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March 10, 2015

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Re: Pacific Northwest LNG draft Environmental Assessment Report
Reference Number: 80032

1. Wilps Gwininitxw writes to respond to the Canadian Environmental Assessment Agency's ("CEAA") draft environmental assessment report regarding the proposed PNW LNG Project ("Project") and to give further notice to the CEAA acting as the Crown in regard to the Project, that we have not yet been consulted on the Project. Gwininitxw is deeply concerned that the proposed development will significantly impact our opportunities to exercise our aboriginal rights, particularly involving traditional fisheries, though including other indirect rights as well. As such, this submission follows up on letters sent to the CEAA on June 23, 2015, August 26, 2015, and February 6, 2016.

Gwininitxw Rights

2. Wilps Gwininitxw is part of 52 independent traditional Houses making up the cultural collective, the Gitksan Nation. Wilp groups are the basic Gitksan social, economic and political unit. As one of the original plaintiffs in the landmark *Delgamuukw* litigation, utilization of our cultural prerogatives was affirmed by the highest court in Canada. As such, Wilps Gwininitxw has aboriginal rights, which are protected by Section 35(1) of the Constitution Act, (1982).

3. Canada has had full knowledge of Gwininitxw`s perspective since the *Delgamuukw* case. Wilps Gwininitxw consider that a decision Canada makes regarding the proposed project mandates the reconciliation of pre-existing Aboriginal sovereignty with assumed Crown sovereignty and imposes a duty of honorable consultation and accommodation on the Crown. As a result, the Crown must complete its consultation with Wilps Gwininitxw in a way that fulfills the duty before making a decision on the project. To date, this has not occurred. Noting the above, Gwininitxw is not disrespectful of Canada`s legal framework, but it is important to recognize that we utilize Gitxsan law and policy, which was also affirmed in the *Delgamuukw* case.
4. Gwininitxw has title, rights, and as such, decision-making authority over the use of its traditional territories and resources. The collective traditional decision-making process utilized by Gwininitxw governance includes all House members and leadership. Collective participation in consultation ensures that House members and leadership are able to effectively and meaningfully participate in the decision-making process. Gwininitxw maintains its right and responsibility to make land and resource use decisions in its traditional territory.
5. As well, because salmon are migratory and are held in very high value, Gwininitxw maintains that potential infringements to our rights and interests and exercising those rights and responsibilities in other geographic areas such as the Skeen estuary are wholly valid and reasonable. To be clear, Gwininitxw is not making claim to estuary lands and waters, but is deeply concerned that ecosystem functioning is anticipated to be disrupted by the proposed project, and this in turn will adversely affect the health and well-being of salmon juveniles originating in and adult salmon returning to Gwininitxw territories to spawn and die. These returning fish are critical to Gwininitxw—our identity, our culture and its continuity, and our survival as First Nation peoples. The intent of Gwininitxw maintaining its rights and responsibilities is to protect our traditional territories and our resources and to ensure that future generations of Wilps Gwininitxw are able to live and benefit from all that our ancestral land and resources provides.

Canadian Environmental Assessment Act

6. Wilps Gwininitxw believes that the scope of the proposed Project and the anticipated direct and indirect adverse impacts provides the basis for CEAA to initiate and formalize adequate consultation arrangements due to aspects of the *Canadian Environmental Assessment Act*, particularly Section 5(c). Gwininitxw has yet to see a Strength of Claim from the Crown that lays out Canada`s position in regard to upriver First Nations, particularly Gwininitxw, and in conjunction with any potential impacts to migratory species such as salmon, which migrate downstream as smolts and fry from Gwininitxw territories to the Skeena estuary and return as adults.

