FIRST NATIONS SUMMIT

NEWS RELEASE

FOR IMMEDIATE RELEASE:
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Grand Chief Edward John of the First Nations Summit presents to House of Commons Standing Committee on Natural Resources

Coast Salish Territory (Vancouver) — Grand Chief Edward John of the First Nations Summit political executive presented to the House of Commons Standing Committee on Natural Resources yesterday to provide a First Nations perspective on the committee's current study of the potential importance of market diversification to Canada's energy future and economic growth.

Chief John raised issues of critical importance to First Nations in BC and indicated that the issues being studied by the committee *"are important because they involve direct impacts on: our First Nations communities and peoples' social, cultural and economic well-being and dignity; the environment, lands and resources we rely on which continues to support our way of life and livelihoods; and the aboriginal and treaty rights, including aboriginal title, we have inherited from our ancestors and which are recognized and affirmed in the Constitutions of Canada."*

Chief John also reinforced that "*resolution and reconciliation … cannot be the extinguishment of, in any form or result, the aboriginal rights and aboriginal title of First Nations. The "certainty" necessary for First Nations must be one based on true and full recognition and implementation of aboriginal rights and title. This will provide a solid basis for First Nations to share and co-exist with all others and to provide for our economic, social and cultural well-being."*

Full text of Chief John's speaking notes as well as the written brief tabled with the committee is attached.

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The First Nations Summit speaks on behalf of First Nations involved in treaty negotiations in British Columbia. The Summit is also a NGO in Special Consultative Status with the Economic and Social Council of the United Nations. Further background information on the Summit may be found at www.fns.bc.ca.

For Further Information:

Grand Chief Edward John, FNS Political Executive 778-772-8218
Colin Braker, Communications Director, FNS 604-926-9903

FIRST NATIONS SUMMIT

May 2nd, 2013
Presentation by Grand Chief Edward John, First Nations Summit Political Executive

To the House of Commons Standing Committee on Natural Resources

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1. Good afternoon ladies and gentlemen.

2. Thank you for inviting me to submit a presentation to your Committee today.

3. The issues this Committee is considering, outlined in the 6 "questions" (appendix 1) presented to me, as well as the "recommendations" you make, are critically important to First Nations in BC. Developing a just resolution of the "land question" in BC is essential but it requires the full and collaborative involvement of, as well as the free, prior and informed consent of First Nations.

4. They are important because they involve direct impacts on: our First Nations communities and peoples' social, cultural and economic well-being and dignity; the environment, lands and resources we rely on which continues to support our way of life and livelihoods; and the aboriginal and treaty rights, including aboriginal title, we have inherited from our ancestors and which are recognized and affirmed in the Constitutions of Canada.

5. There is one thing I want to have clear at the outset: our people, communities and constitutional rights, are considered by governments, industries and even the public, as "risks", "barriers" and "obstacles" which create "uncertainty" for "development". To assume, or suggest this, puts our people and our rights in an adversarial position. We do not see ourselves or our rights as "risks", "obstacles" or "barriers". We have a right and a responsibility to advance and protect ourselves, our well-being and dignity; our lands, resources and environment and; our rights.

6. During the course of this past winter the protection and promotion of these rights and responsibilities were key in "IdleNoMore", the grassroots First Nations/Aboriginal protest movement. The steps by the federal government in Bills C38 and C45 to limit or eliminate environmental

standards and safeguards have in no way provided any assurances to First Nations who continue to practice their way of life and who provide for their livelihood by relying on the lands and resources in their respective territories. Because of this there is strong and widespread opposition to the significant risks associated with proposals such as those being advanced by Enbridge, Kinder-Morgan and Taseko.

7. Mechanisms such as political advocacy, action on the ground and litigation have all been used, with various degrees of effectiveness, by First Nations in advancing and protecting their rights, supporting their communities and peoples and defending their lands, territories and resources. Much of this has been seen as necessary because of the intransigence of, and in some cases, because of actions of Crown governments. However because of these initiatives, First Nations peoples are perceived in negative and discriminatory ways.

8. I believe you have an important responsibility to recommend to the federal government, change as to the nature and tone of the unfortunate negative perceptions about First Nations peoples. As the saying goes "the tone starts at the top". I think it applies here.

