April 16, 2019

Submission to the
Senate Standing Committee on Transportation and Communication

Re: Bill C-48, the Oil Tanker Moratorium Act

Introduction

Member tribes\(^1\) of the Allied Tribes of Lax Kw’alaams (ATL) submit this brief to ensure the Senate Standing Committee on Transportation and Communication is aware that our member Tribes fully support *Bill C-48, the Oil Tanker Moratorium Act*. We also want to make it clear that we do not support the Eagle Spirit Energy Holdings Ltd (ESE) proposal to alter the geographic scope of the tanker ban as set out in its November 2019 submission to the Standing Committee Transportation and Communication.

Our brief has been prepared to include responses to questions posed by Committee members at the hearing held in Prince Rupert on April 16, 2018 with respect to the stated opposition of the Lax Kw’alaams Band Council who support the proposal of Eagle Spirit Energy Holdings Ltd., a private company who have declared an interest in building a pipeline to transport heavy crude oil from Bruderheim, Alberta to Grassy Bay at Lax Kw’alaams, B.C.

The brief provides information necessary for a full understanding of the difference between the Tsimshian hereditary system of leadership and the elected band council system imposed by the federal government and who is the proper representative of these tribes that today make up a large percentage of the Metlakatla and Lax Kw’alaams Indian Bands.

Section I of our brief explains who we are and sets out an overview of the Tsimshian social system and the ancient laws that uphold it; Section II reviews Canadian and Tsimshian law that supports the view of the ATL that the Lax Kw’alaams Band Council has no authority over the Lax Yuup (territories) of the Tsimshian tribes at Lax Kw’alaams or make unilateral decisions affecting these Territories. Section III examines some of the claims made by ESE, and supported by the mayor of the Lax Kw’alaams Band, to see if they fit with the reality we experience in our community, and Section IV concludes with our recommendation to the Committee.

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\(^1\) These are the Ginaxangiik, Gitwilgyoots, Gitandoh, Gitsiis, Gitzaxlaal, Gilutsau, Gitnadoiks, Gitlan and Gispaxlo’ots Tribes
I. Who We Are: Background

The Allied Tribes of Lax Kw’alaams (ATL), formerly known as the Allied Tsimshian Tribes Association, was established in the early 1980’s by the S’mgyigyet, Lik’agyigyet and Matriarchs of the nine Coast Tsimshian Tribes now headquartered in Lax Kw’alaams. See attached Appendix 1 for an outline of organization of the Tsimshian tribes, Indian Act Bands and communities.

The establishment of a registered organization merely formalized the alliance between these nine Tribes of the lower Skeena River, one which has been in existence for unknown millennia. It was instituted to support the efforts of these Tribes to work together for effective Crown recognition of their tribal territories and acknowledgement of their legal rights now recognized and protected under Section 35 of the Constitution Act, 1982. To this end, the Allied Tsimshian Tribes’ Aboriginal Claim was submitted to the federal government in May 1982. A copy of that claim is available upon request to our contact person.

The ATL is currently in Stage two of the six-stage BC Treaty Process. Negotiations have been at a standstill for the last number of years, and the political situation that currently exists between the ATL and the Lax Kw’alaams band council has made impossible to return to the negotiation table at this time. We are hopeful that this situation will change in the near future. Attached as Appendix 2 is the ATTL 1992 BC Treaty Statement of Interest Map showing the Tribal Territories, differentiated by colour.

Long Standing Opposition to Oil and Gas Development

The stated opposition to oil and gas development of the ATL in our Tribal territories and waters is captured in the policy statement contained in the June 2004 ATTL Land and Marine Plan which states:

- *The cultures of the ATTL are derived from our relationship with the land and sea.*

- *The marine environment is amongst the richest on the planet and attracts visitors from all around the world;*

- *The ATTL do not support offshore oil and gas exploration or development in the traditional territories;*

- *The ATTL have examined the issues and have determined that the risks to the marine environment are too great to warrant this kind of development.*

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2 Tribal Chiefs, House leaders, Women leaders

3 Interim Land and Marine Resources Plan of the Allied Tsimshian Tribes of Lax Kw’alaams, June 3, 2004
That policy continues to be upheld today, as was clearly demonstrated by Lax Kw’alaams memberships’ unanimous vote rejecting the Pacific Northwest LNG offer of $1 billion dollars to build a pipeline through our territories and terminal on Lelu Island at the mouth of the Skeena River in May 2015.

