

# Lubicon Lake Indian Nation

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Please find attached the submission of the Lubicon Lake Indian Nation to the April 14, 2008 Prehearing Meeting of the Alberta Utilities Commission on Application No. 1551990 of NOVA Gas Transmission Ltd. to build a 42-inch diameter gas pipeline called the North Central Corridor Pipeline across unceded Lubicon Territory without Lubicon consent.

Sincerely,



Bernard Ominayak  
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SUBMISSION OF THE LUBICON LAKE INDIAN NATION TO THE APRIL 14, 2008  
PREHEARING MEETING OF THE ALBERTA UTILITIES COMMISSION ON APPLICATION  
NO. 1551990 OF NOVA GAS TRANSMISSION LTD. TO BUILD A 42-INCH DIAMETER  
GAS PIPELINE CALLED THE NORTH CENTRAL CORRIDOR PIPELINE ACROSS  
UNCEDED LUBICON LAND WITHOUT LUBICON CONSENT

SUMMARY

The Applicant seeks authority from an Alberta provincial regulatory agency called the Alberta Utilities Commission (AUC) to construct a 42-inch gas diameter pipeline called the North Central Corridor Pipeline across unceded Lubicon Territory without Lubicon consent. The AUC cannot legitimately grant authority to the Applicant to construct a pipeline across unceded Lubicon land without Lubicon consent because the Alberta government does not have proper jurisdiction over unceded Lubicon land.

The Alberta provincial government claims to have obtained the right to authorize construction of the pipeline from the government of Canada by virtue of a 1930 federal/provincial land transfer agreement. The 1930 Land Transfer Agreement purports to transfer vast tracts of lands and resources allegedly under the jurisdiction of Canadian federal government to the jurisdiction of the Alberta provincial government.

The government of Canada in turn claims to have obtained the land rights that it allegedly transferred to the Alberta provincial government in 1930 through negotiation of land cession treaties with the original indigenous owners of that land. However the members of the Lubicon Lake Indian Nation are the original indigenous owners of Lubicon Territory and the Lubicons have not surrendered their rights, titles and privileges to Lubicon Territory to Canada through treaty with the government of Canada or in any other legally or historically recognized way.

Canada has thus never been properly in possession of rights to unceded Lubicon Territory and could not transfer those rights to the government of Alberta. Alberta is therefore not in proper possession of rights to unceded Lubicon Territory and cannot legitimately authorize construction of a pipeline across unceded Lubicon land without Lubicon consent.

## 1.) Historic Lubicon Occupation of Lubicon Territory

The Lubicon people assert that they have occupied their traditional Territory since time immemorial.

An eminent, highly qualified, professionally respected independent ethnologist -- using anthropological, archaeological, demographic, ethnographic, historical and linguistic evidence -- concluded that "The immediate ancestors of the historic Cree lived (in Lubicon Territory) from about A.D. 1400...(and)...may have lived there earlier but the amount of archaeological research represents too small a sample to be certain of the initial date".<sup>1</sup>

Genealogical evidence documents Lubicon occupation of Lubicon Territory by the direct ancestors of the current Lubicon Cree population as early as 1750 -- well before the advent of Europeans.

## 2.) The Procedure for the Taking of Indian Land in Canada

In 1763 English King George III issued a Royal Proclamation the purpose of which was to organize England's North American Empire and to define relations with North American Indians including land acquisition from Indigenous Nations on the western frontier in an area of North American where at that point no western European had yet set foot.

The "Indian Provisions" of the Royal Proclamation of 1763 read as follows:

"And where it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians (underlining added) with whom we are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds -- We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretence whatsoever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective governments, as described in their Commissions: as also that no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads of Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West,

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<sup>1</sup> Dr. James G. E. Smith, "The Western Woods Cree: Anthropological Myth and Historic Reality", AMERICAN ETHNOLOGIST 14(3), August, 1987, American Anthropological Association, 1987, p. 439.

or upon any Lands whatsoever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

"And We do further declare it to be our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid.

"And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for the Purpose first obtained.

