



FIRST NATIONS SUMMIT

Suite 1200-100 Park Royal South, West Vancouver BC V7T 1A2

Tel: (604) 926-9903

Statement by Chief Douglas White III Kwulasultun, First Nations Summit Eleventh Session of the UN Permanent Forum on Indigenous Issues, 7-18 May 2012

Agenda Item 4(b): Human Rights: Dialogue with the Special Rapporteur on the rights of indigenous peoples and the Chair of the Expert Mechanism on the Rights of Indigenous Peoples

15 May 2012

Thank you, Madame Chair. I would like to begin by acknowledging the important work completed by the three UN Indigenous-specific mechanisms: the Permanent Forum on Indigenous Issues, the Special Rapporteur on the Rights of Indigenous Peoples and the Expert Mechanism on the Rights of Indigenous Peoples.

In particular, we appreciate the report by the Permanent Forum to this year's 11th Session entitled, "*An analysis on the duty of the State to protect indigenous peoples affected by transnational corporations and other business enterprises.*" We thank the Special Rapporteur for his report entitled, "Extractive industries operating within or near indigenous territories." Further, we look forward to the upcoming follow-up report on Indigenous Peoples and the Right to Participate in Decision-making with a focus on extractive industries by the Expert Mechanism on the Rights of Indigenous Peoples ("EMRIP") at its upcoming 5th Session. All of this important work advances Indigenous Peoples' right to free, prior and informed consent.

We wish to direct the attention of the Special Rapporteur to an emerging and disturbing pattern of behaviour by the Government of Canada in the form of significant proposed amendments to legislation arising in the early part of this year that are critical to decision-making processes that are at the core of the relations between the State and Indigenous peoples. Rather than seeing a convergence and alignment by the Canadian government with international laws, norms and standards, including the UN *Declaration on the Rights of Indigenous Peoples* ("the UN Declaration"), we are witnessing a deepening of divergent laws and policies and a widening of the gap between Canadian and international laws, norms and standards.

For many decades, Indigenous peoples have been seeking legal remedy in our domestic courts regarding our Aboriginal title and rights. From the seminal Supreme Court of Canada ("SCC") decision in *Calder* to the recent BC Supreme Court decision in *Tsilhqotin*, we have yet to achieve any remedy by way of a declaration of Aboriginal title from any level of Canadian court. Instead, courts have articulated the legal theory of Aboriginal title and called for good faith negotiations by the Crown to resolve underlying land rights. Negotiated settlement of this critical issue has proven elusive. Of key

concern, we continue to face intractable government policy rooted in extinguishment and denial of our title and rights. Canada and industry continue to seek to benefit from our territories and make decisions that have the effect of dispossessing us of the very substance we are negotiating.

Decision making by the Crown regarding extractive industry projects have been directed, by the 2004 SCC decision in *Haida Nation*, to be rooted in the principle of the honour of the Crown, giving rise to the duty to consult with Indigenous peoples regarding projects. To date, the lack of a commitment by the Crown to develop with Indigenous peoples an effective and meaningful form of engagement about extractive industry decision-making has led to an impoverished form of engagement that has created significant uncertainty for all and led to continued recourse to the courts by Indigenous peoples to protect their lands and waters.

For a number of years now the Crown has taken what it sees to be a minimally acceptable approach to meet its legal duties. Unfortunately, the Crown is now taking steps that worsen this situation. By way of example, we point to significant changes to environmental assessment processes that have been a critical opportunity for Indigenous participation in consideration of extractive industry projects. The changes involve consolidating the assessment tasks so they will be conducted by three federal bodies (the Canadian Environmental Assessment Agency, the National Energy Board and the Canadian Nuclear Safety Commission), instead of the current 40.

In addition, the federal government has announced amendments to fisheries legislation which removes legal protection for fish habitat, a key provision in the act. First Nations have expressed concern that these changes are clearly aimed at fast-tracking approval of major projects such as Calgary-based Enbridge Inc.'s proposed \$5.5-billion oil-sands pipeline to the B.C. coast, at the expense of Indigenous title and rights.

