

Questions – September 28, 2012

1. Has work or planning started on what form of election (democratic) process will replace the present Indian Affairs (Indian Act) Chief and Council? If so, what education will be required?

Yes, work has begun. We refer you to questions # 5 and 21 for detailed answers.

2. What is the plan if fish is not going to be a part of the Final agreement?

There will be no Final Agreement if fish is not a part of the Agreement. Fishing rights will continue (they have existed in the past, and will continue) – if this is not guaranteed in the Final Agreement, there will be no Final Agreement.

We direct you to page 63 of the *Kitselas Draft Agreement-in-Principle* where it says:

“For greater certainty, this Agreement [the draft AIP] is not intended to affect any aboriginal fishing rights that Kitselas may have.”

3. How will Kitselas sustain itself post-treaty?

All funding that exists now will continue. In fact, in the case of other Treaty Nations, funding will increase. We will own resources and it will be up to the Kitselas government as to how make use of these resources, as well as the financial aspect of sustaining our people post-treaty. For further details, please consult page 109 of the *Kitselas Draft Agreement-in-Principle*

Questions specifically related to the AIP (as a document)

1. How do we access the Appendices to this document?

The appendices are nearly finished. They consist mostly of maps and a listing of all the various interests that exist on the lands, things like people who own mineral tenures or water reservations. They are not confidential and will probably be made available soon. Again, we just want to be sure there are no mistakes. They contain mostly technical information and so probably will not be sent to everyone. They will probably be made available online or at the treaty office soon.

2. Based on what formulas have Kitselas arrived at the land ownership of 36,167 hectares (90, 419 acres) of land?

Canada and BC receive instructions from their leadership in regards to how much land and cash they can offer. The exact formula is a secret. Based on existing treaties, it is

believed to be an amount based on population. Then Canada and BC enter a cost sharing agreement between themselves in regards to how much land should be offered to a particular First Nation as opposed to how much cash should be offered. Their cost sharing agreement has not been shared with negotiators. On a per capita basis, Kitselas is receiving a comparable if not higher amount of land.

3. Based on what formulas have Kitselas arrived at the \$34.5 million dollar amount? Why do we not ask for more, is it based on more land, less money?

Please see the answer above as well. We expect a slight increase in funds during the Final Agreement negotiations. Again, we also believe the amount of land and cash we are receiving is consistent with other treaty First Nations on a per capita basis.

4. Why does the official languages act of Canada have to be applied to this Treaty Agreement?

Requirements for both official languages comes from s. 16-19 of the Charter, which is part of the Constitution and the highest law in Canada. The Official Languages Act implements these sections of the Charter. Any legislation must be made available in both 'official languages' French and English as part of the legislative process. The Kitselas treaty will be a law of Canada and so must be accessible to French speaking Canadians too.

Kitselas has considered provisions for a sm'aylax version however the proper resource personnel and requirements are not yet available. We hope this is one of our early changes once we have the treaty in place.

5. We currently do not have a Constitution. Is there one being developed now and do Kitselas members have an opportunity for input before the Constitution is passed into law?

Currently, the background work for a Kitselas Constitution is being prepared. We have assembled a Constitution Working Group of "experts". The working group is putting together a "consultation draft" based on recent community meetings and meetings with leadership.

Once the draft is ready, it will be made available to everyone. All Kitselas members will have input into our Constitution - either through meetings or through discussions with our home visit team - to make it the best Constitution we can have. In order to get the Constitution right, it will have to be reviewed a number of times by:

- Constitutional Working Group
- Treaty Team
- Chief and Council
- Legal Counsel

- Community Members

The Kitselas Constitution will take several years to develop and does not have to be ready until just prior to the Final Agreement. Everyone will have an opportunity to provide input. It will have to be ratified by community members prior to our Treaty. Further to this, and as a piece of background information the Kitselas Constitution will address the matters below, as well as other topics that Kitsumkalum member feel are important.

- Rights and Responsibilities
- Structure of Government
- Law Making Authority
- Elections and Appointments
- Financial Accountability
- Land Management
- Conflict of Interest
- Adoption of existing Kitselas Laws
- Ratification

6. On page 21 (Release of Past Claims), do we have any outstanding lawsuits?

The section you are referring to means essentially any past land claims that Kitselas as a whole can make against Canada or BC. Treaties are meant to be a resolution of land claims issues. After Delgamuukw, many First Nations believed they should file what is called a protective writ. Normally you only have a limited amount of time to file various lawsuits, but a protective writ reserves your right to suit even after a long time. These writs were all put into something called abeyance, which means that the case is on hold. Most of these protective writs or related lawsuits are on hold pending the results of the treaty negotiations. This is not the same as an active lawsuit but could become active again if negotiations failed. Any First Nations that actively sue for land claims cannot at the same time participate in treaty negotiations. After treaty, Kitselas will still be able to suit Canada and BC but in regards to future events or for failed treaty obligations.