"And We do further strictly enjoin and require all Persons whatever who have either willfully or inadvertently seated themselves upon any Lands with the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

"And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians: In order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where We have thought proper to allow Settlements: but that, if at any Time any of the said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie: and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as We or they think proper to give for that Purpose..."

### **3.) Treaties with Indigenous Nations in Canada**

The procedure historically employed in Canada to obtain rights to indigenous land under the Royal Proclamation of 1763 is through the making of a treaty with the original indigenous owners of the land. Although the indigenous understanding of the purpose, nature and effect of the treaty is different, it is the position of the Canadian government that through the treaty the indigenous nation cedes rights, titles and privileges to relatively vast indigenous lands and resources to the Crown in exchange for exclusive use of a small reserve area and prescribed rights and benefits.

### **4.) The Coming Into Existence of Canada as an Identifiable Political Entity**

Canada was created in 1867 by the British government as a "self-governing colony of the British Empire" operating under a piece of British legislation called the British North America Act. The British North America Act served as an externally provided Canadian Constitution from 1867 until 1982 when it was "patriated" or "brought home" to Canada thereby making it subject to the Canadian Parliament instead of the British Parliament. The Royal Proclamation of 1763 is part of the British legislation "patriated" by Canada in 1982 and is now part of the Canadian Constitution.

Among other things the British North America Act spells out the jurisdiction of different levels of Canadian government specifying that "Indians and Lands Reserved for Indians" are "the exclusive Legislative Authority of the Parliament of Canada". The Canadian federal government is thus the only level of government in Canada that is constitutionally empowered to negotiate a land cession treaty with Indigenous Nations or Tribes in Canada.

### **5.) No Treaty Between Canada and the Lubicons**

In 1899 the Government of Canada made Treaty 8 with the indigenous nations in the area surrounding traditional Lubicon Territory. Treaty 8 provides, among other things, that "the undersigned...Indian Chiefs and Headmen, on their own behalf and on behalf of all of the Indians whom they represent" (underlining added), "DO HEREBY CEDE, RELEASE, SURRENDER AND YIELD UP to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors forever, all their rights, titles and privileges whatsoever, to the lands (within Treaty 8 boundaries unilaterally determined and drawn on a map by the government of Canada)".

Lubicon Territory is located within the Treaty 8 boundaries unilaterally drawn on a map by the government of Canada. However the Lubicons were missed when Canada made treaty with the indigenous nations in the surrounding area because the Lubicons lived in an

isolated, inaccessible hinterland not visited by the Canadian Treaty party. Consequently the Lubicons were not afforded the opportunity to sign Treaty 8, did not sign Treaty 8, and did not cede, release, surrender and yield up their rights, titles and privileges to Lubicon Territory to the government of Canada.

Nor have the Lubicons subsequently adhered to Treaty 8 or signed any other land cession treaty with Canada ceding, releasing, surrendering and yielding up to Canada Lubicon rights, titles and privileges to Lubicon Territory. Canada has therefore never obtained rights to Lubicon Territory and could not transfer rights to Lubicon Territory to the government of Alberta. Alberta is consequently not in proper possession of rights to unceded Lubicon Territory and cannot legitimately authorize construction of a pipeline across Lubicon land without Lubicon consent.

## **6.) The Coming Into Existence of Alberta as a Province of Canada**

The original Canadian provinces forming Canada in 1867 were deemed to own the public lands and natural resources within their respective provincial boundaries. The province of Alberta, however, was not established as a recognized province of Canada until 1905 and Alberta was treated differently than the original provinces forming Canada in that the Canadian federal government retained ownership of the public lands and natural resources within the boundaries of the new province of Alberta until 1930.

In 1930, after nine years of contentious negotiations that continue to plague relations between the different levels of Canadian government and complicate resolution of the jurisdictional dispute between Canada and the Lubicons, the Canadian federal government agreed to transfer jurisdiction and ownership of public lands and resources under federal jurisdiction within the boundaries of the province of Alberta to the Alberta provincial government subject to certain specified provisions and exceptions.