II. Allied Tribes of Lax Kw’alaams and the Lax Kw’alaams Band Council

Who are the rightful owners and proper representatives of Tsimshian Territories according to Canadian and Tsimshian law (Ayaawx)?

John Helin, mayor of the Lax Kw’alaams Band, states and behaves as though he has a legally recognized right to represent the nine historical Tribes of Lax Kw’alaams. He has been told numerous times, verbally and in writing by the ATL and other band members, that he does not have this right, and that while we have worked together in the past, he cannot unilaterally make decisions on behalf of these nine tribes and constituent Houses. See Appendix 3 for a copy of ATL letter of August 19, 2016 addressing this matter that was sent in response to Mr. Helin’s poll regarding the Pacific Northwest LNG proposal.

The Tribes are not extinct; they exist today and have not surrendered their territories or their authority to the Lax Kw’alaams Band, the Lax Kw’alaams Band Council or any other government, agency or group. Our position is based on Canadian and Tsimshian Laws (Ayaawx) as outlined below:

i. Canadian Law

a. Source and meaning of Aboriginal Title

- Delgamuukw v. British Columbia, [1997] 3 S.C.R. 1010 – provides a clear definition of the source and content of “aboriginal title”, stating that:
  - Aboriginal rights arise from the prior occupation of land, but they also arise from the prior social organization and distinctive cultures of aboriginal peoples on that land. (quoting Van der Peet at para. 74) (Para 141)
  - ... the aboriginal group asserting the claim must establish that it occupied the lands in question at the time at which the Crown asserted sovereignty over the land subject to the title. (para. 144)
  - “...if, at the time of sovereignty, an aboriginal society had laws in relation to land, those laws would be relevant to establishing the occupation of lands which are the subject of a claim for aboriginal title. Relevant laws might include, but are not limited to, a land tenure system or laws governing land use.(Para.148)

- Aboriginal Title:
  - Confers a right to the land itself (para. 138);
  - Encompasses the right to choose to what end a piece of land can be put (para. 168)
• These protected uses must not be irreconcilable with the nature of a group's attachment to land (para. 185);
• Encompasses the right to use and occupy the land to the exclusion of non-aboriginal and members of other aboriginal nations (para. 185);
• Is inalienable except to the Crown [in Right of Canada] (para. 190)

a. Authority of Indian Act Band Councils

i. Paul Band v. The Queen, 1983 ABCA 308 (CanLII), [1984] W.W.R. 540 (Alta. C.A.) at p. 549 the Alberta Court of Appeal stated:

Band Councils are created under the Indian Act and derive their authority to operate qua band councils exclusively from that Act. In the exercise of their powers they are concerned with the administration of band affairs on their respective reserves whether under the direct authority of Parliament or as administrative arms of the minister. They have no other source of power. (Cited by the BC Court of Appeal in Louie v. Louie, 2015 BCCA 247) (Emphasis added)

ii. William v. British Columbia, 2012 BCCA 285 – made clear that, in deciding what aboriginal entity is the rights holder for aboriginal rights and title purposes, it is necessary to examine how the aboriginal community itself addresses this question;

ii. Tsimshian Law (Ayaawx)

The hereditary leadership of the Allied Tribes of Lax Kw’alaams continues to assert its inherent authority to make decisions on behalf of their Tribes in accordance with our Ayaawx (Tsimshian laws). Our ancestors fought against the colonial governments’ imposition of the reserve system and band councils for well over 50 years (mid-1870’s to the mid-1920’s) and were overcome by the harsh laws constraining our rights enacted by the federal government to control our territories and resources.

In spite of this history, our hereditary leaders have always worked with the elected band councils for the best interests of our people. It was not until the current band council took office in October 2015 that the relationship became one of dismissiveness and denial of the rightful hereditary leadership and the establishment of the Eagle Spirit Energy’s local ‘chiefs council’ as the recognized tribal leaders.

