

Day 65 – March 11, 2013 – Prince Rupert – Vol 149

[International Reporting Inc. - 13-03-11 - Volume 149 - A3F9T3](#)

Contents

Order of Appearances	1
Northern Gateway Panel 4.....	1
Preliminary matters brought forward by Mr. Richard Neufeld for.....	1
Introduction by Ms. Laura Estep for Northern Gateway Pipelines..22451	1
Examination by Ms. Terri-Lynn Williams-Davidson for Council of the Haida Nation. 2	2
Living Marine Legacy reports	2
Haida marine traditional knowledge.....	2
Effects of a spill on Haida Gwaii are unlikely	2
Assessing spiritual values	3
Ocean & Way of Life poster.....	3
Sqaan Kinghlas or the Bowie-Hodgkins-Davidson Seamount.....	4
Haida Aboriginal rights.....	4
Reversing the trend, restoring the sea.....	5
Examination by Mr. Jim Munroe and Chief Kenny Sam for Daiya-Mattess Keyoh.....	6
NGP has not considered the Daiya-Mattess Keyoh land use plan.....	6
The sooner the better to talk.....	7

Order of Appearances

Preliminary matters brought forward by Mr. Richard Neufeld for Northern Gateway Pipelines 22414

Northern Gateway Panel 4

Aboriginal Engagement and Public Consultation

Ms. Janet Holder	Mr. Paul Anderson	Mr. John Carruthers
Mr. Ray Doering	Mr. Jeffrey Green	Ms. Michele Perret
Ms. Catherine Pennington	Ms. Jan Whitney	

Introduction by Ms. Laura Estep for Northern Gateway Pipelines 22451
Examination by Ms. Terri-Lynn Williams-Davidson for Haida Nation 22536
Examination by Mr. Jim Munroe and Chief Kenny Sam for Daiya-Mattess Keyoh 22918

Preliminary matters brought forward by Mr. Richard Neufeld for 22414

Mr. Neufeld said that Northern Gateway Pipelines (NGP) would reduce its estimate of hours to question others from 43 hours to half that. He projected that they would need one day each to question the panels put forward by the Haisla, Gitga'at, Gitxaala and the Sustainability Coalition. Part of a fifth day may be also be required. 22415

Introduction by Ms. Laura Estep for Northern Gateway Pipelines..22451

Ms. Shannon introduced the panel members, and the personnel supporting the witnesses, and described their areas of expertise and corporate affiliations. Four of the witnesses

were reaffirmed as they had previously been sworn in, and the others were sworn. Ms. Jan Whitney used an eagle feather instead of the Bible. Ms. Estep described and confirmed with each of them their roles and areas of expertise, evidence for which they are responsible, and their curricula vitae. She referred to information listed on Adobe page 15 and 16 of [Exhibit B210-6](#), which lists the Northern Gateway Pipelines' witness panels, titles and responsibilities, issues and evidence, including the Application. She also referred to the errata in [Exhibits B201-2](#). CVs for the four new witnesses are Exhibits [B90-27](#), [B91-11](#), [B188-10](#) and [B91-22](#) 22451

Examination by Ms. Terri-Lynn Williams-Davidson for Council of the Haida Nation 22536

Living Marine Legacy reports

Ms. Williams-Davidson asked the panel about their awareness of the Living Marine Legacy technical reports which have been put in evidence by the Haida Nation [[Exhibits D42-4-1](#) to D42-4-50]. She said these were completed over six years from 1999 to 2006, before the NGP application, and were prepared by Parks Canada to inform joint management of the Gwaii Haanas area by Parks Canada and the Haida Nation. 22539

She asked where in the application these reports are referenced. Mr Jeffrey Green said they are not referenced, that NGP had used reports from the PNCIMA, because the Living Marine Legacy reports are “focused primarily on the shoreline areas of Haida Gwaii as opposed to the open water area. The shipping lane for this project is some 70 to 80 kilometres away from the shoreline of Haida Gwaii.” 22559