Section 10 of the 1930 Land Transfer Agreement pertains to Indian reserve lands pursuant to treaty. It stipulates that Indian Reserves will remain under federal jurisdiction and that the province agrees to transfer back to federal jurisdiction any land required by the federal government to enable the federal government to meet its constitutional obligations under the treaties with the Indians. This section of the 1930 Land Transfer Agreement relates specifically to Indian Nations that signed treaty but didn't receive their reserve land entitlement under treaty, or all of it, and reads as follows:

- "10. All lands included in Indian reserves within the Province, including those selected and surveyed but not yet confirmed, as well as those confirmed, shall continue to be vested in the Crown (in Right of Canada) and administered by the Government of Canada for the purposes of Canada, and the Province will from time to time, upon the request of

the Superintendent General of Indian Affairs, set aside, out of the unoccupied Crown lands hereby transferred to its administration, such further areas as the said Superintendent General may, in agreement with the appropriate Minister of the Province, select as necessary to enable Canada to fulfill its obligations under the treaties with the Indians of the Province, and such areas shall thereafter be administered by Canada in the same way in all respects as if they had never passed to the province under the provisions hereof."

Section one of the 1930 Land Transfer Agreement, which is the section apropos to Lubicon circumstances, expressly excludes lands and resources that the Canadian federal government did not properly hold. Section one reads:

- "1. "In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section one hundred and nine of the British North America Act, 1867, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province, and all sums due or payable for such lands, mines and minerals or royalties, shall, from and after the coming in force of this agreement and subject as therein otherwise provided, belong to the Province, subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same...(underlining added)".

#### **7.) Lubicon Lands Excepted From Lands Transferred From Federal to Provincial Jurisdiction**

Since Canada had not made treaty with the Lubicons pursuant to the Royal Proclamation at the time of the 1930 land transfer agreement -- and has still not made treaty with the Lubicons -- Lubicon rights to Lubicon Territory constitute an "interest other than that of the Crown in the same". Lubicon lands are consequently excluded from lands and resources transferred by the government of Canada to the Alberta provincial government via the 1930 Land Transfer Agreement.

Neither have rights to Lubicon lands subsequently been obtained by Canada and transferred to Alberta. Alberta is therefore not in proper possession of rights to unceded Lubicon Territory and cannot legitimately authorize construction of a pipeline across unceded Lubicon land without Lubicon consent.<sup>2</sup>

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<sup>2</sup> Notably subsurface rights to land in Alberta that had been transferred to private ownership prior to the 1930 Land Transfer Agreement were not transferred to Alberta under the 1930 Agreement as they are an "interest other than that of the Crown in the same". Subsurface rights held by the federal government in 1930 were transferred to Alberta and have been since retained by Alberta.

**8.) First Contact between Canada and the Lubicon Lake Indian Nation**

First contact between Canada and the Lubicon Lake Indian Nation occurred in August of 1939 when an official Canadian government delegation was sent into Lubicon Territory for the express purpose of determining whether the Lubicons are a separate and distinct indigenous society or merely the members of other indigenous nations with whom Canada had already dealt. The Canadian delegation officially concluded that the Lubicons are a separate and distinct indigenous nation with land rights. They made up the first officially recognized Lubicon membership list and recommended that a Lubicon reserve be created.

There have been on-again off-again negotiations between the Lubicons and both levels of Canadian government respecting settlement of Lubicon land rights ever since but for a variety of well documented reasons settlement has not been achieved; a Lubicon reserve has not been created and the Lubicons have not ceded their rights, titles and privileges to Lubicon Territory.

**9.) Opening Up of Unceded Lubicon Territory for Resource Exploitation**

Although there was limited, sporadic gas and oil exploration activity improperly authorized in unceded Lubicon Territory by the Alberta government going back to the 1950's, the Lubicon area was not opened up for significant gas and oil exploitation activity until the province completed construction of an all-weather road into unceded Lubicon Territory in 1978-79. Subsequent resource exploitation activity improperly authorized by the Alberta government in Lubicon Territory has had a well-documented horrific effect on the members of Lubicon society and their way of life, triggered a number of political confrontations and inconclusive legal actions in the Canadian courts, and resulted in a number of international human rights decisions that speak directly to both the continuing jurisdictional dispute between Canada and the Lubicons and to the issue of provincial authorization of economic activity in unceded Lubicon Territory without Lubicon consent.

