OUR LAND IS OUR FUTURE

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UNION OF B.C. INDIAN CHIEFS
CHIEFS COUNCIL
JUNE 1ST - JUNE 2ND, 2011
VANCOUVER, B.C.

Resolution no. 2011-19

RE: UBCIC Application for Intervenor Status on the appeal
***Adams Lake Indian Band v. Lieutenant Governor in Council* Decision**

WHEREAS the March 4, 2011 trial court decision in *Adams Lake Indian Band v. Lieutenant-Governor in Council* ruled in favor of Adams Lake Indian Band and the court said that there was inadequate consultation and accommodation by the Province prior to the incorporation of the Sun Peaks Municipality;

WHEREAS the Sun Peaks ski resort area and Municipality is within the Traditional Territory of the Secwepemc People who collectively are the Aboriginal Title and Rights holders. The Sexqeltkemc Lakes Division of the Secwepemc People are the caretakers of this area known as Skwelkwek'welt and the Neskonlith Douglas Reserve claim is collectively held by the members of the Adams Lake, Little Shuswap and Neskonlith Indian Bands;

WHEREAS in establishing the prima facie case for Aboriginal Title and the breach of the duty to consult, the Adams Lake Indian Band extensively relied on the actions taken by Secwepemc people on the ground, including the Skwelkwek'welt Protection Centre and the strong position taken by the Neskonlith Indian Band;

WHEREAS the Province of BC is appealing this decision of the court which ordered that the Province consult with Adams Lake on incorporation to address adverse impacts of the change in local governance/balance of powers from the incorporation, which opened the door to the Sun Peaks Corporation having increased influence over decision-making in the Sun Peaks ski resort area;

WHEREAS the duty to consult regarding the municipal incorporation of Sun Peaks, also applies to the Neskonlith Indian Band, whose strong record of calling for recognition of Secwepemc Aboriginal Title and Rights over Skwelkwek'welt was heavily relied on in *Adams Lake Indian Band* pleadings and referred to by the Court;

WHEREAS Adams Lake is cross appealing with respect to remedy, arguing that if the trial decision is changed, that the court should have quashed the Municipality (not only ordered consultation). Adams Lake will be arguing that if there is effectively no remedy for the Crown failure to consult, then the honour of the Crown with respect to the duty to consult and accommodate will not be met;

WHEREAS the United Nations *Declaration on the Rights of Indigenous Peoples* states:

> **Article 19**: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
>
> **Article 26**
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> 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
> 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
> 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.
>
> **Article 28**
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> 1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
> 2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.
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> **Article 32**
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> 1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
> 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
> 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact;

WHEREAS the Neskonlith Indian Band has repeatedly called for the implementation of the international principle of free, prior, and informed consent regarding the municipal incorporation of Sun Peaks and any developments at Skwelkwek'welt, and this standard has to be met, by seeking the consent of all Secwepemc people who collectively are the proper Title and rights holder;

WHEREAS by Resolution 2007-21, regarding opposition to the proposed Sun Peaks Incorporation, the UBCIC Chiefs Council fully supported that Adams Lake, Neskonlith, and Little Shuswap Indian Bands must be meaningfully consulted and that their respective Aboriginal Title and Rights are respected;

WHEREAS Adams Lake is seeking the support of the Union of BC Indian Chiefs to argue that the trial judge's decision should stand, given the numerous favorable rulings (and important issues on appeal), which increase and clarify what the consultation obligations actually require, in order to uphold Crown honor;

WHEREAS the *Adams Lake* appeal will shape the law of consultation generally, and intervention by First Nations on behalf of Adams Lake will be extremely useful to maintain Adams Lake's success on appeal;

WHEREAS it is key that international principles of free, prior, and informed consent of Indigenous Peoples and recognition of Aboriginal Title and Rights of the Secwepemc People are implemented regarding the municipal incorporation of Sun Peaks and all developments at Skwelkwek'welt.

THEREFORE BE IT RESOLVED the UBCIC Chiefs Council unanimously and fully supports the Adams Lake Indian Band in their cross appeal of the Province of BC's appeal of the recent trial court decision in *Adams Lake Indian Band v. Lieutenant-Governor in Council;*

THEREFORE BE IT FURTHER RESOLVED the UBCIC Chiefs Council recognizes the extreme importance of this case in setting a precedent in the law of consultation generally;

THEREFORE BE IT FURTHER RESOLVED the UBCIC Chiefs Council directs the UBCIC Executive to seek resources in order to apply for Intervenor Status in the appeal by the Province;

THEREFORE BE IT FINALLY RESOLVED the UBCIC Chiefs Council directs the UBCIC Executive to communicate to the Province of BC in a letter, full political support for the trial court decision in *Adams Lake Indian Band v. Lieutenant-Governor in Council* to the Province of BC, and argues for the implementation of the international principles of free, prior, and informed consent of Indigenous Peoples and recognition of Aboriginal Title and Rights of the Secwepemc People regarding the municipal incorporation of Sun Peaks and all developments at Skwelkwek'welt.

Moved: **Kukpi7 Wayne Christian, Splatsin**
Seconded: **Chief Geronimo Squinas, Lhooskuz Dene Nation**
Disposition: **Carried**
Date: **June 2nd, 2011**