

Long Lake #58 First Nation

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Via Online Submission
www.EAreview.ca/submissions

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Canadian Environmental Assessment Agency
Review of Environmental Assessment Processes
c/o Renee Pelletier
Chairperson
Expert Panel

Dear Ms. Pelletier:

Over the past several weeks, Long Lake #58 First Nation has had the opportunity to consider the numerous questions that have been posed by the Expert Panel and we wish to put forward our detailed response to the various issues and concerns that you have raised.

We are pleased to provide you with some background information on our First Nation, our responses to your questions and our position on other issues that have been raised during our internal discussion.

Background

Long Lake #58 First Nation is a very small community situation, as you might expect, on the Northshore of Long Lake, in northern Ontario, on one square mile of land that was designated for the use and benefit of the First Nation when the families of the First Nation refused to sign Treaty 9. That one square mile of land has been significantly eroded by highways, railways, flooding and the First Nation today lives on less than 200 acres of useable land which provides homes for 450 people.

Long Lake #58 First Nation wishes to remind the Expert Panel that is neither a signatory to Treaty 9 nor a signatory to the Robinson-Superior. It is important that this distinction be made and understood since many issues arise from a First Nation's Treaty relationship with the Crown. Since Long Lake #58 First Nation does not have an established Treaty relationship it relies on Section 35 of the *Constitution Act* to assert its Aboriginal rights and interests must be addressed when considering any project that is within its Traditional Territory.

Long Lake #58 First Nation does acknowledge that its Traditional Territory is rich with natural resources such as minerals, forests, water, fish, animals and it has provided generations of Anishnawbe people who call Long Lake, and our traditional territory, home. As Anishnawbe people we are responsible to protect the lands and resources that were entrusted to us by the Creator.

We expect to be part of the solution and not considered an after-thought or given a lesser status than other Governments and Canadians when it comes to deciding the type of regulatory process/regime that should be in place to evaluate projects that are proposed for development in our Traditional Territory.

It is with this background that we are pleased to provide you with our response to your questions.

Before proceeding with providing specific information that Long Lake #58 First Nation wants you to consider it is important that we remind you of the questions that you have put into the public domain:

Environmental Assessment in Context

1. To what extent do current federal environmental assessment processes enable development in Canada that considers the environment, social matters and the economy?
2. What outcomes do you want federal environmental assessment processes to achieve in the future?
3. How can federal environmental assessments support investor certainty, community and environmental wellbeing, the use of best available technology, certainty with respect to the protection of Aboriginal and treaty rights and timely decision-making?
4. How should federal environmental assessment processes address the Government of Canada's international and national environmental and social commitments, such as sustainable economic growth and addressing climate change?

Indigenous Considerations

1. How can federal environmental assessment processes better reflect and incorporate the multiple ways in which Indigenous Peoples may interact with federal environmental assessment, including as potentially affected rights holders, proponents of development, self-governing regulators, and partners?
2. How is the need to address potential impacts to potential and established Aboriginal and treaty rights best incorporated into the federal environmental assessment process?
3. What is the best way to reflect the principles of United Nations Declaration on the Rights of Indigenous Peoples, including the principles of Free, Prior

and Informed Consent and the right to participate in decision-making in matters that would affect Indigenous rights, in federal environmental assessment processes?

4. What role should Indigenous traditional knowledge play in federal environmental assessments and what are some international best practices?
5. How can the practices and procedures associated with federal environmental assessments, as well as the process itself, support the Government of Canada's goal of renewing the nation-to-nation relationship with Indigenous Peoples and moving towards reconciliation?

Planning Environmental Assessment

1. Under what circumstances should federal environmental assessment be required?
2. For project environmental assessments, do you think the current scope and factors considered are adequate?
3. Are there other things (effects, factors, etc.) that should be scoped into an environmental assessment?
4. Under which circumstances should environmental assessment be undertaken at the regional, strategic or project-level?
5. Who should contribute to the decision of whether a federal environmental assessment is required?