9. Our peoples are proud of who we are, proud of where we come from and proud of our linguistic and cultural heritage. Historic and even contemporary policies of the federal government have done much to deny, undermine and extinguish this. We can't change the past, but historical wrongs can, and should be remedied. As well we can strive to create more inclusive and dynamic relationships based on respect, recognition and reconciliation.

10. The diversity and richness of the cultural and linguistic background of First Nations in BC is truly immense, and in my view absolutely wonderful and worth celebrating. We have some 30 tribal groups with seven linguistic families representing about 5% of the population in the province. However the federal government's Indian residential and associated policies have had, and continue to have, devastating impacts on our peoples and communities including families and languages. In fact, if nothing is done, some languages will become extinct in a generation or two.

11. Our leaders, families and communities are working against difficult odds in rectifying this. They have, over several years and in countless meetings, developed proactive measures and actions and have created community, tribal and provincial institutions and initiatives. As members of Parliament it is important for you to ensure the federal government recognizes and supports these significant steps to improve our peoples "quality of life". It is our view that, in time, the changes we need will happen.
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12. One of the most significant issues in BC relates to the inherent, legal and human rights First Nations have to and in their respective lands, territories and resources. These lands, territories and resources have, throughout our histories, provided for the well-being of our peoples. In the mid-1800s colonial authorities, without our peoples' agreement or consent, appropriated these to Crown sovereignty, ownership and jurisdiction. The underlying assumptions about our First Nations then were: that we were not civilized enough to have ownership to or authorities over our traditional lands, territories and resources and; that the civilizations of the new colonies were superior to those of our peoples. These underlying assumptions have been categorically condemned internationally including in the United Nations Declaration on the Rights of Indigenous Peoples.

13. However, and unfortunately, these underlying assumptions were recently re-iterated by the BC Court of Appeal in the Tsilhqot'in case, where the so called "principle of discovery" (also referred to as the "doctrine of discovery", established in US jurisprudence, and first applied in the St. Catherine's Milling case in 1888) was considered as a part of the rationale to deny the existence of Tsilhqot'in peoples title to their lands, resources and territories. These assumptions, even now forming a foundation for Canada's "aboriginal" relations strategy, including the comprehensive claims and self-government policies, must be re-considered.

14. The appeal in this case will be heard in the Supreme Court of Canada this fall and it is imperative that the federal government discontinue advancing arguments premised on these underlying, much maligned and discredited assumptions. A more respectful foundation, such as those contained in the minimum standards in the UN Declaration on the Rights of Indigenous Peoples will foster better First Nations-Crown relations."

15. In most of the province there are no agreements or treaties. Resolution and reconciliation however cannot be the extinguishment of, in any form or result, the aboriginal rights and aboriginal title of First Nations. The "certainty" necessary for First Nations must be one based on true and full recognition and implementation of aboriginal rights and title. This will provide a solid basis for First Nations to share and co-exist with all others and to provide for our economic, social and cultural well-being.

16. In negotiations in BC the existing unilateral and self-serving federal government comprehensive claims and self-government policies and mandates continue to be significant impediments to "good faith negotiations". Government cannot dictate what is, and what is not, negotiable; nor can it take the position that if a First Nations does not agree with its negotiation policies and mandates that they should pursue other options. This does not under any circumstances amount to "good faith" on the part of government. The Supreme Court of Canada has been

critical of this pattern of conduct on behalf of the Crown. It has repeatedly stated that "reconciliation" is an important constitutional purpose of s. 35 and that it is best achieved through principled negotiations conducted in "good faith".

17. For this Standing Committee the respectful resolution of the land question and the critical issues of certainty for First Nations "without extinguishment" and negotiations in "good faith" are definitely "key" to the six questions you raise.

18. The Prime Minister on January 11, 2013 (and on January 24, 2012) committed to set up a process to deal with treaty implementation and enforcement and, to reforming Canada's "comprehensive claims" policies and mandates. It is important that this Committee consider this as a priority and that the work necessary to revise Crown negotiating policies, including mandates, proceed with urgency and priority.