7. On page 23 (Periodic Review), what does this mean in the agreement? Is it a regular process with a timeline? What if, for example, we do not get sufficient fish in the agreement? Would we have to wait for a periodic review to correct the situation?

The Periodic Review provisions are really meant more to facilitate changes in regards to administration and procedure. They could be for other matters if all three parties

agreed, but in regards to fish, Kitselas will want to make sure the fish provisions in the Final Agreement are sufficient and include a formula that contemplates the future. The timeline for Period Review will be determined during the negotiations for the Final Agreement. Other treaties have set their review to happen every 10 to 15 years. The parties can agree to do it sooner as needed.

8. On page 32 (under 31), what are the terms of Appendix c-5 in the Final Agreement Right of Way? What access are Kitselas going to have to food fishing and the aquacultural rights?

The details of this have yet to be determined and set out in Appendix c-5. This will take place during final agreement negotiations. When, and if, this were to happen, then the Kitselas Government would have the law-making authority to ensure that food fishing and aquacultural rights are protected. As we have stated above, there will be no Final Agreement without the continued right to fish.

9. In regards to page 33 (Submerged lands), according to the agreement, we do not have rights or access to use any resources that may be found under water within our territory. Is that correct? Why should we agree to such terms? Can Canada or the province make agreements to sell water within our territory or dam our rivers or lakes? Do we have any recourse to prevent this from happening? What mineral rights will we have? What about royalties for minerals – should minerals be extracted from treaty lands?

It's important to understand the difference between subsurface resources and submerged lands. Submerged lands are the lands underneath water, such as the land under a lake or a river. Kitselas will not own those lands, but it will still have access to the rivers and lakes, including the resources such as water and fish. Ownership of submerged lands is rarely contemplated by Canada or BC because it implies legal ownership of the water and every fish that might be caught going through it. First Nations have attempted to claim exclusive ownership of submerged lands as part of a claim to Aboriginal title and have failed. Accessing resources under the water is risky too because it almost always comes with great risks to the fish and fish habitat. Access to take water is provided through a thing called a water licence, provided to Kitselas in the Water chapter. If Canada or BC simply dammed the water that Kitselas relied upon, we would have several options for suing them, most of them related to violations of various treaty obligations. Subsurface resources are mineral resources. These resources are normally found beneath the surface, like coal, gold and copper. Kitselas will own all mineral resources beneath Treaty Settlement Lands. Royalties are a sum of money that industry pays to the Crown for the right to extract mineral resources. We will charge a royalty if anyone wishes to extract minerals from our lands. We are also seeking to share mineral resource royalties from Crown lands.

10. In regards to page 34 (Site Remediation), do we have any land in need of remediation? Why can't the government clean it up while negotiations are continuing? If lands need remediation, what sort of pollutant is involved? How much of an area are we talking about?

The vast majority of lands that are becoming Kitselas lands are vacant crown lands that have hardly been used for anything other than forestry. The first task the parties will have to do is identify which lands if any need remediation. No matter how hard you try to identify these lands, you may still find afterwards through future use of the lands, such as actually digging something up to build there, that there were lands in need of remediation that you did not realize needed it. The parties have agreed not to try to identify which lands may need remediation until Final Agreement negotiations. We do not expect much if any of the lands to require remediation. If later they do find that lands are in need, BC will pay the costs. BC may still clean up some of the lands before the treaty comes into effect, but they will want to know that a treaty is being approved before they undertake those works.

11. Why are there arrangements for expropriation (or seizure) of Kitselas lands?

Kitselas Lands will be constitutionally protected, but the treaty does still allow for the potential expropriation of lands by Canada, BC or Kitselas. The treaty puts a number of protections in place. It can only be done for a valid public purpose. It has to be the least possible land interest for the least possible time. Compensation in the way of cash or additional lands would have to be provided. Keep in mind that Reserve lands can also be expropriated and that the courts have said in *Delgamuukw* that even Aboriginal title can be infringed by the crown when it has a valid purpose. We can say this about treaty, for the first time in history, it will be harder to expropriate from a First Nation than it will be to expropriate from someone else.

12. In regards to page 44 (Tenured Subsurface Resources), who will pay for restoration costs under this tenure if the land or water is left in a contaminated or environmental catastrophic state following the extraction of resources by a private company?

Under the Mineral Tenure Act and related provincial laws, the person who holds the mineral tenure is responsible for cleanup. Provincial provides for a number of fines and offences for anyone who contaminates water. BC is responsible for emergency preparedness related to mining. You can view their emergency plans online at www.empr.gov.bc.ca.