Haida marine traditional knowledge

Ms. Williams-Davidson referred to the Haida marine traditional knowledge study, that it “was completed over five years with over 55 interviews” [[Exhibits D42-7-40](#) to D42-7-47]. She asked, “Enbridge did not incorporate the traditional knowledge contained in the Haida marine traditional knowledge study in its response to the IR 1010 from the panel; is that correct?” Mr. John Carruthers said, “It was noted. [The] study was not undertaken for or in relation to the project but appears to have been of a general nature for use undertaken by the Haida.” 22564

Ms. Williams-Davidson asked similar questions about the Haida Nation's oral history submissions which were similarly not reflected in NGP's evidence – because, said Mr. Green, “the assessment was completed in May 2010 and the oral evidence that you're referring to was given at a much later date.” 22576

Effects of a spill on Haida Gwaii are unlikely

Mr. Green said, “The only effect that we believe this project could have on Haida Gwaii is if a spill was to occur and the spill was to move towards Haida Gwaii both of which are unlikely, then effects could occur. But that's the extent of the effect of the project on Haida Gwaii.” 22587.

Ms. Williams-Davidson asked, “Why did you not incorporate the specific traditional knowledge information that the Haida Elders and people provided into your response to the Joint Review Panel Information Request 10.10?” Mr. Paul Anderson replied, “This type of information would be incorporated into our coastal sensitivity mapping as we proceed forward.” 22588

Assessing spiritual values

Ms. Williams-Davidson: “Elders ... shared traditional knowledge about the relationship between the Haida, the natural world and the spirit world.” Mr. Green: “The assessment of effects on spiritual values is not included and it’s not addressed.” It’s not required under the Canadian Environmental Assessment Act. Mr. Carruthers said, “We have had difficulty in engaging with the Haida in terms of getting direct contact.” 22591

Ms. Williams-Davidson said some Haida Elders had “shared about the importance of the ocean as the whole as a marine ecosystem as being a birth place of the Haida people. How do you assess the impacts on an oil spill on the entire marine environment and the impact upon Haida culture?” She said she is trying to test “your understanding of the knowledge that they’ve shared.” Mr. Carruthers said that NGP is trying to “drive the chance of a spill to as low as possible and then be very prepared if there ever was a spill.” Ms. Williams-Davidson replied, “You didn’t incorporate any of [the Elders’] concerns into any application updates.” 22598

Discussion continued in this vein, with Ms. Williams-Davidson referring to evidence told by Haida people and Elders, and the absence of that information in NGP’s documents.

Ocean & Way of Life poster

Ms. Williams-Davidson put up a poster entitled “Ocean & Way of Life” [Exhibit D42-6-5]. It illustrates that “there are many, many places and many different species that the Haida harvest.” None of this was reflected in NGP evidence.



Ms. Williams-Davidson said, “You mentioned the number of studies that ... would be important going forward. ... What more would you gain from the incredible wealth of knowledge that the Haida have already provided?” Mr Green replied, “The purposes of those studies are quite different. ... In terms of the marine environmental effects monitoring program [NGP will be] preparing an environmental quality database that would be useful if a spill or accident ever occurred.” 22637

Ms. Williams-Davidson put up [Exhibit B24-14](#), two maps which do not show the southern portion of Haida Gwaii. She asked why. Mr. Carruthers said it was because the maps are concerned with the pipeline and terrestrial side of the project. Ms. Williams-Davidson asked if they were aware that “the area excluded contains the Gwaii Haanas Haida Heritage Site and National Park Reserve?” She said she would “refer to this area as Gwaii Haanas, which means islands of beauty in the Haida language. You’re aware of the Gwaii Haanas agreement,” she asked. Mr. Anderson said, “Yes, we are, and we were not intending to depict that in this map in any way.” Mr. Green said that Volume 8B, Exhibit B3-35 contained a series of maps which include all of Haida Gwaii. 22650