19. We know that the foundation of wealth generation to support the economic and social well-being of peoples comes from the access to and development of lands and resources. There is, in the coming years, an estimated $650B worth of resource development and associated infrastructure pending in First Nations territories. One of the greatest sources of the enduring poverty in First Nations communities comes from the Crown dispossession of their lands, territories and resources and the continued denial and prohibition of First Nations from using and developing these to support their social and economic well-being. For example, notwithstanding recognition and affirmation in s.35 of the Constitution Act (1982) governments refuse to recognize the existence, including the nature and scope, of aboriginal title to the territories of First Nations. Recognition and the resolution of this would provide a solid foundation to support sustainable economic and social development. These lands, territories and resources have since time immemorial provided for the well-being of our peoples. There is no reason why this cannot be the case.

20. Regarding some public perceptions on this I want to refer to an opinion poll by the Asia Pacific Foundation, titled Assessing Canada-Asia Energy Relations. This poll was commissioned in March 2013 and directed to Asia practitioners, those who engage in business in Asia. A majority of Asia practitioners (63%) believe that the federal government should NOT allow the development of energy resources for export to Asia without first obtaining the approval of affected First Nations communities.

21. I also bring to your attention two key reports: the Canadian Council of Chief Executives July 2012 report entitled "Framing an Energy Strategy for Canada" and the Asia Pacific Foundation June 2012 report entitled,

"Securing Canada's Energy Future: Report of the Canada-Asia Energy Futures Task Force". Both of these reports highlight the importance of meaningful partnerships with Indigenous Peoples.

22. In conclusion, as articulated in Articles 18 and 19 of the UN Declaration on the Rights of Indigenous Peoples, I strongly recommend that new and constructive standards provided in the Declaration as well as those set out by the various Supreme Court of Canada decisions form an important base for renewed First Nations-Crown relationships. The old standards are regressive, colonial and outdated. New standards will allow for an improved process for achieving reconciliation. There is now a good opportunity for strong and true partnerships with our First Nations while ensuring our communities realize benefits as well as the necessary protections and safeguards from development that is sustainable.

23. **APPENDIX - Questions from the House of Commons Committee on Natural Resources:**

Given the potential importance of market diversification to Canada's energy future and economic growth, the House of Commons Standing Committee on Natural Resources has decided to study this topic in greater detail and consider the following questions:

- *What is the current state of Canada's domestic and export energy markets?*
- *What are the key drivers of energy market diversification? Why are Canadian energy producers (including crude oil, natural gas, electricity and nuclear) looking to diversify their markets, both domestic and export?*
- *What are the key advantages and risks involved in diversifying Canada's energy markets? How would market diversification benefit the country?*
- *What are the key barriers to the diversification of Canada's energy markets? What are the key requirements for market diversification?*
- *What actions are needed from energy industries and government to realize market diversification in Canada's energy sector?*
- *What role can the federal government play in maximizing advantages and minimizing risks of Canada's energy market diversification?*

FIRST NATIONS SUMMIT

SUBMISSION TO HOUSE OF COMMONS STANDING COMMITTEE ON NATURAL RESOURCES

By Grand Chief Edward John
May 2nd, 2013

Introduction

This document provides a broad overview of some key issues for First Nations in BC and for the First Nations Energy and Mining Council. It is hoped these will provide an opportunity for dialogue between First Nations and the federal government.

Priority Recommendation: To establish a high level working table with First Nations Leaders (including the First Nations Leadership Council and the First Nations Energy and Mining Council) and federal government officials to consider each of the recommendations below.

About the First Nations Leadership Council

On March 17, 2005, the political executives of the First Nations Summit (FNS), BC Assembly of First Nations (BCAFN), and Union of BC Indian Chiefs (UBCIC) signed a *Leadership Accord* to affirm mutual respect amongst the three organizations and to formalize a cooperative working relationship to: address issues of common concern; develop strategies and actions to bring about significant and substantive changes to government policy that will benefit all First Nations in BC; create space and opportunity for First Nations to engage directly with governments on their priority issues; and engage in advocacy on behalf of First Nations to achieve these objectives. The Political Executives of the BCAFN, FNS and UBCIC work under the *Leadership Accord* as the First Nations Leadership Council (FNLC).

About the First Nations Energy and Mining Council

In 2008 First Nations leaders in BC created the First Nations Energy and Mining Council FNEMC to provide support and facilitate First Nations efforts to manage and develop energy and mineral resources in ways that protect and sustain the environment, while enhancing the social, cultural, economic and political well-being of First Nations.

