

OPENING REMARKS

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British Columbia is blessed with an abundance of natural resources relative to many other regions of the world. Resource development over the last century and a half by European settlers has brought great prosperity to many communities and regions but this prosperity has frequently been both short-lived and cyclical and often at the expense of the environment. Those communities, which have been able to diversify their economic bases, to go beyond the simple extraction and export of resources, have created the ingredients of a model of economic and social development most likely to succeed. Many communities are now actively searching for new options to diversify development through tourism, value added industries, and knowledge-based activities. And of course oil and natural gas production have become yet another option.

What is true for each community is also true for the province. The BC economy is entering a very significant transition- in which the importance of physical commodities and their impact on employment and income, regionally, provincially and nationally, is being subsumed by a new information/knowledge based economy. In particular, innovation in fuel cell technology originating in BC may diminish our need for fossil fuels. There is, in other words, a pronounced dualism developing as the two sides of BC's economy compete for human and capital resources and, in many ways, compete for scarce dollars and political support. This is not just a sectoral issue where one component of an economy subsumes the other but also a very real geographical one. Most non-metropolitan communities are still heavily wedded to resource development (their comparative advantage remains in resources) and they have few prospects of being an integral part of the information economy.

Governments, of course, have played and will continue to play an important role in regulating resource industries. That regulation, and the nature and intent of that regulation, have evolved substantially. Where governments were initially preoccupied with economic imperatives- an attempt to sustain jobs and incomes- this broadened in the 1960s and 1970s to regulation to meet broader social/cultural goals. During the past 15 to 20 years, we see government regulation, at least provincially, increasingly aimed at ecological and environmental imperatives- and for good reason!

There is a legacy of mismanagement of the resource base in practically all sectors- both renewable and non-renewable. Communities have borne the brunt of this mismanagement experiencing substantial and in some cases irreversible economic and social dislocations as a result of the declining quality of the resource at hand. The oil and gas industry must recognize that there are legitimate and significant environmental concerns associated with offshore development as there are with the problems associated with the boom and bust cycles of development. Importantly, there is a growing conflict over the singular use of marine and landbased ecosystems for traditional resource extraction. Society now interprets and values resources in a far more pluralistic fashion. What I mean by this is that the 'natural economy' is increasingly valued for its non-market and non-commodity uses. Preservation of those uses is often conflicts with resource extraction. There are plenty of examples of this in mining, forestry, agriculture and fisheries. Having said this, there are also examples where multiple uses and hence values can co-exist. A number of factors/ issues need to be confronted and recognized if there is to be progress in reconciling the differences. For example, science has an important role to play in understanding the risk and uncertainty associated with competing uses. Sharing access and rights to resources beyond the traditional government/industry model is critical. And ensuring that communities will benefit over the long term through participation cannot be overemphasized.

While provincial governments have altered the intent of regulation, there has been considerable broadening in influence if not in actual decision making from environmental NGOs, community groups, First Nations representatives and stakeholders provincially, nationally and internationally. As a consequence the complexity of arriving at decisions has risen dramatically. Approval times on many resource projects have lengthened and, in numerous instances the prospects for further resource development have been eliminated. Depending upon one's perspective, these delays and refusals may represent direct benefits i.e. increase in option values or direct costs i.e. foregone opportunities. And again I would remind you that there is a pronounced dualism spatially in the way in which these outcomes are expressed and experienced.

With the emergence of the new information based economy, the diminished economic importance of traditional resource sectors and the changing values we place on the natural economy combined with many more forms of regulation and new stakeholders including First Nations groups, we run the risk that the differences, divisions and

complexities will impede action and foreclose on opportunities which are essential to the survival of many resource dependent communities. Better understanding our options (goals) and the social, economic and environmental implications of pursuing those options are at the heart of a successful society and economy. Part of that discourse must include consideration of key moral and ethical questions relating to equitable treatment of First Nations and future generations as well as the imperative of managing our environment sustainably.