We understand that our system can be confusing to others and has been made more confusing by the recent rift between the hereditary/elected leadership in our community and set out below a brief outline of our social structure and the ancient laws (Ayaawx) that uphold it.
iii. The Tsimshian Social System

i. The basic unit of Tsimshian social organization is the House⁴ (waap -sing., wuwaap -pl.) and consists of members who trace their ancient⁵ ancestry through their mothers to a common grandmother;

ii. Each Tsimshian tribe is comprised of a number of historic Houses, which also belong to one of four clans⁶; each ATL Tribe has at least three clans and historically had between eight to seventeen Houses;

iii. The House is a corporate unit that exists through time, and exclusively owns coastal and inland territories, as well as specific harvest gathering sites, adaawk (sacred histories), crests (displayed on poles, regalia, and masks), songs and a stock of personal names in which are embedded the roles and responsibilities for the land and other House possessions;

iv. The total of these House territories, tribal village sites and special areas, such as the Nass River fishing villages, constitutes the whole of each Tribe’s Territory; however the House territory (Lax Yuup) always remains in control of its House leader who is responsible to manage and protect it in accordance with the Tsimshian Ayaxw;

v. Our Ayaxw (Tsimshian law), which pre-exists the British Crown’s assertion of sovereignty, forbids the alienation or destruction of Tribal or Waap territories (Lax Yuup); it is the sacred duty of each S’mooygyet (head Chief) and Lik’agyigyet (House chiefs) to ensure that its Lax Yuup is managed and protected so it can sustain future generations;

vi. The Tsimshian House system was found in Wii’litsxw v. Minister of Forests (BC) to be an “integral and defining feature of Gitanyow’s society⁷ and as such, the Wilp system and the related aboriginal rights attract the protection of s. 35 of the Constitution Act”⁸;

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⁴ (Waap (sing.); Wuwaap (pl.)
⁵ For instance, a House group’s stock of names include a number of that come from incidents that are relayed in its Adaawk (ancient oral accounts of the House history) which gave rise to the sacred possessions of a House, such as its exclusive crests displayed on poles, regalia and other objects. These names can be traced backed to incidents that occurred in the distant past, such as the great flood (which experts tell us occurred in this area over 5,000 years ago), the ice age and long-extinct birds and animals.
⁶ Clan - p’teex; there are four clans in the Tsimshian Nation – Lax Skiik (Eagle), Ganhada (Raven); Laxkibu (Wolf), Gispawudwa’d (Black Fish – Killer Whale); Clans consist of larger groupings of related Houses and may cut across Tribal and Nation boundaries.
⁷ Although Gitanyow is a Gitxsan tribe, we share a number of fundamental features with them, including laws, adaawk, ancient names, crests;
⁸ Para. 222, Wii’litsxw v. Ministry of Forests, (British Columbia), 2008 BCSC 1139
iv. **Legitimate Decision Making**

i. Each Tribe is led by a head S’mooygyet (Chief), and a Council comprised of the highest ranking Lik’agyet⁹ (House Leader) of each clan in the Tribe¹⁰, who are responsible for making decisions for the Tribe as a whole; decisions are made by consensus. See Appendix 4 for example of Tribal organization and lines of authority;

ii. Decisions **within a House** are made by the leaders of the House, that is the Lik’agyet and other family leaders, matriarchs and elders, who have sole responsibility for managing and protecting its Lax Yuup and other House possessions in accordance with the Ayaawx;

iii. The highest ranking Lik’agyet in the Tribe is usually designated Gal’malgyax (box of speech) and has sole authority to publically speak and relay decisions made by the S’mooygyet and council of Lik’agyigyet. (see Appendix 4 for example);

iv. **Decisions affecting all nine Tribes** are made by the head S’mgyigyet in council with the leading Lik’agyigyet of each tribe, through a four-step process which includes: 1) a proposed resolution is agreed upon by the decision-makers of each tribe (Chiefs and head House leader; 2) the S’mooygyet and House leaders of each tribe then meet with their individual Houses and clan groups for their input and agreement; 3) individual Tribal decisions are then brought back to the larger group for a final consensus confirmation of original decision which may include a Talking Stick ceremony to confirm complete agreement and, 4) the decision is made public by the designated Gal’malgyax.

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2) **Lax Kw’alaams Band Council and Eagle Spirit Energy Holdings Ltd**

Eagle Spirit Energy Holdings Ltd. is a private company and although it represents itself as having full support of the Lax Kw’alaams community, it does not. We have analyzed their membership as shown in public documents and can demonstrate that their members basically belong to two families (including in-laws). We can also show that none of these members, including any recognized Tribal Chiefs, have the appropriate authority to speak or act on behalf of any of the nine tribes at Lax Kw’alaams they purport to represent.