Gwininitxw Interests and Values

7. Gwininitxw holds two territories, Galaanhl Giist and Maxhla Didaat, which are located adjacent to and bisected by the upper Skeena River; Maxhla Didaat to the south and Galaanhl Giist lies to

the north. These two territories, as shown in Map 1 below, are each similar in size, and combine to cover approximately 170,000 hectares of the central Skeena Mountains, including portions of the Atna, Sicintine, and Slamgeesh Ranges. The Maxhla Didaat territory is centered on Xsi Gwin Tayin (Sicintine River and watershed). The Galaanhl Giist territory is centered on Galaanhl Giist (Slamgeesh River and watershed). These territories support important parts of the diverse and abundant Skeena salmon ecosystem.

8. Fish values are very high in both the Slamgeesh and Sicintine systems with chinook, pink, sockeye, and coho salmon, and steelhead trout present. Gwininitxw fisheries management on both territories includes traditional fisheries and contemporary science, which are supported by homeplaces and other cultural infrastructure. Gwininitxw fisheries management activities are supported by Canada DFO, Pacific Salmon Commission, and Skeena Fisheries Commission. As well, Gwininitxw maintains fishing sites on the Babine and Skeena River mainstems.
9. Hundreds of millions of juvenile salmon emigrate from the Skeena River, and traverse through the Flora Banks / Lelu Island / lower Inverness Passage estuarine areas where the proposed PNW LNG project will be constructed and operated. These hundreds of millions of juvenile salmon include fish from the Galaanhl Giist and Maxhla Didaat territories as well as fish from the Babine and other upper Skeena systems. Wilps Gwininitxw members have relied on these populations for thousands of years. We are also aware that various scientific studies, including by Department of Fisheries and Oceans, identify the Flora Banks area as being critical salmon habitat, which needs to be clearly understood as to ecosystem functioning and conserved. We question how the proposed project can be constructed and operated without harming the estuary, particularly the fragile eel grass beds, which are critical to survival of Skeena River salmon. The CEAA draft Environmental Assessment report offers no answers to this question nor provides comfort regarding our Rights and interests concerns.
10. To our understanding, neither CEAA nor the third-party proponent consider inland First Nations, including the Gitxsan, to have potential or established rights, which may be adversely impacted by the proposed LNG project in the Skeena river estuary. As Canada is fully aware, Gwininitxw as part of the Gitxsan, have a strong prima facie case to title and rights which have been recognized in various court cases including *Delgamuukw v. B.C.*, [1997] 3 SCR 1010, 1997. Gitxsan fishing rights were specifically discussed by McEachern C. J. of the B.C. Supreme Court in his decision reported at 79 DLR (4th) 185; [1991] 3 WWR 97; as follows:
 - Each Gitxsan house owns territory and fishing sites which have been used since time immemorial (p.85);
 - Early historical records indicate fishing was the mainstay of the traditional economy (p 22);
 - Although reserves in the territory included most occupied villages, they were relatively small as it was thought secure access to strategic fishing sites was more important than acreage (para 27);

- Gitksan men and women have been employed in the coastal commercial fishing industry since the 1870's (p. 68 and 144);
 - Fishing remains an important part of the economy (p. 143- 144).
11. It is our view that the foregoing confirm that Gwininitxw has established fishing rights in discrete parts of the Skeena River watershed. Further to this, juvenile salmon from Gwininitxw territories were captured in and around the Lelu Island area and identified by 100% DNA assignation. Salmon fisheries and their management have, and continue to be integral to our culture and to our economies, and there is potential of significant, if not irreversible impacts caused by the proposed Project. We consider that consultation must be in depth in order to reflect our strength of claim.
12. In the CEAA October 30, 2015 response to Gwininitxw, the letter states:
- “As noted in my August 6, 2015 letter, the Canadian Environmental Assessment Agency (the Agency) recognizes your concerns about potential adverse impacts of the Project on fish and fish habitat in relation to Flora Bank. As part of the ongoing federal environmental assessment, the Agency, supported by expert advice from Fisheries and Oceans Canada (DFO), continues to closely examine potential effects of the Project on fish and fish habitat, including salmon that rear and pass through Flora Bank, and measures that could be applied to prevent or mitigate any potential effects.”
13. Gwininitxw notes that legislation and policies affecting both CEAA and Fisheries and Oceans Canada (FOC) were weakened by the previous government in order to push forward and enable oil and gas developments. Unfortunately those changes currently guide CEAA and FOC activities in regard to the PNW LNG environmental assessment process. Gwininitxw thinks CEAA must be pulling our leg or trying to con us with your statement: “...the Agency, supported by expert advice from Fisheries and Oceans Canada (DFO), continues to closely examine potential effects of the Project on fish and fish habitat, including salmon that rear and pass through Flora Bank, and measures that could be applied to prevent or mitigate any potential effects.” A brief review of the draft Environmental Assessment Report shows that neither CEAA nor FOC understands how ecological functioning occurs at the Skeena estuary level nor how ecosystem functions at the Lelu Island and it adjacent lands and waters level.
14. For example, the Skeena River discharge data used throughout the assessment analysis is derived from the Water Survey of Canada — Skeena River at Usk station (08EF001) located approximately 140 km upstream of the Skeena River mouth. There is roughly 22% of the watershed drainage downstream of the Usk station, and it is important to note that this area is at the wet end of the watershed receiving between 2,500 and 3,000 mm of annual precipitation. Gwininitxw notes that this is roughly 50% additional discharge that is not accounted for by the proponent, CEAA, or FOC. Due to the anticipated environmental impacts from the construction