This conference provides a unique opportunity to begin to explore the implications of options relating to offshore oil and gas development. Clearly we are revisiting old questions but in the light of new information, insights and exigencies. Notwithstanding the growth in the information economy, the oil and gas sector will remain important in BC particularly given the environmental advantages of switching to natural gas. Its spatial expression will be the result not just of geological and economic opportunity but public consensus that the benefits far outweigh the potential costs. Thus this conference is taking the first steps: to ensure the oil and gas industry is cognizant of environmental concerns; to learn of new technologies and procedures for oil and gas development from other jurisdictions; and lastly to educate and share information in both native and non-native communities about the pros and cons of this form of economic activity for the purposes of community economic development.

THE BC SITUATION: A LOOK AT THE PAST, PRESENT AND FUTURE

Offshore Oil and Gas: Past and Possible Future

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The Past

Since at least 1949, offshore oil and gas has been an issue in British Columbia. The Province has always believed that the seabed of the offshore area belonged to the Province and that the benefits of any exploration should therefore belong to the Province. Concerned that the federal government would proceed unilaterally with exploration, British Columbia issued an Order-in-Council (OIC) in 1959, reserving the submerged lands to the Crown Provincial. This OIC was re-issued in 1967.

However, offshore oil and gas drilling under federal regulation proceeded regardless of provincial concerns. From 1966-68, 14 wells were drilled by Shell Canada Ltd. from a rig built in Victoria - 6 wells off the west coast of Vancouver Island and 8 wells in Hecate Strait. The results were inconclusive and drilling was halted.

In 1972, in response to concerns about tanker traffic between the Queen Charlotte Islands and the B.C. Mainland, the federal government prohibited any such traffic and in addition, indicated that no offshore exploration could proceed. It should be noted that tankers and oil barges now routinely use those waters.

As part of the 1980s National Energy Program, the federal government stepped up incentives for offshore oil and gas exploration and British Columbia feared that activity would again take place which excluded provincial involvement. In response, a third provincial OIC was issued in June, 1981, reserving the offshore lands to British Columbia. At the same time, the Province issued a press release stating that no exploration could proceed before a full environmental assessment was undertaken. As a result of the provincial initiative, Canada's first federal-provincial environmental assessment process was established under the auspices of the Federal Environmental Assessment Review Office (FEARO) and the BC Ministry of Environment. Public consultation and information meetings were held widely throughout coastal communities and with First Nations, followed by public hearings, during the period 1984-1985. At that time Chevron Canada Ltd., which had obtained a farm-out from Shell, and Petro Canada were the proponents, although Petro Canada subsequently withdrew from the review process.

The Federal-Provincial Panel issued its report in April, 1986, indicating that offshore oil and gas could proceed with 92 conditions. Those conditions required understanding of the drilling environment, use of the best available technology, a requirement for strong, effective regulation, training, inspections and preparation for emergencies. Specific conditions included a requirement for continuing public and First Nations consultation, environmental assessments of drilling programs (not a requirement at the time), areal and seasonal constraints on seismic exploration and no drilling within 20 km of land during the initial drilling phase.

Research requirements included knowledge of currents, improved weather forecasting, seabed site surveys, bird surveys, baseline coastal inventories and sensitivity mapping. In the event of a spill, lethal and sub-lethal impacts of crude oil on salmonids and other species research was required, as well as contingency plans, tests and reviews prior to drilling. Some of this work has been done; some would be required prior to or during exploratory drilling.

In 1987, the federal and provincial governments issued a response to the panel report, accepting many of the recommendations, particularly as many already were required by regulation, and rejecting or revising others.