Through the involvement and guidance from First Nations leaders two (2) key action plans were developed and adopted to direct the vision and purpose of the FNEMC:

- BC First Nations Mineral Exploration and Mining Action Plan (2007)
- BC First Nations Energy Action Plan (2008)

Priority Topics

This paper will focus on nine (9) key areas in the mining and energy sectors that impact First Nations.

1. First Nations "strategic level" plans for lands, territories and resources
2. First Nations Equity Fund
3. Environmental Assessments
4. Impact Benefit Agreements (First Nations Government and Industry)
5. Natural Gas Opportunities
6. First Nations International Desk
7. Revenue Sharing (Government to Government)
8. Mining Reforms
9. No Net Loss Policy & Metal Mines and Effluent Regulations reforms

1. First Nations "Strategic Level Plans" for lands, territories and resources

As set out by the Supreme Court of Canada in the Haida case, governments in consulting with First Nations should engage at the "strategic level" when land and resource development plans are being considered and not at "operational levels" when projects are ready to proceed.

RECOMMENDATION RE: FIRST NATIONS "STRATEGIC LEVEL PLANS":

A. To ensure First Nations have ongoing capacity, federal and provincial governments support the development of Strategic Level Plans by First Nations for lands and territories within their respective traditional territories to ensure that First Nations are in a position to fully address, respond to and make the necessary decisions on any and all proposed development initiatives.

2. First Nations Equity and Capacity Fund

First Nations in Canada are positioned to participate and invest in many of Canada's significant resource, energy and infrastructure projects, particularly in British Columbia. These opportunities include both self-sponsored projects as well as projects initiated and sponsored by corporations. With over $650 billion in proposed natural resource projects in the next 10 years there are exceptional opportunities if the tools for First Nations are made available.

Compared to other levels of government or industry, First Nations do not have the same access to capital and equity. In cases where First Nations partnerships with the private sector are being developed, there is the potential for significant mutual benefits. The most obvious benefit of a project is that if First Nations are partners, then the hurdle of obtaining their support is diminished. First Nations businesses are benefiting from the investment capacity, experience and business acumen of the broader private sector. In return, private sector companies recognize the value in strengthening ties with First Nations as partners to expedite project approvals in First Nations traditional territory, as a readily available and local labour force as well as customer base.

First Nations seek to build a unique partnership with governments to generate mutual success. The creation of a First Nations equity fund that can be utilized based upon the economically viable projects that are reviewed by an independent advisory panel.

This proposal consists of two components:

1. Create a Capacity / Relationship Fund to support the conditions for engagement; and

2. Create an Equity Fund to provide First Nations the opportunity for ownership in projects that are proposed in their traditional territories.

RECOMMENDATIONS RE: FIRST NATIONS EQUITY AND CAPACITY FUND

A. Provide direct loans to finance First Nations equity ownership in start-up or existing renewable or non-renewable energy projects in BC.

B. Make direct equity investments that provide for greater First Nations participation in the economic opportunities arising from major project proposals in the BC energy sector.

C. Leverage investment capital from other sources including conventional lenders, private investors or joint venture partners.

D. Stimulate economic activity throughout BC, especially in rural areas. Priority access to the equity investment fund will be given to:

- ***First Nations communities who are poised to respond quickly.***
- ***Those First Nations who have imminent opportunities as equity partners with projects that are in the approval process.***
- ***First Nations who seek to generate direct employment for their members as a result of their equity investment.***

3. Environmental Assessments

First Nations in BC, both individually and at the provincial leadership level, have called for reform of the BC environmental assessment process. There is increasing evidence on all fronts, including new legal challenges, that the system of project review and Crown consultation being applied by the BC Environmental Assessment Office (BCEAO) is seriously dysfunctional when it comes to ensuring that First Nations interests are effectively provided for in the assessment process, that the honour of the Crown is properly preserved in the consultation process used by the agency and, in the final analysis, and that meaningful accommodation to the potentially affected First Nations has been made.

Furthermore the federal omnibus Bill C-38 replaced the current Canadian Environmental Assessment Act with new legislation which decreases the opportunity for First Nations' involvement in Environmental Assessments as well as ending environmental assessments for minor projects, referred to as "screenings". This unilateral action, that directly impacts our Aboriginal rights, occurred without any consultation with First Nations.

A number of problems with the existing BC EA process can be identified. First, is the matter of the legislation itself. To summarize, the BC Environmental Assessment Act is silent with respect to a number of important aspects, such as First Nations involvement in the process, objectives, standards and principles for delivery for the EA process, and methodological content for the conduct of reviews.