**10.) International Human Rights Decisions on the Continuing Jurisdictional Dispute and Provincial Authorization of Economic Activity in Unceded Lubicon Territory without Lubicon Consent**

In 1987, after concluding that "there are no effective (domestic legal) remedies available to the Lubicon Lake Band" to protect the Lubicon people from human rights abuses occasioned by resource exploitation activity authorized by the Alberta government in unceded Lubicon Territory without Lubicon consent, the Human Rights Committee

of the United Nations (UNHRC) agreed to hear a Lubicon complaint under the International Covenant on Civil and Political Rights. While the complaint was being heard the UNHRC instructed Canada "to take interim measures of protection to avoid irreparable damage to (Lubicon) Chief Ominayak and other members of the Lubicon Lake Band". (No such "interim measures of protection" were ever taken.)

In 1990 the UNHRC broadened the cultural, religious and linguistic rights protected under Article 27 of the International Covenant on Civil and Political Rights "to include the rights of persons, living in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong". The Committee then found that "historical inequities...and more recent (resource exploitation) developments threaten the way of life and culture of the Lubicon people and constitute a violation of Article 27 (of the International Covenant on Civil and Political Rights) so long as they continue".

In October of 2005 the UNHRC revisited the still unresolved Lubicon situation and concluded:

"The Committee is concerned that land claim negotiations between the Government of Canada and the Lubicon Lake Band are currently at an impasse. It is also concerned about information that the land of the Band continues to be compromised by logging and large-scale oil and gas extraction, and regrets that the State party (Canada) has not provided information on this specific issue.

"The State party (Canada) should make every effort to resume negotiations with the Lubicon Lake Band, with a view to finding a solution which respects the rights of the Band under the Covenant, as already found by the Committee. It should consult with the Band before granting licences for economic exploitation of the disputed land, and ensure that in no case such exploitation jeopardizes the rights recognized under the Covenant(underlining added)"

In May of 2006 the UN Committee on Economic, Social and Cultural Rights (CESCR) considered the situation of the Lubicons under a second international human rights covenant called the International Covenant on Economic, Social and Cultural Rights. The CESCR concluded:

"The Committee recommends that the State party (Canada) resume negotiations with the Lubicon Lake Band, with a view to finding a solution to the claims of the Band that ensures the enjoyment of their rights under the (International Covenant on Economic, Social and Cultural Rights). The Committee also strongly recommends the State party (Canada) conduct effective consultation with the Band prior to the grant of licences for economic purposes in the disputed land, and to ensure that such

activities do not jeopardize the rights recognized under the International Covenant on Economic, Social and Cultural Rights (underlining added)."

In September of 2006 the UN Human Rights Committee rejected Canada's appeal of the earlier Committee decision holding Canada in violation of the International Covenant on Civil and Political Rights. The UNHRC pointedly observed that the parties "are still not in agreement on an appropriate remedy" and urged "the State party (Canada) to resume, without further delay, negotiations with a view to finding a solution to (Lubicon) claims in conformity with the Covenant".

In October of 2007 Special UN Rapporteur on Adequate Housing Miloon Kothari conducted a mission to Canada on behalf of the UN Human Rights Council to investigate, among other things, aboriginal housing conditions. During Mr. Kothari's mission to Canada he visited the Lubicon community of Little Buffalo Lake. His official report to the Human Rights Council is expected shortly. His preliminary observations to the Canadian government regarding his visit to Little Buffalo Lake include the following statements:

"...during his visit to the Lubicon Lake Nation, the Special Rapporteur could witness how families still live without access to potable water and sanitation in appalling living conditions. He also noted the destructive impact of oil extraction activities that continue to lead to loss of lands and the asphyxiation of livelihoods and traditional practices.

"In line with UN treaty body recommendations, the Special Rapporteur calls for a moratorium on all oil and gas extractive activities in the Lubicon Region until a settlement is reached with the Lubicon Lake Indian Nation. The Federal Government should resume negotiation with the Lubicon Lake Nation consistent with the Human Rights instruments including the UN Declaration on the Rights of Indigenous Peoples (underlining added)".