While there is a great deal of group confidentiality in what they do, we do know that the Vice President of the ESE is also the current mayor of the Lax Kw’alaams Indian Band, and the Chair of the ESE “Chiefs Council”, Helen Johnston, is also the deputy chief of the Lax Kw’alaams band.

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⁹ Lik’agyet (singular), Lik’agyigyet (plural) - House leader (male or female)

¹⁰ A tribe is comprised of individual Houses (Waap) which also belong to one of the four Tsimshian clans: (Laxskiik – Eagle; Ganhada-Raven; Gispaxwuwade – Blackfish (Killer Whale); and Laxgibou- Wolf. While Tribes and Houses are local, clans cut across Tribes and Nations.
council, as documented in its November 2018 submission to your committee\textsuperscript{11}. In any other jurisdiction this would be considered a serious conflict of interest, but apparently not so when dealing with Indian Act governments.

Eagle Spirits’ Lax Kw’alaams Chiefs Council, which goes by the name of the Nine Tribes of Lax Kw’alaams, does not have the authority to displace the rightful tribal governance left to us. They may not use their local ‘chiefs’ council’ to take over what they do not legitimately represent. We did not want to make this dispute public but have been forced to do so in order to protect our territories and critical food sources and to uphold the Tsimshian Ayaawx.

The Lax Kw’alaams Band’s notice of Civil Claim against Canada and the province of British Columbia\textsuperscript{12} was filed without consultation with, or consent of, the hereditary leaders of the Lax Kw’alaams tribes and constituent Houses and should be disregarded in its entirety in relation to Bill C-48. We do not agree that our aboriginal rights and titles be put at risk in order to benefit the Eagle Spirit Energy Holdings or the members of its ‘Chiefs Council’ and have informed the band council of this by way of letter dated November 28, 2018.

The Eagle Spirit Energy pipeline proposal has been put forward as the only answer to getting a higher price for Alberta’s heavy crude oil. We believe the ESE arguments to be as overly optimistic for its proposed pipeline as the arguments for the twinning of the Trans Mountain pipeline. Set out below are summaries of several articles that call into question the need for more pipelines to get Alberta’s to British Columbia’s west coast in order to reach a higher price market:

i. The Myth of the Asian Market for Alberta Oil, James Wilt, April 19, 2018
   a. “Canadian producers already have the ability to ship their heavy oil to Asia via the existing 300,000 barrel/day Trans Mountain pipeline – but they’re not using it;”
   b. “...virtually no exports go to any markets other than the US,” economist Robyn Allen told DeSmog Canada – “the entire narrative perpetuated by Prime Minister Trudeau and Premier Notley is fabricated.”
   c. In 2017, the Port of Vancouver only shipped 600 barrels to China, less than a tanker load – during the same year it shipped almost 13 million barrels to the US.
   d. Peak was reached seven (7) years ago when the equivalent of nine (9) fully loaded tankers were shipped to China; this has dropped off completely since.

\textsuperscript{11} Ibid., Appendix 5, Chiefs’ Council Operational Chart
\textsuperscript{12} Lax Kw’alaams Indian Band represented by its Mayor, John Helin on behalf of all members of the Nine Tribes of Lax Kw’alaams, and the Attorney General of Canada and HMTQ in right of British Columbia, No. 10683 Prince Rupert Registry, March 21, 2018.
e. There is little proven interest in Alberta’s hard-to-refine oil; Asian countries continue to rely on imports of light sweet crude from the Middle East and it appears unlikely to change significantly enough to make Alberta oil competitive.

f. A new pipeline will not change the fact that Alberta’s heavy oil takes more effort to refine into usable products and is located further away from major markets than most other sources;

g. The article concludes that the U.S. Gulf Coast remains the most lucrative location for Alberta’s oil production, aided by Trans Canada’s Keystone XL and Enbridge’s Line 3 pipeline,

ii. False Oil Price Narrative Used To Scare Canadian Into Accepting Trans Mountain Pipeline Expansion, by Robyn Allan, in Analysis, Energy, November 26, 2018:

a. “Alberta Premier Rachel Notley is aggressively advancing a false narrative about heavy oil’s deep discount. She presents the problem in two parts, neither of which stands up to scrutiny”;

   - First Notley purports that the abnormally wide price spread affects every barrel of heavy oil leading to millions of dollars a day in losses to the Canadian economy”; and,

   - Second that “the Trans Mountain pipeline is crucial”.

