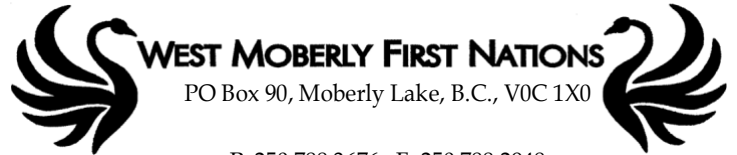




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May 16, 2018

Sent via email

Attorney General  
Vancouver-Point Grey  
Elected 2013, 2017  
BC NDP

**Attention: Honourable David Eby, Q.C.**  
[AG.Minister@gov.bc.ca](mailto:AG.Minister@gov.bc.ca)

Minister Eby, Je aa haanach'e:

**Re: Withdrawal from Site C Injunction**

We write regarding the recent decision of the Attorney General of Canada to withdraw its opposition to our application for an interim injunction to suspend construction of the Site C Dam (the “Injunction”), and regarding the positions being advanced last week by your Ministry and BC Hydro in response to the Injunction. For the reasons set out below, we urge your Government to withdraw its opposition to the Injunction and to initiate plans to suspend work at Site C until our underlying claim of Treaty Infringement is resolved.

**1. The Denial of our Rights is Incompatible with Reconciliation**

We were surprised and disappointed to read the interpretations of Indigenous rights that B.C.’s lawyers have been instructed to advance last week under your leadership. It is well-established that when negotiating Treaty 8 with Indigenous signatories, the Crown’s representatives made oral promises to protect the Indigenous Parties’ traditional mode of life from forced interference, and that the protection afforded by Treaty 8 rights must be interpreted in light of such promises. We have spent years attempting to explain, and provided thousands of pages documenting, the many pathways tying our Dunne-za way of life to the Peace River valley. The evidence filed in support of the Injunction contains some of the most sensitive information to be shared not only about our hunting, fishing and trapping, but about our sacred places, prophecies, teachings, and spiritual practices. Our Elders and knowledge-holders have carefully described how Site C in combination with the previous two dams on the Peace, will irrevocably alter these cultural values and practices.

But under your instruction, B.C. lawyers are inviting the Court to deny all of this. They assert that the Treaty holds *no* protection for our “specific or preferred locations”:

“The question as to whether the impacts from Site C infringe the Plaintiffs' Treaty rights must be measured against the Plaintiffs' rights as actually protected under the Treaty and as recognized and affirmed by section 35. Treaty 8 does not provide for the exercise of rights at specific or "preferred" locations.”

They deny that we will suffer *any* irreparable harm, and even assert that “the infringement of Treaty rights may be financially compensable”, as if the Government could simply pay its way out of its most fundamental constitutional obligations.

These are the same types of arguments that were led against us in 2011 when the provincial government, then led by the B.C. Liberals, asked the Court to find that Treaty 8 did not protect “specific or preferred” species such as caribou, which have been driven to the point of extirpation by previous dams on the Peace and other unchecked development. We defeated those arguments. But it is disheartening to see them revived under your leadership, particularly given your own work defending human rights before entering public life, and your Government’s commitments to pursue reconciliation by implementing the UN Declaration on the Rights of Indigenous Peoples and the Calls to Action of the Truth and Reconciliation Commission.

## **2. Your Lawyers Tell us Not to Trust You**

Like many British Columbians, we believed the statements made by Premier Horgan and his colleagues supporting our opposition to Site C and promising to cancel the project after the implications to ratepayers were assessed by the BCUC. So, when the B.C. NDP took office last summer and our appeals of previous judicial reviews concluded that a civil action would be necessary to determine the issue of Treaty infringement, we waited for the BCUC inquiry and we participated in it in good faith. Our civil claims were commenced only after your Government decided to proceed with Site C notwithstanding the BCUC’s recommendation that there were alternatives available at an equivalent cost to ratepayers.

In its filed response to our Injunction, your Ministry now asks the Court to punish us for placing faith in your Government and for taking its elected representatives at their word:

“The Plaintiffs' reliance on the statements of elected representatives to explain their delay in this regard is misplaced. It is well established that statements by elected representatives do not fetter decision makers, nor do political speeches constitute legally enforceable promises against the Crown.”

You simply cannot have it both ways. If you wish to promise reconciliation when in front of the cameras, you should demonstrate it in your submissions before the Court.

## **3. Our Rights Deserve No Less Respect than the Interests of Kinder Morgan**

We understand the concerns that have been expressed about the risk of an oil spill if Kinder Morgan’s Trans Mountain pipeline is constructed. There are thousands of kilometers of pipelines in our territory, and we have experienced oil spills firsthand. We also appreciate the caution your Government has taken by asking the Court to weigh in on the constitutionality of any Government actions which could affect the interests of Kinder Morgan, the Government of Alberta, or the federal government. This demonstrates respect for the rule of law and due process.

The Treaty rights of our Nations are entrenched in the constitution, and we are entitled to this same degree of respect. Your Government should not be continuing with Site C in the absence of a determination on the issue of Treaty infringement. We therefore urge you to withdraw from the Injunction and to initiate the suspension of construction activities until such a determination is made.

We anticipate your considered reply.

Wuujo aasana laa,



Chief Lynette Tsakoza  
Prophet River First Nation



Chief Roland Willson  
West Moberly First Nations

cc Right Honourable John Horgan, Premier of British Columbia  
Honourable Michelle Mungall, Minister of Energy, Mines, and Petroleum Resources  
Honourable George Heyman, Minister of Environment and Climate Change Strategy  
Honourable Scott Fraser, Minister of Indigenous Relations and Reconciliation  
Honourable Carole James, Minister of Finance  
Right Honourable Justin Trudeau, Prime Minister of Canada  
Honourable Judy Wilson-Raybould, Attorney General of Canada  
Honourable Catherine McKenna, Minister of Environment and Climate Change Canada  
Ken Peterson, Executive Chair of the Board, BC Hydro  
Council, West Moberly First Nations  
Council, Prophet River First Nation  
Jason Lee, Lands and Resources Director, Nun wa dee Stewardship Society  
Tim Thielmann, General Counsel to West Moberly and Prophet River First Nations