In 1987 negotiations between the federal and provincial governments on management of offshore oil and gas activity began. These were based on precedents set in Nova Scotia and Newfoundland and were without prejudice to ownership and jurisdiction. Two elements of the Atlantic and Nova Scotia Accords were agreed upon: that revenues should go to the Province as if on land and that reciprocal legislation would be put in place giving regulatory powers to both governments. Negotiations foundered for two reasons: 1) the federal government was pressing BC to open Land Claims and 2) BC wanted parity with Eastern province regarding development funding. Although negotiations were re-opened in 1988, these came to a halt when the province declared in a 1989 press release that there would be no drilling for five years. This was in response to public concerns about the Nestucca barge spill off Grays Harbour, Washington and the Exxon Valdez spill in Alaska.

In the Interim

Although the issue was discussed within government, no further actions were taken until 1997 when the North Coast Oil and Gas Task Force, a lobby group centred in Prince Rupert, asked government to re-examine the issue of the moratorium. Subsequently, letters of support for reconsideration of the issue from Mayors, Chambers of Commerce and other coastal community leaders were received by federal and provincial ministers. The federal government indicated that it was up to British Columbia to decide whether or not to lift the moratorium.

A further impetus came from the Geological Survey of Canada who, in 1998 issued Open File Report #3699 which indicated oil potential of 10 billion barrels and gas potential of 43 trillion cubic feet on the west coast. These are considered very high numbers from a self-styled conservative agency and suggests that the BC offshore has the potential of basins such as that in the Cook Inlet of Alaska. However, British Columbia's offshore potential will only be fully understood after modern geophysics and exploratory drilling have taken place.

In the meantime much resource survey work had been done on birds, currents and coastal resources. Some specific candidates for Marine Protected Areas had been identified. New advanced technologies were in place including 3-D seismic, directional drilling, multi-beam bathymetry, satellite communications and weather forecasting. There had been considerable additional experience in offshore oil and gas operations and regulation in Nova Scotia and Newfoundland, the North Sea, Cook Inlet, as well as fields in Australia, Africa and South America. Double hulled tankers are required on the Alaska run as a result of 1990 U.S. legislation. A BC-States Oil Spill Task Force, formed after the Nestucca and Valdez spills were better prepared to implement coordinated shore-based clean up measures, should they be required. Land Claims negotiation with B.C. First Nations were also taking place. These advances were documented in a report to the BC Information Science and Technology Agency by AGRA Earth and Environmental Limited in December 1998.

In addition, statistics regarding the input of hydrocarbons into the marine environment indicated that the offshore oil and gas industry is responsible for only 1.5 per cent, natural sources through seeps and erosions 7.7 per cent, municipal and industrial wastes and run off 36.3 per cent. Tanker traffic, which a few years ago was responsible for some 45.2 per cent of marine hydrocarbons, has seen its contributions reduced considerably in recent years as a result of new vessels, double-hulls and other technologies.

In 1999 the Northern Development Commissioner (NDC) first initiated discussions with north coast and then Mainland residents concerning their views on opening discussions regarding the moratorium. Those reports were issued in 2000.

The Future(?)

Should government decide to open the issue of offshore oil and gas exploration, there are two major tasks to be completed: An environmental scoping document indicating what work remains to be done and First Nations and

Public consultation. With this information, plus experience in the rest of Canada and any changes in the regulatory environment, a decision could be made regarding lifting the moratorium.

If government subsequently decided to proceed with lifting the moratorium, the Pacific Accord would need to be negotiated and completed, reciprocal legislation put in place, a joint federal-provincial board or committee would be appointed and a public/First Nations advisory committee established. Industry would have to be re-engaged and the existing 22 million hectares of tenures re-negotiated. Industry would be required to undertake First Nations/public consultation. An Oil and Gas/Fisheries Liaison Committee would be established and geophysical exploration and analysis would be required to determine initial drilling targets.

When initial drilling targets are identified, industry would be required to continue with Public/First Nations consultation, to do site specific environmental studies, make an application to the joint Board or Committee and undergo an environmental assessment of its drilling plan. Each new activity would be subject to Board and environmental assessment approval as well as public/First Nations consultation.