b. Ms. Allan states that when the numbers are crunched, and include the variety of methods that even small players rely on to protect their exposure, such as long-term supply arrangements, hedging, and access to rail, it turns out that only about 20 per cent of oilsands supply is actually affected by the light-heavy differential.¹³

c. Allan says that Notley relied on the Scotia Bank report which stated that the heavy oil discount was costing the Canadian economy $15 billion a year, that is $40 million a day. However, it misrepresented how the crude oil market actually works and mistakenly applied the discount to all barrels supplied as if they were all exposed to spot market pricing when relatively few are.

d. A week later, Notley doubled the number to $80,000 million a day and launched a Canada-wide campaign, including a Real Time Revenue Loss Calculator located near Parliament Hill.

e. The second part of the misleading narrative around the deep discount is the abnormally wide differential is due to one factor – a lack of pipeline, therefore

¹³ WTI is West Texas Intermediate light oil priced in Cushing, Oklahoma and WCS is Western Canadian Select heavy oil priced in Hardisty, Alberta. The WTI-WCS is referred to as the light-heavy differential. (Allan, p. 1)
the problem can only be narrowed to its normal range by the Trans Mountain expansions;

f. However, Ms. Allan says, producers are causing problems by over-nominating for pipeline space through the use of “air barrels”, which are barrels beyond what the producers have available to ship, to get all the space they could possibly need;

g. This has led to un-used capacity; Canadian Natural Resources estimated last spring that as much as 125,000 barrels a day of capacity on Enbridge Mainline is running empty because of air barrel nominations;

h. The article concludes that “there are few barrels of oil affected by the deep discount, and for those barrels that are, the deep discount is being driven by a flawed nomination process and industry players that refuse to fix it.”

iii. First crude oil shipment of the year bound for China has left Vancouver - David Carrigg, Vancouver Sun, Updated: April 20, 2019,

a. A key part of Trans Mountain’s argument to the NEB that the twinning of the pipeline was needed and economically feasible was that Alberta producers needed to diversify their market beyond the U.S., primarily to northeast Asia;

b. While China is the world’s largest importer of crude oil, since 2017 only 17 tankers have taken crude from Westridge to China;

c. The annual record of 6.8 million barrels shipped was set in the last half of 2018 when Alberta crude-oil prices plunged - those prices have now recovered after government intervention;

d. China imported no crude oil from Westridge in 2016 or 2017, and on average during the previous eight (8) years bought 2.6 million barrels per year;

e. By contrast, Alberta exports 1.46 billion barrels of crude a year, most of it heading south via pipeline to the U.S. Gulf Coast and eastern seaboard.

We do not agree with ESE and the Lax Band Council’s argument that our community is poverty-stricken and are appalled at the comparisons drawn with Russia’s birth rate or the poverty in sub-Saharan Africa.

What is fact is that former band councils have worked very hard to establish infrastructure and agreements to align with the changing economy. As Garry Reece pointed out in his oral evidence, we have a marine-based economy, both formal and informal, that is wholly dependent on a healthy marine environment. Former band councils invested over $13 million dollars to upgrade our former salmon cannery to handle ground fish. The plant provides employment to at least a hundred people for approximately eight months of the year and allows them to draw employment insurance during the off-
season. Other employment is available through band initiatives such as forestry, and the community Leisure Centre and the Port of Prince Rupert.

While we are not wealthy in western sense, the sea provides ample food for sustenance and trade; a catastrophic spill would wipe out our traditional food sources for years and the impacts on our communities and culture would be devastating. So, the answer to the Chair’s question to our representative, Mr. Reece, on our theoretical responsibility to support the First Nations who want to develop their oil reserves and sell it to Asia, is no. No, we are not responsible for them; our first responsibility is to ensure that our territorial lands and waters are managed and protected so they can support the generations that follow us. That is the responsibility of each of us who carry names entrusted to us by our various Houses and Tribes; that is our birthright.

ESE has made much of the United Nations Declaration on the Rights of Indigenous Peoples; however it does not appear to recognize that it is bound by the same guidelines. As Mr. Reece informed the Committee hearing in Prince Rupert, the present head S’mooygyet, S’mooygyet Galksic, of the Gitsiis tribe which owns the territory that ESE plans as the terminus of its proposed pipeline at Grassy Bay, has not been consulted at all about its proposed project and there has been no consent by the Gitsiis that their territory be used as a termination point for ESE’s proposed pipeline.