Recently, the underlying Aboriginal title and rights of number of First Nations in British Columbia have been adversely impacted by the activities of extractive industries operating within or near their territories. In particular, Premier Clark's B.C. Jobs Plan promises to open eight new mines by 2015, reducing the backlog of mining permits by 80% in the province. The Tahltan Nation of northwest BC is opposing the Red Chris mine proposal unless the risk of water pollution is minimized on their traditional hunting grounds. Concern has been expressed that the mine would transform part of the Klappan Valley into a vast tailings pond near the headwaters of three of B.C.'s biggest river systems.

In regard to social and cultural impacts on the rights of Indigenous peoples, on March 20th, 2012 the government of BC approved the construction and operation of a ski resort (known as the Jumbo Glacier Resort) within this area of great cultural and spiritual significance, known to the Ktunaxa as 'Qat'muk'.¹ This occurred despite 20 years of opposition by the Ktunaxa Nation and the fact that the resort will impair Ktunaxa aboriginal rights and have profound impacts on the spiritual and cultural values of the area for the nation.

¹ See attached memorandum from Kathryn Teneese, Chair, Ktunaxa Nation Council to Grand Chief Edward John, Chair, UN Permanent Forum on Indigenous Issues, dated May 8, 2012.

In a similar vein, the people of the Musqueam Nation are currently maintaining an ongoing protest to prevent the destruction of cəsnaʔəm (commonly known as the Marpole Midden) and ancient village and burial site from condo development. This site is of significant cultural importance and been a known archaeological site for over 100 years and recognized as a Canadian Heritage Site since 1933, containing priceless artifacts and undisturbed intact burials of the Musqueam people.

These examples are the direct result of the broken form of engagement between the Canadian State and Indigenous peoples, where the prioritization of non-Indigenous economic development by Canada overrides and devalues Aboriginal title and rights. The ugly reality is that we can expect many more decisions like the ones at Qatmuk and Musqueam given the broken and impoverished decision-making framework in Canada. We must find ways to ensure that the government of Canada shifts its laws and policies toward closing the gap with international standards, rather than widening the gap. The human rights of Indigenous peoples of Canada depend upon this.

In this regard, we pose the following inquiries to the Special Rapporteur:

Key Questions

1. I would like to inquire as to the Special Rapporteur's future plans of study or work on the right to free, prior and informed consent and how this work will be advanced in collaboration with the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues.



Ktunaxa Nation Council
7468 Mission Road
Cranbrook, BC V1C 7E5
tel: 250-489-2464
fax: 250-489-2438

visit us at:
www.ktunaxa.org

Memorandum

Date: May 8, 2012

To: Grand Chief Edward John
Member, UN Permanent Forum on Indigenous Issues

From: Kathryn Teneese
Chair, Ktunaxa Nation Council

Subject: **British Columbia government approval of Jumbo Glacier resort in Qat'muk**

The purpose of this memo is to ask that you bring the above-captioned matter to the attention of the UN Permanent Forum on Indigenous Issues. In particular, this issue is directly relevant to agenda item 4: Human Rights (a) Implementation of the United Nations Declaration on the Rights of Indigenous Peoples:

Article 12: The right to manifest, practice, develop and teach spiritual and religious traditions, customs and ceremonies and to maintain, protect, and have access in privacy to religious and cultural sites.

Article 25: The right to maintain and strengthen distinctive spiritual relationship with traditionally owned or otherwise occupied and used lands, territories, waters and other resources and to uphold responsibilities to future generations in this regard.

On March 20th, 2012 the government of BC approved the construction and operation of a four season, 6,500 bed ski resort (Jumbo Glacier Resort) within an area known to the Ktunaxa as 'Qat'muk'. This occurred despite 20 years of opposition by the Ktunaxa Nation and the fact that the resort will impair Ktunaxa aboriginal rights and have profound impacts on the spiritual and cultural values of the area for our nation. The depth and significance of these impacts has been likened to the impacts to our nation from residential schools and from the 1940's extirpation of salmon from our territory.

The following is a brief summary of the spiritual and cultural importance of the Qat'muk area, taken from the Nov. 15th, 2010 'Qat'muk Declaration':

Takisqnuuk

Lower Kootenay

St. Mary's

Tobacco Plains

"We, the Ktunaxa, have lived in our territory since time immemorial and have a deep spiritual connection to the animal world and, in particular, to the grizzly bear. Qat'muk is a very special place where Kławła Tukłak is the Grizzly Bear Spirit, was born, goes to heal itself, and returns to the spirit world. The Grizzly Bear Spirit is an important source of guidance, strength, protection and spirituality for the Ktunaxa. Qat'muk's importance for the Grizzly Bear Spirit is inextricably interlinked with its importance for living grizzly bears now and in the future. The Ktunaxa have a stewardship obligation and duty to the Grizzly Bear Spirit and Qat'muk."

