BRITISH COLUMBIA
ASSEMBLY OF FIRST NATIONS
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COMMUNIQUE TO FIRST NATIONS IN BC

RE: BC ENVIRONMENTAL ASSESSMENT REFORM

TO:	First Nations Chiefs and Leaders	**DATE:**	July 13, 2018
FROM:	Regional Chief Terry Teegee	**PAGES:**	1

New Environmental Assessment legislation must:

Embody the *United Nations Declaration on the Rights of Indigenous Peoples* standard of free, prior, informed consent

- Implementation of *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) in the context of environmental assessment (EA) must go beyond technical collaboration to legally recognizing Indigenous decision-making regarding the process and outcomes of assessments.
- Government-to-government agreements that establish an Assessment Plan – including the scope, procedures and methods for EA, how provincial and Indigenous processes and decision-making will align, funding, timelines, and approaches to community/public participation – must be in place before an assessment commences, and may be informed by a new early engagement phase.
- A provincial EA certificate must not be granted in the absence of consent from all impacted First Nations.

Advance self-determination through fully funded Indigenous-led assessments based on Indigenous law, knowledge and best available science

- The current approach to assessment in BC – whereby the proponent generates virtually all the evidence, which is reviewed by an ad hoc technical advisory group led by the Environmental Assessment Office (EAO) – is inadequate and must be changed.
- Unless otherwise determined through collaboratively developed Assessment Plans and related government-to-government agreements, independent or Indigenous-led processes should be the default for assessment, and Indigenous-led studies to inform EA decisions need to be fully funded.
- Regional “Reconciliation” or “Sustainability” offices proposed in the Discussion Paper should be implemented as independent science centres to assist with generating, overseeing and/or peer reviewing scientific and technical evidence in project and regional assessments to enhance capacity and the quality and independence of evidence.

- New EA legislation needs to legally recognize the role of Indigenous governments (e.g. guardian programs) in monitoring and enforcement and require that the results of monitoring be acted on.

Implement a clear legislated test for approval or rejection of projects to uphold the UN Declaration and advance ecological, cultural, health and socio-economic sustainability

- New EA legislation needs to require decision-makers to select the option from among reasonable alternatives that best protects Indigenous title and rights, and makes the greatest positive, lasting and equitably-distributed contribution to sustainability. This must include the option of *not* proceeding with the proposed project.
- New EA legislation must include defined legislative sustainability and reconciliation criteria – including the requirement for Indigenous consent, a climate test and baseline ecological limits. Projects that fail to meet these defined criteria must not be approved under a new assessment law.

Address cumulative effects within a region, through a broader requirement for project assessments and mandatory regional assessments

- *All* projects that stand to impact Indigenous title or rights or sustainability must be assessed.
    - The legal criteria for which proposed projects get assessed must be broadened beyond current, narrow thresholds based on production-capacity (e.g. the amount of mineral ore that a mine plans to produce each year).
    - Legislation needs to provide a mechanism for Indigenous peoples and the public to trigger assessments for projects that fall outside the assessment threshold.
- The ability to exempt projects meeting the assessment threshold from assessment must be removed.
- New EA legislation needs to provide triggers and requirements for regional assessments, which would establish legally binding standards for environmental protection that apply to project assessments and regulatory decisions in the region.

Ensure effective dispute resolution mechanisms are developed collaboratively with Indigenous nations

- With appropriate safeguards, dispute resolution mechanisms referenced in the Discussion Paper could be incorporated in new EA legislation. For example, the Discussion Paper references an EA Advisory Committee recommendation to create a "Reconciliation Commission," described in the Discussion Paper as:

    [A] time-bound alternative dispute resolution process to provide constructive direction and support for reconciliation initiatives within the EA process and to

address disputes arising from implementation of the UN Declaration within the EA revitalization initiative –for example to provide support for reconciling the differing decisions of Indigenous nations and public governments with respect to EA – and to apply Indigenous laws and legal processes to address disputes among Indigenous nations in areas of shared territories in relation to EAs when requested to do so.

- Any "alternative" dispute resolution mechanisms cannot limit access to the courts to ensure the EA legislation is being followed and the standards of the UN Declaration and the Crown's constitutional duties are being upheld. Outcomes from key assessment stages, such as the assessment report and recommendations, and the Ministers' decision on whether to approve a project, must be subject to appeal and recourse to the courts.

Set aside the existing bilateral MOUs between federal agencies and the BCEAO that allow substitution of assessments

- New tri-partite arrangements that enable substitution of Indigenous-led assessments must be negotiated.