This is true for all the other tribes; there has been no consultation with anyone that we know of outside of the ESE group. We have never been provided with a business plan but yet we are supposed to have agreed that ESE has a right to build a pipeline through the territories of the nine tribes to tide water at Grassy Point. We know nothing of their plans aside from what we read in the press and yet they have the audacity to tell others how to UNDRIP should be used.

ESE and the Lax Kw’alaams Band Council’s claim that the Gitsiis aboriginal title gives them the legal right to use the Grassy Bay area as the terminus for the proposed ESE pipeline is ludicrous. Delgamuukw said that there is an inherent limit to aboriginal title and that limit is breached when the aboriginal group wants to use that area for a purpose not in keeping with the groups’ original attachment to it. Transporting oil is not an aboriginal right, it actually can be view as an antithesis of such a right – a situation which the Supreme Court said would require a surrender of aboriginal title.

Finally, we note that the ESE briefing note\textsuperscript{14} concludes with the following proposition:

\textbf{Proposal} - “We support the request of the Lax Kw’alaams community that a northern boundary to the oil tanker moratorium be fixed at 54 degrees, 30 minutes north latitude pending the development of a land separation scheme for oil tankers in Dixon Entrance equivalent to that in the Strait of Jun de Fuca”.

No such motion has ever been put forward publically to the community of neither Lax Kw’alaams, nor have there been any public community meetings to discuss this issue, let alone such a motion. While this is the first we’ve heard of this proposal, the ATL S’mgyigyet and Tribal leaders reject it completely and fully support the current boundaries established in the original Bill.

\textsuperscript{14} Eagle Spirit Briefing Notes: Bill C-48: Oil Tanker Moratorium Act, November 2018, pg. 4
IV. Conclusion

The S’mgyigyet, Sigad’m Hanaxa, Lik’agyet and Matriarchs have worked hard, along with the leadership of neighbouring nations and others who live in the north, to put in place a de facto moratorium against the shipping of crude oil through our waters. This was done because the risks to our marine environment and food supply are too great:

- Our coastal waters are particularly dangerous and remote;
- Experiences such as those shared by Gitga’at First Nation and the Heiltsuk Nation, show that when accidents do happen, our area’s remote and challenging conditions make effective response extremely difficult, and in some cases, impossible;
- Major spills such as those that occurred Prince William Sound and the Gulf of Mexico have catastrophic impacts over a wide area and over the immediate and long-term.

It is time to remove these risks for good so we can begin to focus on managing and protecting our territories from the effects of climate change and rebuilding our tribal economies.

We have seen no evidence that another pipeline is required to bail Alberta out of its financial problems, and even if such evidence existed, it is asking far too much that we put our environment and way of life at risk so Alberta can continue on its destructive path. It makes no difference to us who the producers are or where they come from, our answer is the same as that of generations of our leaders before us – No. No to oil tankers loading or unloading in our territorial waters, no to pipelines through our lands and waters, no to excluding our territories from the geographic scope of the Bill C-48, and a resounding ‘yes’ to the Oil Tanker Moratorium Act.

The Allied Tribes of Lax Kw’alaams:

1. Ginaxangiik: S’mooygyet Alimlaxha (Garry Reece); Liamlaxha, (Leonard Alexcee), Gal’malgyax
2. Gitwilgyoots: S’mooygyet Yahaan (Donald Wesley); Algax’m Hax, (Murray Smith), Gal’malgyax,
3. Gitandoh: S’mooygyet’m Hanaxa (Sandra Littlewood); Lais (James Lawson, Jr.) Gal’malgyax,
4. Gitzaxlaal: Sayo (Stan Dennis, Sr.), Gal’malgyax, S’mooms (Geddes Wesley), Gal’malgyax
5. Gitsiis: S’mooygyet Galksic (Andrew Tait); Thluum (Howard Green, Sr.), Gal’malgyax,
6. Ginaxdoiks: S’mooygyet’m Hana’a Tsimbelhaat (Victoria Reece), Waaps Satsaan,
7. Gispaxloats: Xpila’ (Lawrence Sankey) Waaps Xpila’, Sagipaayk (Tom Dennis), Waaps Sagipaayk, Gal’malgyax
8. Gilutsau, Elizabeth Reece, Sigad’m Hanaxa
APPENDIX 1: TSIMSHIAN NATION BY GEOGRAPHIC GROUPING, TRIBES, INDIAN BANDS AND CURRENT REPRESENTATIVE ORGANIZATIONS