Additionally, the BCEAO executive director has a wide range of discretion that is explicitly open to ministerial direction and influenced by government policy mandates. Far from being the independent, neutrally administered, technically robust, transparent and accountable process it needs to be, the Act is constructed to achieve the opposite of these characteristics in its implementation.

Another problem is the way the legislation is implemented by the EAO. Despite having complete discretion in designing and implementing the process, the EAO appears unprepared to adapt the process when required to meet the needs of First Nations. No stated objectives exist to guide the executive director and the process, and First Nations are not involved in determining the scope of the assessment or the terms of reference for the process. Any funding offered by the EAO to a First Nation is trivial compared to what is required. And the unilaterally designed consultation process now used by the EAO is somewhat cynically conducted and misleading in the result.

In short, the entire BC process for project assessment is ripe for reform. A significant number of First Nations have lost confidence in the process. This is unfortunate, because it is a fundamental inclination of Aboriginal people to promote economic development in their territories that they view as sustainable. There is, in other words, a common interest between BC and First Nations in seeing the right kinds of development projects materialize and, therefore, a common interest in an assessment process that will deliver the goods. We don't have one, and so it is important now to get on with the job of collaboratively designing such a process.

The BC First Nations Energy and Mining Council developed an environmental assessment solutions paper in 2009. This paper was brought to the Chiefs at the Union of BC Indian Chiefs and First Nations Summit sessions and resolutions were passed to support moving forward this solutions paper as a policy for provincial and federal reforms.

RECOMMENDATIONS RE: ENVIRONMENTAL ASSESSMENT REFORMS

A. The Federal and BC government commit to meeting with the First Nations Leadership Council and the BC First Nations Energy and Mining Council to discuss the First Nations EA solutions paper and commit to government-to government reforms.

B. Appoint a joint government – First Nations committee (that includes the First Nations Energy and Mining Council) to engage and provide feedback to the Chiefs and Cabinet on a new EA process.

C. ***Discuss immediate projects of concern that First Nations feel are not yet resolved. Ex. Prosperity Mine Proposal and the opposition by the TNG.***

4. Impact Benefit Agreements – must be a standard practice

There are numerous examples across Canada and in BC of resource companies coming into a First Nations territory, interfering with the practice of Aboriginal and Treaty rights, taking natural resources and leaving without any compensation or benefits accruing to the impacted First Nations.

First Nations have a right to be compensated for interference with their Aboriginal rights and where applicable, Treaty rights and they have a right to benefit from the resources in their traditional lands.

The few companies that as "good corporate citizens" adopted an internal Aboriginal relations policy did make efforts to contact and involve First Nation and other Aboriginal communities. However, even in most of these cases, the benefits were generally limited to a few short-term employment opportunities and some small business contracts. There are now some companies that share the profits and offer equity participation as part of their corporate practices.

Investors are increasingly knowledgeable about the risks of ignoring First Nation interests when projects are located within traditional territories. High profile protests such as the Tahltan, KI, Six Nations at Caledonia, and Clearwater River Dene on oil sands development, have alerted investors to the perils of ignoring First Nation interests. Simply put, projects which have not reached agreements with First Nations are a greater investor risk – and many corporations recognize this fact.

Some industry lawyers are advising their clients not to provide equity or profit sharing IBAs with First Nations as the "Crown is accommodating the First Nations interests". The First Nations Energy and Mining Council has reviewed a number of mining agreements across the country and the Crown revenue sharing portion (for those provinces/territories that share the revenues) add up to a small fraction of the economic benefits as compared to an industry impact benefit agreement (IBAs). These IBAs should be a standard way of doing business on any development on First Nation lands.

