

Resource Development Newsletter

Kingsclear First Nation

What is a Treaty?

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Issue 2

What is a Treaty?

A treaty is a formal agreement between two or more nations which recognizes specific rights and obligations set out within the context of the treaty. Basically, treaties are meant to define the relationship between the signatories. The Supreme Court of Canada (SCC) decision in *R. v. Sioui (1990)*, found that treaties are mutually binding obligations, and solemn undertakings. Interpreting the spirit and intent of treaties, oral history and collective memory are both valid tools.

<http://www.cbu.ca/aboriginal-affairs/unamak-college/mikmaq-resource-centre/treaties/>

What is the Peace and Friendship Treaties?

The Peace and Friendship treaties were between the British and the Maliseet and Mi'kmaq. The first treaty was signed in 1725 in Boston. The intent was for peace, to end hostility and conflict between the Aboriginals and the colonialists.

In the Atlantic, the Maliseet, Mi'kmaq and Passamaquoddy Nations and the British signed 11-13 treaties between 1725 to 1779.

In the 1725 and 1760-1761 treaties has a "Truck House" clause which the British to establish a Truck house or trading post for

exclusively for First Nation signatories.

<https://www.aadnc-aandc.gc.ca/eng/1360937048903/1360937104633>

The following link is for the Peace and Friendship Treaty Days conference, which took place on October 28-30th, 2015 at UNB.

<http://www.unb.ca/fredericton/education/mmi/events/treatydays2015.html>

On Thursday December 10th, 2015, there was a Treaty Education Workshop located at the Wulastukw Elementary School (WES). There were five community members that attended.

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Court Cases

Court Cases that impact our Aboriginal rights but are not limited to:

1. Calder et al. v. BC (1973)- involved aboriginal title claimed by the Nisga'a people of BC. Chief Calder lost, but the courts acknowledged that aboriginal title to land existed prior to colonization and the Royal Proclamation of 1763, however, the judges did not agree that title existed to the modern day.

2. R. v. Paul (1980)- Gregory Paul, a member of Metepenagiag First Nation (Red Bank) was charged for having a beaver skin without a license. Eventually, charges were dropped as the 1779 Treaty recognized a pre-existing right to hunting and fishing (which was limited to reserves at the time).

3. Simon v. The Queen (1985)- James Simon a member of Shubenacadie Indian Brook Band, was charged with the illegal possession of a rifle and shotgun cartridges. He used the Treaty of 1752 and Section 88 of the Indian Act, as evidence for his right to hunt and fish. He won as he proved connection with the signatories of the Treaty of 1752, by proving he was a registered member of the band.

Court Cases Continued

Court Cases that impact our Aboriginal Rights but are not limited to:

This is significant as First Nations people in the Maritimes no longer had to prove their ancestral relation to the signatories of the Treaties, as the Indian Act stated they were registered members and that was enough evidence to prove their connection to the tribe.

4. R. v. Sparrow (1990)- in 1984 Ronald Sparrow, a Musqueam band member, was arrested for fishing with a net longer than permitted. He argued that his right to fish with a net was an existing aboriginal right. He took his fight to the SCC and used Section 35 of the Constitution Act, which recognizes and affirms aboriginal and treaty rights. The SCC agreed that Ronald Sparrow had an existing right to fish at the time of his arrest and they also stated that the words "recognized and affirmed" (as they appeared in Section 35) meant that the government can not infringe upon these rights without justification.

5. R. v. Marshall (1999)- Donald Marshall Jr., from Membertou, was charged with fishing Eel out of season and without a license. The SCC overturned his conviction based on his rights under the

1760/61 Treaties, and his right to earn a "moderate livelihood" from fishing and hunting. Again, the SCC stated the infringement of aboriginal and treaty rights must be justified, as legislation must uphold the honour of the Crown.

6. R. v. Sappier and Polchies (2004)- Dale Sappier and Clark Polchies Jr., members of Woodstock First Nation, were charged for taking timber from Crown land. Both stated they had an aboriginal and treaty right to take the timber for personal use. The judge ruled in their favour, based on the Treaty of 1725.

7. Haida Nation v. BC (2004)- In 1961 the government of BC issued a tree harvest license on Haida Gwaii, an area of which the Haida Nation had previously launched a land claim. In 1999, the government also gave a license to the Weyerhaeuser Company without consultation with the Haida Nation. The SCC stated that an unproven claim to the land can trigger the duty to consult and accommodate from the government (honour of the Crown).

8. R. v. Marshall, R. v. Bernard (2005)- the appeal deals with two cases, in Marshall, 35 Mi'kmaq were charged with cutting timber on Crown Lands and in Bernard, one Mi'kmaq was charged with unlawful possession of spruce logs. In both cases, the Mi'kmaq argued they were allowed to log for commercial purposes according to the Treaties of 1760/61, using the "truckhouse" (trade) clause. Marshall and Bernard lost, as the SCC stated that the treaties only gave them the right to continue to trade items traditionally traded in 1760/61.