1. Tsimshian Groups

Northern Tsimshian

Southern Tsimshian

Canyon Tsimshian

2. Tsimshian Tribes


3. Tsimshian Indian Act Bands

Lax Kw’alaams, Metlakatla

Gitga’ata, Gitxaala, Kitasoo

Kitsumkalum, Kitelas

4. Current Organizations

Allied Tribes of Lax Kw’alaams

1. Tsimshian First Nations (BC Treaty) Metlakatla, Kitsas, Kitsumkalum (Stage 5)

Gitga’ata, Kitasoo/Xaixais

2. Coastal First Nations

Note: Metlakatla Indian Band is member of Tsimshian First Nations under the BC Treaty Process and a member of the Coastal First Nations
Nine Tribes of the Coast Tsimshian

Legend
- Statement of Intent Boundary
- Giluts'aaw Tribe "People in Inside"
- Ginaxangik Tribe "People of the Hemlock"
- Gispaxloats Tribe "People of the Elderberry"
- Gitlando Tribe "People of the Other Side"
- Gitlaan Tribe "Canoe Stern People"
- Gitsiadoiks Tribe "People of the Swift Current"
- Gitsis Tribe "People of the Seal Trap"
- Gitwilgyoots Tribe "People of the Kelp"
- Gitzaxlaal Tribe "People from the side of..."
- Share territory by two or more Tribes
- Winter Village Settlement
- Oolichan Fishing Grounds
- Travel en Route

Researched for the Tsimshian Tribal Council by Susan Marsden, September, 1993, from original information from Hebert Wallace collected by Marius Barbeau in 1915 and 1926. Revised April, 2001. For sources and additional information see accompanying data.

Computer Cartography by John Latimer of the Allied Tsimshian Tribes, April 2001 (Revised Cartography September 2016)
August 19, 2016

Lax Kw’alaams Band Council
206 Shashaak Street
Lax Kw’alaams, B.C.

Attention: Mayor John Helin

Dear Mr. Helin

I am writing you on behalf of the undersigned hereditary chiefs of the Allied Tribes of the Lax Kw’alaams regarding your “Message from the Mayor” and the related mail-in ballot process you are undertaking concerning the Pacific North West LNG project.

We wish to state, in unequivocal terms, that as the chief of a band council under the Indian Act, you do not possess the requisite authority to enter into any negotiations or sign any documents related to the aboriginal rights and title of the tribes and the constituent Houses of the Allied Tribes. Furthermore, you do not you have the ability to seek or obtain such authority by way of a “mail in ballot”.

A band under the Indian Act must Act by way of bylaw and through open council meetings. Section 81 of that Act sets out very clearly the band council’s scope of bylaw authority, and it covers matters such as regulation of traffic and construction on reserves, the health of residents and allotment of reserve lands among members. Nothing in section 81 comes anywhere close to providing the authority to undertake the actions contemplated by your mail-in ballot question, nor do any of them give the authority to undertake such a mail-in ballot at all. In Paul Band v. The Queen, 1983 ABCA 308 (CanLII), [1984] 2 W.W.R. 540 (Alta. C.A.) at p. 549 the Alberta Court of Appeal stated:

Band councils are created under the Indian Act and derive their authority to operate qua band councils exclusively from that Act. In the exercise of their powers they are concerned with the administration of band affairs on their respective reserves whether under direct authority of Parliament or as administrative arms of the minister. They have no other source of power. [Cited by the BC Court of Appeal in Louie v. Louie, 2015 BCCA 247]

Furthermore, the courts have made very clear that, in deciding what aboriginal entity is the rights holder for aboriginal rights and title purposes, it is necessary to examine how the aboriginal community itself addresses this question: William v. British Columbia, 2012 BCCA 285. As you are fully aware, our Nation and title which has been documented in the Lax Kw’alaams v. Canada commercial fishing litigation that went all way to the Supreme Court of Canada. This system requires collaborative based decision making by the chiefs and head House leaders of the nine tribes (themselves engaging with other Houses/clans within their individual tribes). It is for this reason you are referred to as “Mayor” and not “Chief” in our community.
While there have been some specific cases in our history where the hereditary leaders have allowed the band council to play some role in respect of aboriginal rights matters, these have been limited always with express or implied support of the Allied Tribes. Never in our history has a band council chief done so without appropriate consent from the nine tribes and their chiefs, house leaders and speakers.