RECOMMENDATIONS FOR IMPACT BENEFIT AGREEMENTS (IBAs)

A. ***IBAs must be legally required. The provincial government should work with the FNLC and FNEMC to discuss how to legally ensure that IBAs are signed prior to a company commencing any work on a project. Ideally these IBAs should be negotiated prior to the commencement of the environmental assessment submission by a company.***

B. ***IBAs should include profit sharing and equity – not just jobs and contracts.***

C. ***The FNEMC has created a mining policy document titled, 'Sharing the Wealth'. This policy was brought to the Chiefs at the UBCIC and FNS meetings and a resolution was passed to create a policy that requires industry to enter into IBAs and that Crown revenue sharing is also required on all projects. There are various stages of agreements that companies are suggested to enter into with the impacted First Nation(s). The FNLC and FNEMC should receive commitments from the various provincial leadership candidates that changes will occur to ensure First Nations benefit from resource extraction.***

5. Natural Gas Opportunities

With the shale gas revolution occurring in northwestern British Columbia there has been a myriad of proposals to drill wells, build pipelines, and propose liquefied natural gas (LNG) terminals in central and northern BC. First Nations in the northeast of BC have raised concerns about the cumulative impacts of this development and the lack of clear regulations and policies on how the gas is to be developed. Huge amounts of water is required for the hydro-fracking and concern are being raised by First Nations about the impacts to the lakes and creeks and the seepage of the waste water as well as the impacts on plants and wildlife. Furthermore the shale gas developments – including but not limited to well sites, hydraulically fractured wells, gas and water pipelines, drilling waste disposal, forest clearances, borrow pits and water usage- continue to occur either without adequate consultation or in some cases (notably water assignments) with no consultation.

Other First Nations along the proposed pipeline routes have also raised concerns. In one case an agreement has occurred with some of the First Nations and a pipeline company/LNG partner. There are now up to 6 other pipeline and LNG proposals.

RECOMMENDATIONS RE: NATURAL GAS OPPORTUNITIES

A. ***Full regional baseline studies are completed in the role shale gas plays in British Columbia;***

B. ***Companies and the Province are required to submit multi-year predevelopment plans that identify all proposed water sources, well sites and other proposed infrastructure prior to any development permits being applied for;***

C. ***Mutually agreed, cumulative effects and environmental assessment processes are in place to ensure that gas industry water withdrawals are capped at ecologically acceptable levels and are not leeching into other water sources;***

D. ***Culturally significant land and water resources are protected and made off limits to industry activities;***

E. ***Industry water withdrawals and associated gas extraction activities are subject to rigorous monitoring and enforcement efforts by an independent body;***

F. ***Call on the Provincial Crown to convene a public commission of inquiry to investigate in an in-depth manner the cumulative effects of shale gas developments on the environment and public health and safety, and:***

- ***The commission composition shall include First Nation representation and have, as part of its mandate, a policy framework that would assess and mitigate cumulative impacts on the land, air, water and Aboriginal, Title, Rights and Treaty Rights, and First Nations' interests in territories affected by shale gas development; and,***

- ***That such an inquiry have the power to compel witnesses to testify, be open to members of the public, be required to publicly report its findings and make recommendations on how to mitigate cumulative impacts and ensure compliance in the oil and gas industry before continuing any work processes;***

- ***That First Nations be provided with financial resources from the Province to be meaningfully involved in the inquiry.***

G. ***First Nations to lead a cumulative impact study on the best routes for these pipelines and locations for the LNG terminals.***

6. First Nations International Desk

In August 2011 the First Nations officially launched the First Nations China Strategy: Transforming Relationships. This multi-faceted strategy is intended to proactively develop relationships with the Chinese government, State-owned enterprises, and private businesses that seek to partner with First Nations. For the most part Chinese organizations know little about the Constitutional Rights of First Nations in Canada.

In September 2011 Premier Clark announced the BC Jobs Plan: Canada Starts Here. That plan outlined a major agenda for resource development in the province, including eight new mines in the next four years and further expansion of nine existing mines by 2015 and an accelerated mining approval process. Earlier this week we read in the media that there will be changes to the BC Mining Act and there has been no consultation with our communities.

From October 22-31, 2011 the First Nations Leadership Council and the Assembly of First Nations participated in a mission to China to inform Chinese officials that investment in Canada must involve First Nations at the earliest stages. Without First Nations involvement projects will not proceed. Meetings were very positive and there is clear interest to build a stronger relationship.

RECOMMENDATIONS RE:FIRST NATIONS INTERNATIONAL DESK

- ***A. Creation of a First Nations International desk. Suggest 6 positions to be financed by the federal and provincial governments: 3 in China and 3 in BC.***

- ***B. Engagement on Asia-related matters with all of the sector councils and BC can be through this desk.***

7. Resource Revenue Sharing

Revenue Sharing Agreements are agreements between First Nations and the Province or Canada in which the revenues are collected by the Province or Canada with respect to resource projects in traditional territories and are shared with the First Nations. This includes but is not limited to taxes, royalties, penalties, permit and other fees.