13. In regards to page 45 (Water), this section states in the Summary document AIP that we are agreeing to 50,000 cubic decametres of water for our use. It states that 'water is likely to become an increasingly valuable resource 'so Kitselas has sought a very large allocation of water to ensure enough for future generations.' The water agreement section is very large and it is a concern that there are so many clauses. Why should we have to, for example, have to apply for additional water licences if we have sufficient water?

The water licences will be managed by the Kitselas Government and could facilitate the Kitselas government making some money by lending excess water. It could also facilitate water supplies for future subdivisions or other housing developments.

14. Why isn't the total amount of water 50,000 decameters written into the AIP?

The details of this will be finalised during the Final Agreement negotiations. The parties will have to identify which river or streams that can be used and get a better idea of how much could be taken from each stream without hurting any fish or fish habitat. A study was done but all of the parties need some time to review the work.

15. How did we know that this is sufficient for our needs now and into the future, how did we arrive at this formula?

Consideration and research was conducted to examine how communities of similar sizes to ours have negotiated for water licences and reservations. The 50,000 cubic decametres will be more than enough for our people. As a comparison, the City of Terrace holds a water licences for 5,000 cubic decametres.

16. Does the government have any existing water licence agreements with any private companies in our proposed territory?

Currently, BC distributes and assigns water licences to applicants for domestic, industrial and agricultural use so the simple answer is yes there are a number of water licences already in place that will continue. Even the City of Terrace holds a water licence to ensure that their citizens have continual access to safe water sources.

17. In regards to page 57 (Roads and Rights of Way), Kitselas will be required to maintain the upkeep of our roads that have public access. Do we have an annual cost to this requirement and do we get provincial money to assist with this?

We will continue to receive funding for this as we currently do. We will also be selective about which roads we want to own ourselves. We will own local roads within our own

community and be responsible for maintaining those, but we will not own more major roads and probably do not want to because then we would also be liable for accidents that were caused by any failure to maintain the roads.

18. In regards to page 85 (Self-government; legal status and capacity)- can our governing body under treaty take out a mortgage against our lands or will this have to go to referendum? Will we have referendums in our decision making on matters that affect land and the threat of loss of land through sale or mortgage? Can this referendum requirement be written into the Kitselas Constitution?

The AIP requires that our Constitution include provisions that deal specifically with this issue. The Constitution must include provisions that speak to when and how Kitselas Lands can be sold or mortgaged. Please refer to question #5 in regards to the development of the Constitution.

19. Is the Constitution currently being developed? If so, by whom?

Please refer to answer #5 above

20. Will the Freedom of Information Act apply to Kitselas government?

Yes. The Act also involves the Protection of Privacy which can sometimes serve to protect information, such as personal health records for example.

21. Devolution of Cultural Property (page 89)

States Cultural Property means:

- a) Ceremonial regalia and similar personal property associated with a Kitselas chief or clan; and
- b) Other personal property which has cultural significance to Kitselas

Can we include under this category a broader understanding to include the wording to read:

- a) Ceremonial regalia, names, songs, dances, stories, totem poles, house names and similar cultural property associated with a Kitselas Matriarch, chief or clan; and
- b) Other personal property which has cultural significance to Kitselas

Thank you for your input, negotiators have found this to be a more complex section than anticipated. Defining anything in regards to culture is a challenge. Negotiators try to avoid the use of lists because they tend to imply that anything that is not on the list is not meant to be included. We would have to be sure the list added clarity and did not miss any items. We like the idea of clarifying the important role of the Matriarch along with the Chief. It is not easy to make changes

to the AIP at the moment. Your suggestions can more easily be considered during Final Agreement negotiations.

22. In regards to page 107 (Capital Transfer), how did we come to negotiate a settlement of a mere 34.7 million dollars for our land and title? This figure seems very small in comparison to the Nisga'a Agreement, which was substantially more of a settlement. Why this amount? This will not be enough to sustain future generations and we may end up mortgaging our land?

Please see our responses to questions 2 and 3 above in regards to the likelihood that treaties are negotiated based on populations. While 34.7 million may seem small in comparison to the Nisga'a treaty, it is not an insignificant amount. Remember that regular program funding will continue – this is a capital infusion that will provide great leverage to us financially and into the future. The Nisga'a have a combined population of over 5,000 members compared to the 585 of Kitselas.

23. When do we get to see the final schedule of payments? Will we have an accounting of the five million dollars that we spent negotiating this Treaty? Will we, the public, have access to these documents?

The 'final schedule' will be determined during the Final Agreement Negotiations.