The Ktunaxa-Kinbasket Tribal Council (KKTC, predecessor of the Ktunaxa Nation Council) became aware of the proposed resort in the early 1990's. Since that time, Ktunaxa Nation representatives have continually expressed shock, dismay and strong opposition. The knowledge of the deep spiritual values of the Qat'muk area is highly private and confidential, even within the Ktunaxa Nation. Until 2009, we relied principally on the many environmental and economic reasons (which we documented extensively) which should have convinced the government of BC to disallow the proposed project.

In 2009, having become convinced of the need, Ktunaxa knowledge holders met privately with Minister Krueger (responsible minister at the time) and shared with him deeply confidential information about the spiritual values of Qat'muk and the potential consequences of the proposed resort. This was repeated for Minister Steve Thompson in July 2011 after he became the responsible minister.

In November, 2010, representatives of our nation formally presented the attached 'Qat'muk Declaration', 'Qat'muk Stewardship Principles' and map to Minister Ida Chong in the provincial legislature in Victoria, B.C. We are going to continue to use all possible means to achieve our vision for the future of Qat'muk.

Takisqnak

Lower Kootenay

St. Mary's

Tobacco Plains

Qat'muk Declaration

We, the Ktunaxa, have lived in our territory since time immemorial and have a deep spiritual connection to the animal world and, in particular, to the grizzly bear. Qat'muk is a very special place where Kʷawʷa Tukʷutakʷis, the Grizzly Bear Spirit, was born, goes to heal itself, and returns to the spirit world. The Grizzly Bear Spirit is an important source of guidance, strength, protection and spirituality for the Ktunaxa. Qat'muk's importance for the Grizzly Bear Spirit is inextricably interlinked with its importance for living grizzly bears now and in the future. The Ktunaxa have a stewardship obligation and duty to the Grizzly Bear Spirit and Qat'muk.

Given the importance of Qat'muk, the Ktunaxa Nation Council, on behalf of the Ktunaxa Nation:

Affirms that having been created in interdependence with the land, its living things, and the spirit world, the Ktunaxa possess and are entitled to enjoy our inherent and preexisting sovereignty over our land and our lives thereon;

Affirms that the United Nations Declaration on the Rights of Indigenous Peoples supports the Ktunaxa Nation's right to: (a) manifest, practice, develop and teach our spiritual and religious traditions, customs and ceremonies and to maintain, protect, and have access in privacy to our religious and cultural sites [Article 12]; and (b) maintain and strengthen our distinctive spiritual relationship with our traditionally owned or otherwise occupied and used lands, territories, waters and other resources and to uphold our responsibilities to future generations in this regard [Article 25];

Emphasizes that the Ktunaxa have never consented to the developments and desecrations that have occurred within Qat'muk;

Asserts that we will not agree to any further development or sale of land associated with Qat'muk that would result in irreparable and irreversible harm to this sacred place and our spiritual connection with it;

Affirms that the Creator gave the Ktunaxa covenants, one of which is to protect, honour, and celebrate what the Creator has given us;

Reaffirms that our Law, ʷaknumuʷtitit, requires the protection of our sacred places for ourselves, our children, and our grandchildren;

Recognizes that the Ktunaxa language does not translate well into other languages and consequently our spiritual relationship with Qat'muk may not be fully understood by others;

Affirms that we are strong, as we have maintained our cultural connection to our land, language, and spirituality;

Reaffirms that we are of one heart and one mind to protect Qat'muk from desecration;

Insists that we will strengthen and revitalize the Ktunaxa Nation through our spiritual connection to Qat'muk;

Invites other governments, non-governmental organizations, business proponents, local communities, and others to support and respect our spiritual traditions and practices linked to Qat'muk, and to help protect it against desecration and destruction.