**11. Regulation of Economic Activity in Lubicon Territory in Lieu of a Mutually Acceptable Settlement of the Jurisdictional Dispute between Canada and the Lubicons**

It will take a settlement of Lubicon land rights to define and procedurally regularize the mutually acceptable exercise of territorial and resource rights in Lubicon Territory. History has shown that any arrangements short of a settlement of Lubicon land rights are vulnerable to abuse by unscrupulous parties and lack equitable and thus workable institutional recourse to deal with disputes. However such unstable arrangements are still better than nothing as long as people continue to try and pursue interests in an area where ownership of the lands and resources remains in dispute.

In the middle 1980's there were a number of potentially dangerous confrontations in Lubicon Territory that prompted efforts by the oil

companies, the Lubicons and provincial regulatory authorities to try and better come to terms with problems caused by lack of clarity as to territorial rights and responsibilities in Lubicon Territory. These efforts culminated in an agreement in 1986 between then Chairman of the Alberta Energy and Resources Conservation Board (ERCB) Vern Millard and the Lubicon Lake Indian Nation that provided that the ERCB would instruct resource companies seeking to undertake activities in Lubicon Territory to obtain Lubicon agreement not to oppose an application to the ERCB prior to applying to making application to the ERCB. Shortly thereafter, in response to company complaints that they were being granted surface access licenses and permits by the province to conduct exploration activities but then told by the ERCB that they had to obtain Lubicon agreement not to oppose resource exploitation projects, the relevant Alberta government department agreed to advise companies to obtain Lubicon agreement not to oppose before making application to the province for provincial surface access permits and licenses.

Provided that the proposed activity didn't threaten a sensitive Lubicon site, such as a burial ground or the area the Lubicons wish to retain post-settlement for reserve purposes -- and the company agreed to offer the Lubicons related work the Lubicons were prepared and equipped to do -- Lubicon agreement not to oppose an application to the ERCB could usually be achieved within 24 hours and the Lubicons would fax the ERCB a letter agreeing not to oppose. The provincial regulatory process could then proceed in the normal fashion.

Over the next eight years hundreds of such agreements not to oppose an application to the ERCB were negotiated. Fewer than a dozen proposed projects had to be cancelled or modified to take Lubicon concerns into account, mostly because they involved the area the Lubicons intend to retain for reserve purposes as part of a negotiated settlement of Lubicon land rights.

## **12. ERCB Agreement Broken**

In October of 1993 Union Oil, now renamed Unocal, contacted the Lubicons pursuant to the 1986 ERCB agreement supposedly to discuss Lubicon agreement not to oppose expansion of an existing oil battery station. Billed simply as an add-on to existing facilities, the Lubicons saw no reason for concern and agreed not to oppose an application to the ERCB.

The proposed Union project was subsequently approved by the ERCB. Later the Lubicons learned that the so-called "plant expansion" was in fact the addition of a sour gas processing facility. A potentially lethal sour gas processing facility located on a hill overlooking the proposed Lubicon reserve area, down wind and down stream and less than 3 kilometers from the area the Lubicons seek to retain for reserve purposes, was an altogether different matter and the Lubicons protested to the ERCB that they'd been deceived by Union Oil.

Union Oil initially responded to the Lubicon protest by taking the position that they didn't require Lubicon agreement not to oppose an application to the ERCB because, they claimed, their battery station was outside of the so-called "ERCB notification area" which they defined as a 247 square kilometer area that Alberta agreed in 1988, as part of Lubicon land negotiations, to transfer back to federal jurisdiction for purposes of establishing a Lubicon reserve if requested to do so by Canada as part of a settlement of Lubicon land rights. This was a blatant misrepresentation of the 1986 ERCB Agreement and everybody knew it. Union Oil's original letter to the Lubicons seeking to discuss their proposed "plant expansion" read "We have been advised by the Energy Resources Conservation Board that the consent of the Lubicon Lake Indian Nation must be obtained in support of the referenced plant expansion".