9. Tsilhqot'in Nation v. BC (2014)- 1983, the BC government granted a commercial logging license to land considered by the Tsilhqot'in to be part of their traditional territory. The Tsilhqot'in had the onus of establishing aboriginal title; where occupation had to be sufficient, continuous and exclusive. The SCC stated that BC had neglected in its duty to consult in connection to licenses issued and ultimately granted aboriginal title to the Tsilhqot'in (but only 2% of the Tsilhqot'in traditional territory).

Sisson Mine Project Update

On Thursday, December 3rd, 2015, the Government of New Brunswick's Minister of Environment, Brian Kelly announced the Provincials approval of the Sisson Brook open pit mine project proposed by Northcliff Resources Ltd. (Environmental Impact Assessment). This is only one of two approvals for the project. The federal regulatory body, "Canadian Environmental Assessment Agency" has to release a comprehensive study report approval and conditions. It is looking to be released in the first half of 2016.



Image from CBC- Shows the Tailing Storage facility (big pond) and the open pit mine (on the left). At the end of 27 years.

On Thursday December 17th, 2015, KFN had a community meeting w. Dominique Nouvet. The meeting had 20 members attend.

<http://www.cbc.ca/news/canada/new-brunswick/northcliff-resources-short-on-money-to-build-sisson-mine-1.3005034>

On November 16th, 2015, KFN Chief, two council members, Employment Officer and the Consultation Coordinator had a site visit up at Sisson.

On December 8th, 2015, KFN Chief and Council issued a response to the sudden Provincial approval of the mine to inform the community.

Sisson Mine Environmental Update is on Monday January 11th, 2016 @ 6pm located at WES.

Who is MSES & Woodward and Company



Who is MSES?

Management and Solutions in Environmental Science or MSES is a network of senior scientists & engineers across North America- they review Environmental Assessments for big projects like pipelines, oil and gas projects, mines, and forestry on behalf of First Nations.

<http://www.mses.ca>

Who is Woodward & Company?

Woodward & Company LLP works exclusively for First Nations governments and organizations in their quest for justice and equality. Idealists at heart, we will fight tenaciously to rectify past and present wrongs. Let us help bring your long battle for self-determination to an end and build a better, brighter tomorrow.

<http://www.woodwardandcompany.com>

Sarah Hechtenthal (MSES) is a wildlife ecologist with a

specialization in avian biology. Her experience-leading field surveys, analyzing data, and writing and reviewing Environmental Impact Assessments.

Dominique Nouvet (Woodward) has specialized in aboriginal law since 2003. Her principles areas of practice include: consultation and accommodations, Aboriginal rights and title and Treaty rights litigation, Indian Act and First Nation election disputes, Supreme Court of Canada interventions, administrative law and drafting Matrimonial Real Property Laws.

TransCanada Project Update

On November 5th, 2015, TransCanada announced adjustments to the Energy East Pipeline by amending the application before the National Energy Board (NEB) by removing the port in Cacouna, Quebec. With the removal of the port in Quebec would mean that the Canaport marine terminal in St. John, NB for the project would increase traffic in the Bay fundy from 2.2 tankers per week to 5.4 tankers per week. The

increase of numbers from 115 to 281 tankers.

<http://www.transcanada.com/news-releases-article.html?id=1999463&t>

There are three class sizes of tankers.

- Very Large Crude Carrier (VLC) class – 2.2 million barrels
- Suezmax class – 1 million barrels
- Aframax class – 700,000

barrels

The storage tanks that will hold the crude oil will increase from 18 to 22 tanks and will be taller in size from 70ft to 80ft.

Who is the National Energy Board (NEB)?

Regularoty body for oil and gas exploration and production activities in Canada.

<https://www.neb-one.gc.ca/bts/whwr/index-eng.html>

Traditional Use (TU) Study Update

For the TransCanada Energy East Pipeline Proposed Project

What is a Traditional Use?

According to Tobias (2000), "knowledge, based on the community's oral history and the individual's direct relationship to the traditional territory and its resources. Land use and occupancy mapping is about documenting those aspects of the individual's experience that can be shown on a map. It is about telling the story of a person's life on the land" (p.1). *Tobias, T. (2000). Chief Kerry's moose: A guidebook to land use and occupancy mapping, research design, and data collection.*

The Traditional Land Use is taking place in all six Maliseet communities to document camping, hunting, trapping, fishing, collecting berries, medicinal plants, wood and using the land in others ways as far back as they can remember.