Ms. Williams-Davidson put up an appendix to the Gwaii Haanas agreement [[Exhibit D42-6-11](#), Adobe 7] and noted that the map shows many of the ancient villages in the Gwaii Haanas area. She also mentioned the 2010 Gwaii Haanas Marine Agreement. She asked, “You are aware that the Gwaii Haanas Haida Heritage Site and National Marine Area Reserve is the only marine conservation area reserve in Canada?” Mr. Green said that was not correct. This discussion continued for some paragraphs. 22687

Sqaan Kinghlas or the Bowie-Hodgkins-Davidson Seamount

Ms. Williams-Davidson said that Sqaan Kinghlas, which in the Haida language means “supernatural being looking outwards,” is 180 km west of Haida Gwaii and is a marine protected area. She put up [Exhibit D42-6-3](#), the actual Sqaan Kinghlas or Bowie Seamount Agreement between the Haida and Canada. Mr. Green pointed out that “the scope of the assessment is the 12-mile territorial waters of Canada and we’re now talking about an area that’s substantially outside that zone.” Ms. Williams-Davidson said it is within the Haida territory. 22746

Ms. Williams-Davidson said “the Haida Nation and the Province of B.C. are jointly managing almost the entire land base outside of the Gwaii Haanas area.” Mr. Green said that these types of questions were addressed in other panels, and Mr. Anderson said the question has no reference in terms of boundaries. 22768

Using an aid to cross examination or aid to questioning (AQ), Ms. Williams-Davidson displayed a map of Haida Nation territory which shows protected areas and conservancies established by the Province of BC, and “the rest of the land base ... managed under ecosystem-based management jointly between the Haida Nation and the Province of B.C.” 22773

Haida Aboriginal rights

Ms. Williams-Davidson stated that “in 2007, the Haida expressed publicly Haida ethics and values.” [[Exhibit D42-6-15](#), Adobe 4]. She asked how these were incorporated in

NGP's application. Mr. Green said "This specific code of ethics would not have been considered in the environmental assessment because what drives the environmental assessment is the Canadian Environmental Assessment Act, the Terms of Reference for this panel and a scope of factors which provide guidelines for how the assessment is conducted." 22786

Ms. Williams-Davidson said that "it doesn't specifically say that you must provide information about traditional use, but [you may augment] the application with traditional knowledge. Ms. Jan Whitney added that "this is exactly the type of dialogue that would take place through the Aboriginal Engagement Program." Mr. Carruthers said that they had met with Elders on Haida Gwaii but have not been able to have any further dialogue. "The information that was provided through the oral evidence and through the filed evidence is consistent with our information. ... So that's how it has been incorporated." Ms. Williams-Davidson asked: "But not specifically -- Haida knowledge is not specifically incorporated into the application or updates? ... I'd like to look at that." Mr. Carruthers did not cite any specific documents. 22797

Reversing the trend, restoring the sea

Ms. Williams-Davidson quoted from [Exhibit D42-6-26](#), "On Haida Gwaii, we are going to reverse these trends. The [...] marine use plan will guide restoration of the sea to its full potential." Mr. Green replied, "[In] the opening description of the Canadian Environmental Assessment Act those exact same sentiments are reflected. The whole purpose of the environmental assessment process is to promote environmentally sustainable development and that is what this entire process is about. ... The objective ... should be in direct agreement with the interests of the Haida. 22819

Ms. Williams-Davidson said that "Volume 5A [[Exhibit B2-26](#), Adobe 25] states that Enbridge has sought to identify the interests and concerns underlying claims of Aboriginal title and rights. ... Can you point to any document or statement where Enbridge identifies [these] interests and concerns?" Mr. Carruthers replied, "We have endeavoured to avoid characterizing or taking a position on the merits of claims including title. ... Rather we went to looking at the potential effects on the rights. 22834

Ms. Janet Holder said, "We did reference ... what we had heard from the Haida in [Exhibit B74-8](#), JRP 10.10. ... We have been listening to what the Haida Nation has been saying." This discussion continued in some detail. 22844