Peter Hannigan (sent slides, in PDF format)

Petroleum Geologist/Resource Analyst, Geological Survey of Canada, Calgary, AB

Please see separate PDF for Peter Hannigan.

Grand Chief Edward John

First Nations Summit, North Vancouver, BC

We understand from a First Nations' perspective the need for development, and recently I talked to one of the provincial cabinet ministers who told me, 'look at the difficult economic situation this province finds itself in right now . I replied, "I know your revenues aren't that great, but look at the source of revenues that are coming into the province. A lot of oil and gas revenues are being generated — one of the more lucrative areas for revenue generation". What he was saying was we are having some problems in the area of fisheries — there is a crisis — no salmon. The salmon industry has been affected very dramatically. The forest industry is also having some major changes. We are currently attempting to prevent complete depletion of resources bases. For example we are doing our best to regenerate logged areas. We need other alternatives. We need to find other areas of employment, business opportunities, and revenue generation in the province. Here we are now — with offshore oil and gas as a huge potential.

Peter Hannigan illustrated the potential that is out there. There are three different groups of people here today: 1) promoters, 2) those who want to protect, and 3) those who want to watch. Wherever we fall in that spectrum, I want people to understand what is happening through the negotiation process in BC. What needs to be clearly understood is the importance of consultation with First Nations. Consultation is the legal constitutional requirement — it is not something that is by the political will of government. The question of the nature of the consultation and the depth of the consultation has yet to be fully and finally determined. The fact and the realities underlying that consultation is the reason why consultation must take place, and that goes to what we as First Nations see as the rights that we have in the traditional territories of our people. I look at the map again and I don't know that there was ever a Queen Charlottes on the west coast of this continent, but I do know that there was a Haida Gwaii, and there is still a Haida Gwaii on the west coast of this continent, and the Haida people have lived on that island for countless generations.

Take a look at all of the tribes in that area under question, the Coast Salish the Kwakwaka'wakw to the north, the Nuu-chah-nulth on the west coast of Vancouver Island, the Heiltsuk and Haisla further north, along with the Tsimshian and the Haida. All the different tribes who have a legitimate legal interest in their territories. And when the Supreme Court of Canada says that Section 35 of the Constitution recognizes aboriginal rights, that the collective interest of First Nations people and that these rights include this notion of aboriginal title as a legal interest in land over which First Nations have a collective decision-making authority, it says to me that you need to do something more than consult — and then go ahead. I cannot help but go back to the statement by the minister — the forestry industry is in a crisis, the salmon industry is in a crisis — and I look to myself and I think to myself and I ask this

question: When you take a look at Smiths Inlet or Rivers Inlet, some of the best salmon producing streams in the world, what do you have now? What is there? They have been totally devastated because of logging. Someone made some decisions. Someone thought that the economic situation in this province needed some boosting. Someone thought that those issues should be played off against each other. But we have to weigh all of these factors — the political, environmental, social, economic and legal implications of what is going on, when we make decisions about what should happen. In this particular case with oil and gas - and let me tell you there are negotiations taking place in this province — it goes beyond mere consultation.

First Nations are standing on the rights that they have — the legal, constitutional rights that we have as peoples in our territories. They are recognized in the Constitution — they do not just exist in some political whim of some political actors of the province or Canada. These are genuine interests that we have. The policy that they have adopted is, Well, if you say that you have aboriginal rights, or you say that you have aboriginal title, you have yet to go to court to prove it. Section 35 remains an empty promise to aboriginal people, notwithstanding that it is a Constitutional provision, because they say that the onus is on First Nations people to prove that they have any rights. Section 35 says that the existing aboriginal and treaty rights, the aboriginal peoples of Canada, are hereby recognized and confirmed. It comes down to this curious situation. Aboriginal people of Canada do not exist according to government policy. They do not exist unless we go to court and prove it. I have not gone to court and proved it, so I cannot tell you that I am an aboriginal person. But I can tell you I can trace my ancestry back thousands of years, as can any aboriginal person here. So it is repugnant to us to have to prove to those governments who asserted sovereignty in our territories in BC in 1846, that 150 — 160 years later we have to prove to someone that we exist.