It is noteworthy that the BC Treaty commission lists the “Allied Tribes of Lax Kw’alaams” (not the Lax Kw’alaams Indian band) on its “Nations List”. Furthermore, the Statement of Intent (http://www.bctreaty.net/soi/soiallied.php) filed on behalf of the Allied Tribes states as follows:

7. Are you authorized to submit this Statement of Intent on behalf of your people?
   Yes

8. How did you receive the authorization? (Please provide documentation)
   Each house group of Lax Kw’alaams authorized this submission. See Schedule 2.

Similarly, it is noteworthy that the recent litigation claiming aboriginal title to Lelu Island is filed by the then chief on his own behalf and “on behalf of all members of the ALLIED TRIBES OF LAX KW’ALAAMS”.

In light of all the above, your March 15, 2016 letter to the Canadian Environmental Assessment Agency purporting to support the Pacific North West project on certain conditions was extremely disturbing, as it was done without any consent from (or even knowledge of) the Allied Tribes.

Similarly, this ham-fisted attempt to bootstrap your authority through a mail-in ballot that completely ignores our hereditary leaders and governance structure is deeply troubling, especially when done with a blatantly loaded question.

Once again, we encourage you to respect both Canadian law and our Ayaaxw in respect of rights and title issues. We ask you to respect the hereditary leaders. And we ask that you begin to work with us to ensure appropriate decisions are made. It is not good enough to say the project may go ahead anyway. It is not good enough to note there is a billion dollars on the table. This matter involves the future of our lands, the future of our salmon and the future of our people.

If there is any basis following the federal environmental assessment decision (and further consultations) to cause us to believe the Allied Tribes should reconsider our prior decision to reject the project and the proposed benefits agreement(s) then we will be prepared to engage in a good faith discussion about that. But, at the same time, it must be very clear that unless we decided to do so, this project cannot and will not be endorsed by our Nation, and we may remain opposed to it entirely. If for whatever
reason you cannot respect that then you will leave us no choice but to explore all legal options available to challenge your actions and any resulting agreements or approvals (and we have recently retained legal counsel). But it is our sincere hope we can find a way to work together.

Yours truly,

Signed in the Original

Howard Green, Interim President,

And on behalf of:

S’moogyet Yahaan (Donald Wesley); Algax’m Hax, (Murray Smith), Gal’malgyax, Gitwilgyoots Tribe
S’moogyet Txagaas (Garry Reece); Liamlaxha, (Leonard Alexcee), Gal’malgyax, Ginaxangiik Tribe
S’moogyet Simoogyet’m Hanax’a (Sandra Littlewood); Gamayaam (Stan Dennis, Jr.) Gal’malgyax, Gitandoh Tribe
Sayo (Stan Dennis, Sr.), Gal’malgyax, Gitzaxlaal Tribe
S’moogyet Galksic (Andrew Tait); Thlum (Howard Green, Sr.), Gal’malgyax, Gitsiis Tribe
S’moogyet’m Hanax’a Tsimbilhaat (Victoria Reece), Waaps Satsaan, Ginadoixs Tribe
Xpila’ (Lawrence Sankey) Waaps X’pila’; Sagipaayk (Tom Dennis), Waaps Sagipaayk, Gal’malgyax, Gispaxloats Tribe

Cc: Honourable Justin Trudeau, Prime Minister
Honourable Christy Clark, Premier
Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs
Honourable Catherine McKenna, Minister of Environment
Ron Hallman, President, CEAA
Honourable Rich Coleman, Minister of Natural Gas and Minister Responsible for Housing
Honourable John Rustad, Minister of Aboriginal Relations and Reconciliation
Dave Nikolejsin, Deputy Minister, Ministry of Natural Gas
Doug Caul, Deputy Ministry, Ministry of Aboriginal Relations and Reconciliation
Adnan Zainal Abidin, President, Pacific North West LNG
Gitwilgyoots Tribal Organization & Ranking

As per “Tsimshian S'mooygit Summary”, Undated document, Gitandoh Binder, Tsimshian Tribal Council, P’tex (Clans): Gispawudwa’da – Black Fish; Ganha’da – Raven; Laxskiik – Eagle; Laxgibou – Wolf

Note: Top row of Lik’agyigyet form Council for the S’mooygit

S. Littlewood, Allied Tribes of Lax Kw’alaams, November 15, 2016