Ms. Williams-Davidson asked, "[Did] Enbridge proceed on the assumption that the Haida Nation holds Aboriginal title and Aboriginal rights to Haida Gwaii?" Mr. Carruthers: "We weren't questioning title or weren't making determination of title." 22858

Ms. Whitney described the Aboriginal Traditional Knowledge (ATK) or Traditional Land Use Studies: "It's quite a methodical process ... it's very participatory." 22866

Ms. Williams-Davidson said, "Enbridge proceeded on the assumption that the Haida Nation holds a right to choose how marine resources are used and managed." Ms. Estep interjected: "These witnesses [are] here to speak to what Northern Gateway did, what

their engagement process was and what their assessment process was. What the Haida Nation's rights are is a matter to be determined in argument or to be determined by the courts.” 22871

Directed to rephrase the question, Ms. Williams-Davidson asked if Enbridge specifically considered “the impacts on joint management activities of the governments, of the Haida Nation and Canada and Gwaii Haanas Marine Agreement.” Mr. Green replied, “We did not consider that specifically,” because there will be no “routine effects of marine transportation,” so it would not compromise the ability of the Haida Nation and the Government of Canada to co-manage the resources in Haida Gwaii.” “If a spill was to occur, ... if there was an effect on a harvestable resource, there are mechanisms in place for compensation and rehabilitation and recovery”.

Ms. Williams-Davidson asked a similar questions regarding the Bowie Seamount. Mr. Green said the Bowie Seamount is beyond the scope of the assessment. And regarding “the near shore and foreshore areas of Haida Gwaii?” Mr. Anderson replied, “We do not believe there will be effects on the management of these resources, period. Whether it’s co-management or management is an irrelevant point.” 22891

Examination by Mr. Jim Munroe and Chief Kenny Sam for Daiya-Mattess Keyoh 22918

Mr. Munroe quoted at length from JRP IR 10.10 [[Exhibit B74-8](#), Adobe 52-54]. He read the JRP’s question which related to how NGP’s assessment of the potential impacts on rights, accounts for and addresses issues raised in evidence; and whether any of these issues do not require further measures. NGP replied that the environmental and socio-economic assessment (ESA), “took into account baseline conditions that were described in the evidence of these intervenors,” and nothing, including other rights, requires “further measures to mitigate impacts beyond those proposed.” 22922

NGP has not considered the Daiya-Mattess Keyoh land use plan

Mr. Munroe asked, “The Daiya-Mattess provided ... our land use plan ... as [Exhibit D48-33](#) and [D48-4-5](#). When can we expect to hear about ... measures proposed to address [the issues] impacted by the construction and operation of the [NGP] with respect to our plan?” Mr. Anderson replied that “We had a very similar question from you in Prince George,” and he gave what he said was the same answer – that “there would be detailed mitigation .. that would follow post-certificate.” 22926

Mr. Anderson continued, “[Your territory] is off the right-of-way so that the areas that are being considered are remote from the corridor that we’re proposing, but we did consider that information in a general way.” Mr. Munroe replied, “Your proposed route does go directly through our traditional territory as described within these documents.” 22934

Chief Kenny Sam said, “We feel that it’s time to address the impacts and mitigate those impacts prior to the permitting rather than later.” Mr. Anderson said, “The pipeline does skirt the south end of that area, of the traditional lands [of the Keyoh]. ... My answer still holds in terms of how we’ll proceed going forward.” Mr. Green said, “Once the

certificate's received for the project, then that normally is the time in which various mitigation begins." He described the post-permit process: "The intent is as this team moves along, kilometre by kilometre of the pipeline proposed right-of-way is concerns are reconciled to the best of ability to meet sort of the optimal combinations for both engineering, environment and social land use." 22942

The sooner the better to talk

Mr. Munroe said, "Mitigation of impacts needs to happen prior to the permitting for protection of our rights. ... You haven't considered the plan at all to date. ... The sooner the better to talk." "We look forward to hearing from you and getting a meeting happening." 22959