That is the legal side. On the political side, we have undertaken with Canada and BC to negotiate — there are at the moment, 46 tables that are negotiating. People say, that will take care of all of these issues. I firmly believe that the negotiation process is ultimately the way to resolve these legal and historical and constitutional issues. And we witnessed that with the signing of the Nisga a agreement, and the enacting of 18 pieces of legislation by the Nisga a Nation and government last week. Negotiation is the way to proceed. The problem that we see on our side is not with the negotiation process as a way to resolve issues. The problem we see is the governments who come to the table with a position that for us to talk about certain issues, we need to prove that we exist and that we have rights.

We are trying to find solutions in a practical way with Canada and BC. There are 46 tables; those tables are going to take time to come to some agreements. We have borrowed in excess of \$100 million collectively in this province and we have yet to reach any agreements. If the government proceeds with events such as offshore oil and gas exploration, this act flies directly in the face of what we are trying to accomplish. We talk about interim measures agreements or what can happen in the meantime. In the meantime, they say we should have agreements on providing some degree of protection to First Nations, and their communities, over areas that are important historically, culturally, or ecologically, and to provide benefits where First Nations are involved in developing agreements and providing their consent to whatever development may take place. It may be logging in a small valley or in a particular area, or some exploration of some sort, e.g. mining in the hills somewhere. I think that, short of that, we are going to have continued confrontation between government, and ourselves as long as they continue to go ahead and wave some paper in front of us, call it consultation, and proceed.

Where I come from in the Central Interior of the province, we have this situation already. In one of the three timber supply areas, there are some serious shortages of timber. They now have had to look to the west in the Fort St. James forest district. I use this as an example of what they are doing. Between themselves they developed a plan to allocate the available timber sales in Vanderhoof and Fort St. James. Meanwhile, we are at the treaty negotiation table with Canada and BC, and they are telling us that they can't talk about this issue. We'll talk small business, maybe 2000 cubic meters, or we'll talk 10,000 cubic meters of timber, but in the meantime, 1.3 million cubic meters of timber is being allocated to the companies in Prince George over the objections of our peoples who are trying to figure out a way to find economic stability for our communities. And the governments say that is only a planning report, and it does not mean anything. What they've done in the meantime is they have given the green light to the companies and told them to amend their five-year harvesting plans to take into account the decisions they make by themselves. The report that they developed does not have any legal standing, but the five-year development plans do. So they have done through the back door what they said they would not do through the front door.

And that is the problem that we see — as we negotiate with government as we are sitting down trying to deal with issues related to sea resources, governments are continually and on an accelerated basis alienating resources to third

party interests. And those third party interests make it very clear that if their interests are affected in any way, and the governments agree with them, they are to be compensated. But if we use the word compensation, they tell us, sorry there is no compensation on the table for First Nations, period. If you want to talk about compensation, you prove that you have aboriginal rights, you prove you have aboriginal title, and you prove that your rights are being impacted, then determine whether or not there are any damages, and then we will talk compensation. That is the reality of where we are. That is why there is so much frustration and that is why there have been no quick movement to agreements on the 46 tables, notwithstanding that we have the Nisga'a agreement in place. That is where we are and as we sit here there is a crisis emerging in this area of relations between government and ourselves. It is important that we understand that. And if governments decide over the objections of our people that they are going to go ahead with oil and gas exploration and development, you are going to hear from First Nations on these issues, until such a time that those genuine legal and legitimate constitutional interests are taken seriously by government, and there are agreements with our nations at the end of the day as to if and how any of these projects will go ahead. With oil and gas exploration, it is an eye opener, for me, to understand the magnitude of the potential that is there and to understand some of the reasons why it might go ahead and how it could go ahead if it does. The environmentalists talk about the great bear forest — maybe there is a great salmon sea out there that they could talk about.