Proclamation

The Ktunaxa Nation Council, on behalf of the Ktunaxa Nation, hereby proclaims, on this date:

That Qat'muk is the home of the Grizzly Bear Spirit and is the unique and proper place to celebrate and honour this spirit;

That Qat'muk includes the entirety of the Toby-Jumbo watershed and the uppermost parts of the South Fork Glacier Creek, Horsethief Creek and Farnham Creek watersheds;

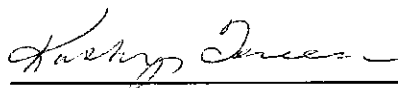
That, to fully protect the most sacred core of the Qat'muk area, a *refuge area* consisting of the upper part of the Jumbo valley is hereby established;

That a *buffer area* consisting of the remainder of the Jumbo watershed is hereby established so that the Grizzly Bear Spirit, as well as grizzly bears, can thrive within and around Qat'muk;

That the Ktunaxa Nation will share Qat'muk with non-Ktunaxa when such use is respectful of Ktunaxa spiritual values and consistent with our *Qat'muk Stewardship Principles*; and

That the Ktunaxa Nation Council will prepare a management plan for the refuge and buffer areas based on the *Qat'muk Stewardship Principles* and in consultation with other governments and stakeholders.

November 15, 2010



Kathryn Teneese, Ktunaxa Nation Council Chair
on behalf of the Ktunaxa Nation Executive Council



Qat'muk Stewardship Principles

The Ktunaxa creation story states that Ktunaxa people were created in our territory, where we will remain as keepers of the land. The creation story also speaks to our obligation to care for and respect the land and all things on it, living and non-living. These teachings come together in Ktunaxa law.

Ktunaxa Law

?aknumuǵtitiit is our word for the law given to the Ktunaxa by the Creator. It is a powerful word and speaks to why we were put on this land. We were born into this land and someday we will return through death. The Creator put us here for a reason and that purpose is to take care of the land and its resources.

The law of the land, ?aknumuǵtitiit, is the law for survival. The law protects the values inherent in the land. The land gives us the resources to survive, and in return, we uphold our covenant with the Creator to protect and not overuse the land.

The law is grounded in the fact that all things are connected and must be kept in balance. It is also the foundation of our spirituality – that of being humble in our limited understanding and of being respectful of our role within nature and with other creatures, as well as being respectful and acknowledging the Creator and our ancestors.

Stewardship Philosophy: The Ktunaxa Relationship with the Land

The foundation of the Ktunaxa's philosophy of stewardship of lands and resources is our recognition that we are part of the land. Our understanding of our connectedness requires that we have respect for all things as anything that affects one affects everything else.

The Ktunaxa have terms that address the natural world and how people are a part of it. ?akuk'pukam speaks to anything that gets life from the earth through roots. ?akuk'pukamnam adds the human dimension whereby the earth's life is translated into human life. That is, the Ktunaxa have roots that tie them to the territory, and that we are of the earth. In other words, what we do to the earth, we do to ourselves.

The Ktunaxa phrase that captures the interconnectedness and the stewardship concepts applicable to land management is *Yaqa! Hankatiitiki na ?amak*. This phrase translates to "our people care for the land, the land cares for our people." It is about our relationship with the land.

Stewardship Principles

Ktunaxa stewardship values will:

- Contribute to the betterment of future generations;
- Balance the economic use of land with cultural and spiritual values;
- Follow natural law of taking only what is needed;
- Ensure that long-term sustainability and ecological integrity take precedence;
- Ensure access to, and protection of, traditional foods, medicines, resources, and spiritual sites;
- Maintain, protect, manage and restore healthy and diverse ecosystems;
- Ensure land, air, and water are and will be clean and healthy.

Special requirements for Qat'muk

Qat'muk is a place to celebrate, protect and honour Grizzly Bear Spirit.

We invite other governments and stakeholders to participate in developing a management plan for Qat'muk, including the *refuge* and *buffer* areas, which reflect our Stewardship Principles.

We will continue to share the designated *refuge area* and *buffer area* with non-Ktunaxa when such use is respectful of Ktunaxa spiritual values and consistent with our *Qat'muk Stewardship Principles*.

The refuge and buffer areas will not be shared with those who engage in activities that harm or appropriate the spiritual nature of the area. These activities include, but are not limited to:

- The construction of buildings or structures with permanent foundations;
- Permanent occupation of residences.

To further safeguard spiritual values, no disturbance or alteration of the ground will be permitted within the refuge area.

