



April 19, 2021

VIA EMAIL AND REGULAR MAIL

Prime Minister Justin Trudeau

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The Honourable Carolyn Bennett

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The Honourable David Lametti

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Dear Prime Minister and Honorable Ministers:

RE: *West Moberly First Nation v British Columbia, 2020 BCCA 138*

We are writing regarding the implementation of the Court of Appeal's decision in *West Moberly First Nation v British Columbia, 2020 BCCA 138* ("**Appeal Decision**"), issued on May 19, 2020. Your government has received letters from some of the interveners in the Appeal Decision, most recently Nak'adli Whut'en, disputing the effects of the judgment.

Our First Nations are treaty signatories to Treaty No. 8 and enjoy a treaty relationship with the Crown. Our communities are Indigenous people of the north who enjoy respectful relations with all of our neighbours. We seek no quarrel with our neighbours. We also seek, after sixteen years, the fair implementation of the declaration we obtained so clearly in court respecting the western boundary of the treaty we have with the Crown.

The Court of Appeal affirmed the British Columbia Supreme Court's ("**BCSC**") holding in *West Moberly First Nation v British Columbia, 2017 BCSC 1700* ("**Trial Decision**") that the western boundary of Treaty 8 is located at the height of land along the continental divide between the Arctic and Pacific watersheds ("**Western Boundary**"). The boundary location of the treaty has

been in place since Canada made the treaty in 1899 - this is *not* a recent land acquisition by our First Nations. However, some interveners, including Nak'adli Whut'en, have taken the disconcerting position that we are not permitted to exercise our Treaty rights all the way to the Western Boundary without their prior consent because they assert Aboriginal title within the treaty territory declared by the court. Nak'adli Whut'en also takes the position, contrary to law, that any Crown consultation in the part of the treaty territory to which it claims Aboriginal title should only occur with them.

We are very concerned about these legally incorrect and unfounded statements and remind you that the trial was an exercise in treaty interpretation, not an action to prove any particular Indigenous group's Aboriginal rights or title to a particular tract of land. The evidence accepted by the court proved our people have a longstanding connection to the Treaty territory, including to the territory that lies to the west of the Rocky Mountains. These connections are intrinsically tied to historic and current land use, as well as to kinship ties throughout Treaty 8 territory.

We also note that the interveners, including Nak'azdli Whut'en, assert unproven Aboriginal title to some of the treaty territory. The law from the Supreme Court of Canada has been clear since the *Haida* decision in 2004 – in a pre-proof, pre-treaty environment, the Crown is obliged to consult with all Indigenous groups who assert s.35 interests that may be adversely affected. The law since the *Tsilhqot'in* decision in 2014 is also clear that exclusivity of title crystallizes upon judicial declaration of Aboriginal title or on the coming into force of a treaty recognizing title. Until then, the *Haida* duty to all asserted and existing interests potentially adversely affected prevails.

With respect to any Crown actions or decisions which may adversely affect the existing treaty rights of our members within the treaty territory to which Indigenous groups like Nak'adli Whut'en claim or assert Aboriginal title, we expect the Crown to follow its consultation obligation as expressed by the Supreme Court of Canada and request your written confirmation of same.

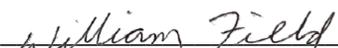
Sincerely,



Chief Trevor Makadahay
Doig River First Nation



Chief Sharleen Gale
Fort Nelson First Nation



for Chief Darlene Hunter
Halfway River First Nation



for Chief Kirk Tsakoza
Prophet River First Nation



Chief Justin Napoleon
Saulteau First Nations



Chief Roland Willson
West Moberly First Nations

cc. Paul Yearwood and Joel Oliphant, Counsel for British Columbia
Judith Hoffman, Counsel for Canada
Tahltan Central Government
Chief Pierre, Tsay Keh Dene First Nation
Chief French, Takla Lake First Nation
Union of BC Indian Chiefs
Christopher Devlin and Allisun Rana, Counsel for Treaty 8 Plaintiffs