and operation of the proposed project, Gwininitxw thinks that such a basic factor as the Skeena River discharge would be an important factor to get right as it helps inform other basic factors such as currents and their effects in and around Lelu Island.

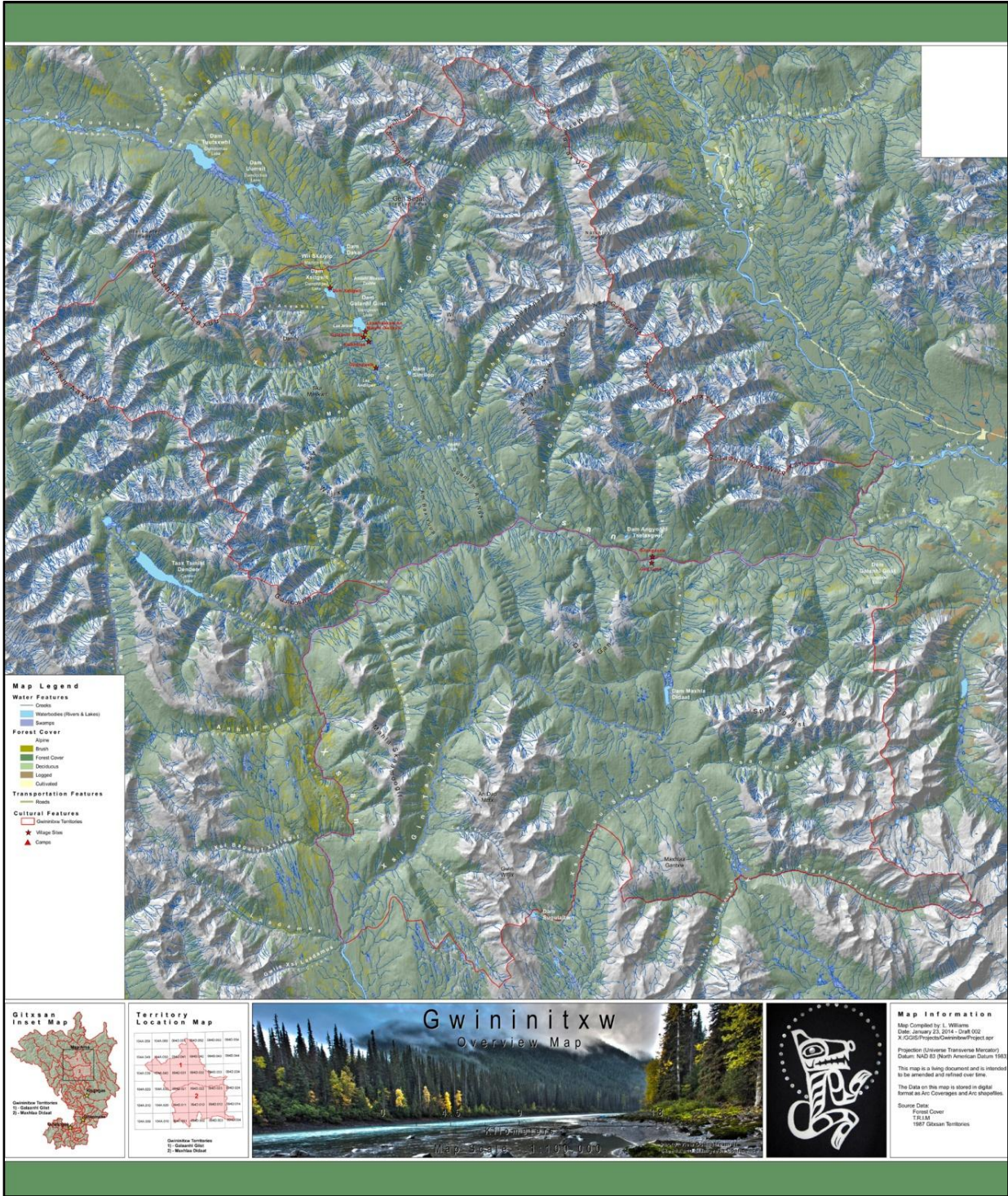
15. Similar to the Skeena discharge factor is how much sediment is transported in the washload at varying river discharge levels, particularly during large snowmelt freshets that create flood events, and how does that sediment affect build-out of the Skeena delta front and the various sediment storage areas such as Flora and Agnew Banks and Inverness Passage, all of which are adjacent to Lelu Island and the proposed PNW LNG development. Without these two principal factors; the river discharge levels and velocity and the amount of sediment transported and deposited, it is impossible to consider any effects concerned with sediment erosion, deposition, and currents are how these factors currently operate at the multi-year and decadal scales.
16. Adequate and sufficient baseline data is critical to the environmental assessment process due to the required subsequent effects assessment and cumulative effects – both of which revolve around and depend on complete and sufficient baseline data. The lack of adequate baseline data at the most fundamental level of understanding as noted in our example above regarding Skeena River discharge and sediment transport, erosion, and deposition clearly does not reflect expert advice, or allow close examination of the potential effects of the Project on fish and fish habitat, including salmon that rear and pass through Flora Bank, or allow measures that could be applied to prevent or mitigate any potential effects as CEAA stated in the August 6, 2015 letter. In effect, the Skeena River discharge levels utilized in the analysis and computer modelling are somewhere around 50% inaccurate.