From a First Nations perspective, notwithstanding what the governments have to say about it, we understand that we are the inheritors of certain rights from our ancestors and we will stand on those rights. And what we are trying to do is find some way to reconcile the interests of our peoples with the assertion of crown sovereignty, and you will never get the governments to agree that we are in the process of reconciliation.

SYNOPSIS OF DISCUSSIONS THAT FOLLOWED THE BC SITUATION, PAST, PRESENT AND FUTURE SESSION

John Pierce offered assurance to Edward John that things do indeed change in this country — and noted that if you look back over the last 20 years there have been remarkable changes.

What is the Pacific Accord?

A member of the audience asked for clarification about the details of the Pacific Accord — it was explained that the Pacific Accord is a draft piece of paper that was negotiated between 1987 and 1989 between the federal and provincial governments. It has no legal basis whatsoever. It reflects a process where the two senior levels of government are moving toward an agreement on how things would be managed — but it is still in draft form and has never been completed.

Who owns the area?

The question was asked: Who owns the area? The response was that it is not clear — it depends on who you talk to who owns it. That is the reason why the Minister of the day said not to mind who owns it; instead, let us talk about the resource and how to manage it thus taking the tack that was taken on the Atlantic coast. Bob Hill noted that the Haida and the Tsimshian have agreed to share Hecate Straits resources and noted that these lands have never been ceded. Charlie Bellis noted that honesty on the part of the government is critical

What were the terms for the 1986 Panel?

A member of the audience asked a question regarding the terms of the 1986 Panel — and commented that is was their understanding that the Panel was not asked to decide whether the moratorium should be lifted. Rather, it was asked what needs to be considered before the moratorium could be lifted; or, under what conditions could the moratorium be lifted.

The presenters agreed that this was an accurate interpretation of the mandate of the Panel, but noted that the Panel was aware that they could have said that there were no terms and conditions under which this moratorium could be lifted — that was always part of the understanding.

What types of agreements might First Nations consider should we decide to proceed?

Chief John was asked the following question: Suppose that we decide that we should proceed with offshore oil and gas development: Would First Nations consider a specific agreement with respect to oil and gas offshore development independent of broader land claims or other resource issues? Or would First Nations only consider a broad agreement in place first before they would consider separate oil and gas agreements?

He replied that this would depend on the geographic region and the Nation adjacent to it. For example, if you are exploring in the Haida Gwaii region then obviously it would be the Haida people. He noted that in terms of the Accord it is regionalized - three regions were identified. He suggested that for explorations/ management purposes it may be appropriate to break it down into the three regions. However, if the implications are coastwide then First Nations communities coastwide must be involved in one way or another and that means probably a different forum. He explained that the reason for his answer was related to the differences that already exist along the coast. For example, at the south end of Vancouver Island there are already a number of treaties, the Douglas Treaties, that were signed pre-Confederation and certain rights are recognized in those treaties. As a result, there may be some impacts of development on these rights, for example, fishing rights - potentially there may be impacts if they are drilling in those areas where First Nations traditionally harvest the sea resources. He stressed that if you are dealing with a specific geographic, then you need to ensure that you have the agreement with the local people — that is presuming for example that the Haida people want that project to proceed. He noted that they may very well want it although he was aware that many of the Haida people have very serious concerns about it.

Could the oil and gas reserves be less or greater than the numbers reported?

A participant noted that the reserve estimates are based on conceptual plays and not on actual proven fields, and they wondered how much uncertainty that introduces into the estimates. They asked: Could the oil and gas reserves be much less or much greater than the numbers that were presented? Peter Hannigan replied that in this particular study they have determined that they believe it is a 100% chance. However, he noted that they are also saying that that does not necessarily mean that there is a prospect for it.

Another participant followed with the observation that regardless of what you find in the exploration it is still a conceptual play and the actual proven fields will not be known until such time as there is the general idea of lifting the moratorium and doing further exploration.