Officially advised that their new sour gas processing plant was within the so-called "ERCB notification area", Union oil then argued that the "notification area" shouldn't be any bigger than the proposed 247 square kilometer reserve area because, they claimed -- again falsely -- the original 1986 agreement provided for a bigger area only because nobody knew in 1986 how big an eventual Lubicon reserve would be or where it would be located. In fact the 1986 ERCB agreement was not made to protect the area where an eventual reserve might be located, although the area the Lubicons intend to retain for reserve purposes is one of the areas they wanted to protect with the Agreement. The 1986 Agreement was made to protect sensitive Lubicon sites scattered throughout Lubicon Territory, including 19 different burial grounds -- one of which located some 70 kilometers north of the proposed 247 square kilometer area had been bulldozed in the early 1980s providing impetus to both sides to make the 1986 Agreement -- and hundreds of proposed projects located throughout the entire 10,000 square kilometer Lubicon Territory had in fact been dealt with under the Agreement.

In the end ERCB adopted the Union Oil misrepresentation of the purpose of the 1986 agreement and unilaterally changed it, officially limiting the area where Lubicon agreement not to oppose would be required by the ERCB only to the 247 square kilometer proposed Lubicon reserve area. Needless to say this autocratically imposed dictate of the ERCB ignores the fact that there is no Lubicon reserve; there is no settlement of unceded Lubicon land rights; the Lubicons have not ceded their rights to their entire Territory in any historically or legally recognized way and the Lubicons consequently retain unceded aboriginal land rights to the entire Lubicon Territory.

All that has prevented continuous confrontations between the Lubicons and resource exploitation companies seeking to conduct activities in the unceded Lubicon area since the ERCB broke the 1986 agreement is

the fact that most companies, including companies that have subsequently taken over the Union Oil facility, developed serviceable working relationships with the Lubicons during the period the 1986 agreement was in force and have continued to seek Lubicon agreement not to oppose prior to making application to provincial regulatory agencies. The few that have not, as in the 2005 case of a proposed project by Deep Well Oil and Gas at Sawn Lake some 80 kilometers north of the 247 square kilometer area, have encountered significant problems.

**13.) The Lubicon Position on Application No. 1551990 of NOVA GAS Transmission to Build the North Central Corridor Pipeline Across Unceded Lubicon Territory Without Lubicon Consent**

In a manner reminiscent of the duplicitous tactics employed by Union Oil, NOVA Gas Transmission Ltd. (NGTL), a wholly owned subsidiary of TransCanada Corporation, has pursued a strategy for proceeding in Lubicon Territory not based on a sincere effort to obtain Lubicon agreement not to oppose an application to the ERCB, but on a cynical effort to meet the minimal requirements of their so-called "duty to consult" under Canadian law by making a supposedly "good faith" effort to accommodate Lubicon concerns as evidenced by meeting with the Lubicons and providing the Lubicons with canned information on the proposed pipeline. By any reasonable definition such an obviously contrived legal strategy is the antithesis of a "good faith" effort to reach an accommodation with the Lubicon people.

TransCanada's transparent legal strategy to meet their so-called "duty to consult" may or may not be sufficient under Canadian law in cases where aboriginal rights, titles and privileges have been ceded to Canada by treaty and subsequently transferred from Canada to Alberta. It is neither sufficient nor acceptable in Lubicon Territory where Lubicon rights, titles and privileges have not been ceded to anybody in any historically or legally recognized way.

The Lubicon people do not recognize provincial jurisdiction over unceded Lubicon Territory or the right of the AUC to authorize TransCanada to build the proposed North Central Corridor Pipeline through unceded Lubicon Territory without Lubicon consent. Lubicon Territory belongs to the Lubicon people and will continue to belong exclusively to the Lubicon people unless and until there is an agreement between Canada and the Lubicon people whereby others legitimately obtain rights to Lubicon lands and resources. If TransCanada tries to build this pipeline through unceded Lubicon Territory without Lubicon consent -- based only on approval of an Application to a provincial government regulatory agency that does not have legitimate authority in unceded Lubicon Territory -- the Lubicon people will oppose it every inch of the way, every way we can, for as long as TransCanada tries to operate in our Territory.