While some First Nations have benefited from mining within their boundaries, in general, First Nations bear an unfair burden at every point in the mining process, from the registration of claims to exploration, production, and abandonment of closed sites. Urgent law reform is needed to shift at least some of that burden onto government and proponents.

In an effort to retain and enhance the industry, the BC government has introduced a number of tax and regulatory measures. For example, the Capital Tax was eliminated, Corporate Tax rates were reduced, the Mineral Exploration Tax Credit Program was introduced and a new policy of resource revenue sharing with First Nations was established. As a result, the Task Force reported in 2009 that the mining industry in BC "has responded with record exploration levels and the opening of new mines in the recent period of economic growth".

There are many options for the design of First Nation financial participation in mining and other resource based projects. Generally they fall within the following five types: Gross Overriding Royalty; Equity; Profit Share; Fixed Payments; and, Guaranteed Base with Upside.

Current law presumes that mining is an acceptable form of land use, but the presumption should instead be that Aboriginal and Treaty rights require a heightened scrutiny of all land-altering activities, especially environmentally destructive operations such as mining. To ensure a fair distribution of both the costs and benefits of mining, reform is needed to position the interests of First Nations and the greater society alongside those of multi-national development corporations.

In 2008 the BC government announced the sharing of the Mineral Taxes. It took nearly two years to receive information about this policy shift and we are now able to comment that it is a very poor attempt at revenue sharing. The Crown unilaterally imposed a sharing of up to 37.5% of the BC Mineral Tax on new or expanding major projects (gravel projects, placer miners and existing projects are exempt from this sharing). For a major metal mine this amounts to approximately $1 million per year to the First Nation. On average there is one new metal mine permitted in BC every 10 years. This "tax sharing" excludes all the other potential revenue sharing opportunities such as the capital gains tax, HST, corporate taxes, etc. Furthermore the First Nations must sign an agreement that they have been accommodated for this project and most communities are forced to sign them in this 'take it or leave it' approach by the Crown.

An even more concerning development regarding the Mineral Tax sharing policy, as noted above, is that some industry lawyers are advising their clients not to provide any equity or profit sharing with First Nations as the "Crown is accommodating the First Nations interests". The First Nations Energy and Mining Council has reviewed a number of mining agreements across the

country and the Crown revenue sharing portion (for those provinces/territories that share the revenues) add up to a small fraction of the economic benefits as compared to an industry impact benefit agreement (IBAs).

The First Nations Summit and the Union of BC Indian Chiefs have passed resolutions that required provincial revenue sharing and industry IBAs to both be in place before projects proceed. The resolutions also speak to the unfair decision of BC to unilaterally create a Mining Tax sharing policy that excludes existing mines and smaller projects that First Nations could benefit from.

RECOMMENDATIONS RE: RESOURCE REVENUE SHARING

A. A review of the BC Mineral Tax sharing policy should be undertaken. The FNEMC and the BC government should meet to discuss the policy and include sharing on capital gains, corporate taxes, etc. as they relate to mining projects.

B. The Province should be aware that both industry IBAs and provincial revenue sharing must both occur before projects proceed. To avoid the industry excuse that IBAs are not required by law the FNEMC will work with BC to draft legislation to require IBAs before projects proceed.

C. Natural resource revenue sharing should occur on all resource-based projects.

8. Mining Reforms (Free Entry) and a Mining Certification Standard

Free entry dates back to the gold rush period, when natural resources were considered infinite and wilderness should be tamed and is the foundation of British Columbia's mining industry.

Free entry assumes mining is the first and best use of land. All lands are open for mining unless specifically excluded. Mining prevails over private property interest and First Nations title and rights. Mineral tenures are granted on a first come, first served basis.

Free entry provides open access for any miner to any part of the provincial mineral zone to explore for minerals.

For more than 100 years mining has trumped all other natural resource industries in BC, such as oil and gas, forestry, fisheries and tourism. Miners do not apply for tenure or try to outbid a competitor for permission to access a resource. With a Free Miner's certificate, a credit card, and an Internet connection, mineral claims can be staked without the miner ever seeing the land or consulting with First Nations. Tenure is given regardless of the miner's history and accountability.