17. This lack of adequate and sufficient baseline data at the most fundamental level has led to faulty conclusions with the effects assessment, the cumulative effects assessment, predicted residual effects, and significance conclusions thereof. Much of the effects assessment is based on subjective professional opinion and does not reflect adequate science, the precautionary principle, and future uncertainty.
18. Further, Gwininitxw notes that the CEAA draft Environmental Assessment report did not include the extensive Lax Kw'alaams' Comments on Pacific Northwest LNG's Response to CEAA's June 2, 2015 Letter dated December 2015. To all appearances, CEAA relied on PNW LNG consultant's information and disregarded other science including DFO and Environment Canada's findings that go back to the 1950s and 1970s respectively.
19. In conclusion, Gwininitxw disregards the CEAA draft Environmental Assessment report as being at the secondary school level of science due to its lack of adequate baseline data that in turn determines the effects assessment analysis and conclusions. Gwininitxw also considers the lack of Crown consultation to be based on error of case law that affects Gwininitxw's constitutionally entrenched rights and interest. As we have not been consulted on the potential impact to our

fisheries from the proposed PNW LNG project, we remain opposed to that development. We consider any development of the project and its related infrastructure to constitute an unjustifiable infringement of our aboriginal fishing rights.

Respectfully submitted.

<Original signed by>


YVONNE LATTIE
CHIEF GWININITXW



Map 1. Gwininitxw territories.