation of culturally sensitive areas in a GIS format to assist in project planning.

- Traditional Foods Study

To determine project potential impacts on priority traditional foods.

- Community Health Assessment

Assesses overall community health in relation to cumulative impacts

- Post-Disturbance Assessment

A follow-up field assessment to ensure adherence to sustainable environmental management practices supported and previously identified by WCFN during the consultation process

- Aboriginal Knowledge Study

An environmental assessment of the Project from an Aboriginal worldview.

(d) *Response*

Once the review process has been completed, either a non-objection letter or a deficiency letter will be sent to the proponent.

(e) *Consultation Record*

Upon receipt of a deficiency letter, the proponent will submit a draft copy of the Consultation Record they propose to submit to Alberta Sustainable Resource Development for review and comment by WCFN.

## 6. Costs

WCFN does not receive funding for the time and expense involved in meeting and responding to all of the developments proposed by industry. As WCFN has limited resources, proponents are required to pay all costs, including reasonable legal and consulting costs, associated with consultation.

This Protocol Ratified and Approved by Chief and Council of the Woodland Cree First Nation on March 19, 2013.

### WOODLAND CREE FIRST NATION

  
Chief William Whitehead

  
Councillor Kathleen Laboucan

  
Councillor Isaac Laboucan-Avirom

  
Councillor Frank Whitehead

  
Councillor Ken Auger