The free entry system does not recognize constitutionally recognized Aboriginal rights and title. Free entry hinders Crown and First Nations legal duties to consult. There is no requirement for consultation before a third party right is established for subsurface minerals.

First Nations rights and title are intricately linked with healthy ecosystems. Modern mining operations bring significant impacts to the environment and communities. First Nations are increasingly concerned with the environmental, social, and cumulative impacts of mining operations in the last 100+ years.

Conflict between First Nations governments, public government and the mining industry continues to escalate under the free entry regime. Blockades and legal battles are ongoing and increasing.

Free entry jeopardizes the future of a healthy mining industry in BC. A significant overhaul of mining policy is needed to decrease conflict, provide more benefits to First Nations, and provide certainty for government and industry investments.

It is therefore proposed that a certification standard for mining and mineral exploration projects be developed to help ensure the accountability and auditability of companies with respect to free, prior and informed consent (FPIC). It is hoped that such a tool would assist in breaking the cycle of conflict and confrontation which presently characterizes most FN-industry relations in the province.

Administered by a multi-party, independent entity with significant First Nation control and influence, the certification standard would include a concise set of principles which would be used to assess the extent to which a project and its proponent have achieved FPIC. Those who successfully achieve FPIC with their host First Nation(s) would be recognized and celebrated with the "BC First Nations Gold Standard in Mining".

The certification standard would be a voluntary initiative on the part of both companies and First Nations, and would be flexible enough to accommodate individual First Nation mineral exploration and mining processes, policies, and guidelines. It will allow a particular First Nation to negotiate the specifics of FPIC to suit their own particular circumstances. That being said, the standard will have to be consistent enough to be applied in a similar fashion across the province.

A fundamental characteristic of the "Standard" would be the audit function. Specific projects would be independently assessed throughout the "life of the mineral exploration program or the mine", insuring that best practices are being implemented not only during the early days of regulatory authorization, but also during operations and closure as well.

It is hoped that the certification standard approach will strongly encourage companies and governments to "raise the bar" with regards to achieving and maintaining FPIC with BC First Nations.

RECOMMENDATIONS FOR MINING FREE ENTRY REFORMS

A. Change the free entry system to a permitting system that includes the impacted First Nation(s) in the decision making process.

B. Create a legal requirement for mineral exploration agreements (See FNEMC policy paper titled, "Sharing the Wealth" – 2010).

C. Create a third party mining certification standard that is developed by First Nations in BC.

9. No Net Loss Policies & Metal Mines and Effluent Regulations

The Department of Fisheries and Oceans (DFO) is responsible for implementing the Policy for the Management of Fish Habitat. The primary goal of this policy is to "maintain the current productive capacity of fish habitats"; to achieve this, the principle of 'no net loss' is used. Briefly, this principle sanctions fish habitat replacement when habitat losses are unavoidable.

From the First Nations stewardship perspective, DFO's No Net Loss policy is an inappropriate and ineffective approach to fisheries management. It also fails to meet the Crown's obligations to First Nations.

The No Net Loss Policy is also closely related to Schedule 2 of the Metal Mining Effluent Regulation (MMER). In 2002, Schedule 2 was added to the MMER, which essentially allow for the re-classification of any natural water body that gets listed on it as a tailings impoundment area. Once a lake or river gets listed onto Schedule 2, it is no longer considered a natural water body and is then no longer protected by the Fisheries Act

First Nations and environmental groups have both expressed concern over Schedule 2, and have joined forces on several projects to save fresh water systems from becoming toxic tailings for mining projects. In both the Amazay Lake and Fish Lake projects, a fresh water system considered sacred by First Nations, was considered the cheapest alternative for a mining company to dump their wastes. The loophole created by Schedule 2 therefor places First Nations in an untenable position.

Reform of this regulation will prevent future costly battles between First Nations, government and industry.

RECOMMENDATIONS RE: NO NET LOSS POLICIES AND METAL MINES AND EFFLUENT REGULATIONS

A. ***Federal Members of Parliament be made aware of the concerns related to the federal No Net Loss policy and the Metal Mining Effluent regulations. Take steps to change these policies.***

B. ***FNEMC and the BC government officials should work together to understand all concerns related to the use of fish bearing fresh water lake and stream destruction.***