Kingsclear started conducting the Land Use interviews the week of November 16, 2015. Kingsclear completed their interviews on December 18th. 59 people were interviewed in the course of 62 interview sessions. The main researcher and interviewer is Peter Armitage from Wolverine & Associates and Kingsclears' Co-

researcher is Natasha Sacobie. By Christmas, 119 Wolastoqey people had been interviewed from all communities except Oromocto in the course of 126 interview sessions. Now the next steps are for the main researcher to transcribe the audio recordings and the data on the maps and return to the communities in June 2016 to present the preliminary results of the TU study and so that interviewees and other community members can review the information for mistakes and omissions.

A community mtng took place on Monday Nov. 30th, 2016 where Peter presented about the TU Study. Eight members attended.

Sydney Paul, BBA, TAED

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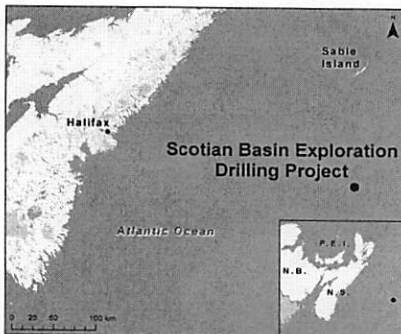
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<http://www.ceaa-acee.gc.ca/050/details-eng.cfm?evaluation=80109>

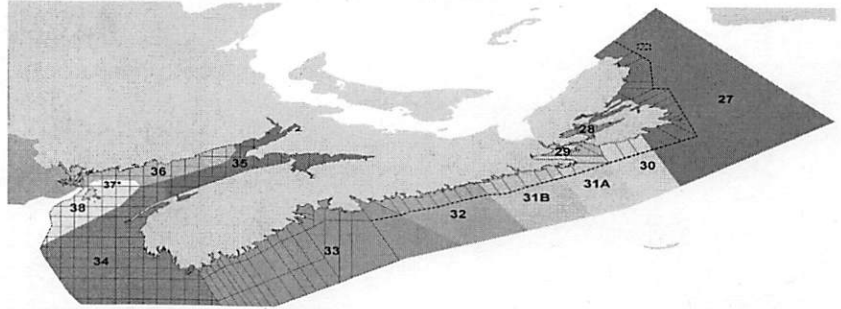
What is British Petroleum Scotian Basin Drilling exploration Project?

BP Canada Energy Group ULC is proposing to conduct an exploration drilling program approximately 230 to 370 kilometres off the southeast coast of Nova Scotia, consisting of up to seven exploration wells within Exploration Licenses 2431, 2432, 2433, and 2434. It would take place over a three year period starting in 2017 pending required approvals. Specific drilling locations would be determined using seismic data gathered as part of BP's 3D seismic exploration program conducted in 2014. *Map to the left shows where the proposed project will take place.*

<http://www.ceaa-acee.gc.ca/050/details-eng.cfm?evaluation=80109>

As many NB first nations have fishing licenses in that general area, BP and government have the duty to consult with First Nations (as we could potentially be impacted in the case of a blow out for example, etc). *Kingsclear's fishing licenses are located in the LFA 36 & LFA 38 areas which are located on the map below.*

<http://www.dfo-mpo.gc.ca/library/348229.pdf>



NB Power Project Update

NB Power Proposed Project

NB Power is proposing three options:

1. Repowering Station- Refurbishing the station by constructing a new powerhouse, spillway and other components, followed by the removal of the existing concrete structure at the station. *The new power station and spillway will be located on the opposite side of the river.*
2. Retain the Headpond with no powering station- Build a new concrete spillway and maintain the dam as a water control structure without a power generation, followed by the removal of the existing concrete structure at the station. *The*

spillway would be moved to the opposite side of the river.

3. River Restoration- Remove the station and enable the river to return to a free-flowing state.

A draft Comparative Environmental Review (CER) was done in September 2015 by Stantec Consulting Ltd on the potential environmental impacts from the three options. The draft report is open for public comments until March 31st, 2016.

A decision for one of the three options is looking to be made in the last half of 2016.

<http://www.mactaquac.ca>

NB Power Oil Spill

On December 22nd, 2015, NB

Power reported an oil spill after a valve malfunction at the Mactaquac Dam. Approximately 700 gallons of non-hazardous, biodegradable *Teresso 46 lubricating oil* was released into the St. John River. *I will be receiving more information the week of January 11th, 2016.*

<https://www.nbpower.com/en/about-us/news-media-centre/news/2015/non-hazardous-oil-released-at-mactaquac-generating-station/>

What is Teresso 46 lubricating oil? Multipurpose lubricant

Teresso 46 is lubricating oil consisting of a mixture of saturated and unsaturated hydrocarbons derived from paraffinic distillate and additives.