Conduct of Environmental Assessment

1. Who should be responsible for conducting federal environmental assessments? Why?
2. What should be the role(s) of the proponent, Indigenous Peoples, the public, environmental organizations, experts, the government and others in the planning of, collection, analysis and review of environmental assessment-related science including community and Indigenous traditional knowledge?
3. How can environmental assessment processes be improved to ensure a timely, yet thorough process has been conducted?

Decision and Follow-up

1. What types of information should inform environmental assessment decisions?
2. What would a fair, transparent and trustworthy decision-making process look like?
3. Who should participate in the implementation of follow-up and monitoring programs and how should that participation be encouraged or mandated?

4. Are enforceable conditions the right tool to ensure that the Government of Canada is meeting its environmental assessment objectives and, if so, who should have a role in compliance and enforcement?
5. Given that environmental assessment decisions are made in the planning phase of proposed actions, how should these decisions manage scientific uncertainty?

Public Involvement

1. What do you think meaningful, effective and inclusive participation in the environmental assessment process looks like?
2. To what extent are current opportunities for public participation in federal environmental assessment processes adequate?
3. To what extent do you feel your views are considered in environmental assessments?
4. What information do you need during an environmental assessment to allow you to effectively participate? What capacity support should be provided and at what stage in the process would that support enable meaningful engagement?

Coordination

1. To what extent can the Government of Canada coordinate with other jurisdictions (e.g. provincial and/or Indigenous governments) while maintaining process integrity in the conduct of federal environmental assessments?
2. To what extent is the current approach to substitution and equivalency effective?
3. Do you think duplication between the federal environmental assessment process and the environmental assessment process of other jurisdictions exists? If yes, what are ways in which duplication could most effectively be reduced while maintaining process integrity?
4. How can Indigenous Peoples' inherent jurisdiction best be reflected and respected in the federal environmental assessment process?

Well we may not provide you with a response to every question, there is some duplication of the themes throughout the various sections, we have used the questions to try and ensure that we stay on topic and provide you with relevant information that is meaningful to your process.

It is important that we take the opportunity to set out our responses as best we can in the context with which the Expert Panel has asked for its feedback. However, as a First Nation it is vitally important that we reorder our responses to make sure that we deal upfront with our thoughts and priorities.

Indigenous Considerations.

The principles of United Nations Declaration on the Rights of Indigenous People [UNDRIP] should be reflected in the approach that is advanced for ensuring that the principles of engagement and accommodation are instilled in federal environmental assessment processes.

First Nations hold a special bond with their land and it is important that the nature of these bonds be respected when examining opportunities for development. It is important that all environmental assessment processes ensure that First Nations rights are protected and respected.

The process being developed by the Government of Canada must ensure that it respects the protocols, laws and regulations that First Nations Governments have created.

Long Lake #58 First Nation has its own Engagement and Accommodation Protocol that outlines the how it wants to be engaged and accommodated. Governments have failed to recognize the importance of what this protocol represents and how it was created to protect the First Nation from the failures of past governments to protect them and their resources.

Long Lake #58 First Nation is a recent Land Code First Nation within the meaning of the First Nations Lands Management Act and the First Nation will now start the process of creating its own environmental laws. Long Lake #58 First Nation expects that Governments will respect these laws and will, where necessary, adopt and apply the laws of the First Nation to projects within its Traditional Territory.

It is also important that future processes respect Traditional Knowledge. Long Lake #58 First Nation has a very extensive record of its areas of traditional use and it is important that when that information is made available to proponents, other Governments, regulators, etc. that the information provided should be fully considered and not sanitized or dismissed as has been past practices.

Where Long Lake #58 First Nation finds itself in the position of proponent or partner in a development project it sees that there are two lens with which they must view their project. The first lens is as the First Nations Government ensuring that their own project meets all of the protocols, laws, regulations and standards that they would expect other projects to follow in their Traditional Territory. The second lens is to ensure that their project/partnership adheres to the existing regulatory frameworks of the senior levels of government. As First Nations people, we cannot say that we are here as stewards of the environment and then turnaround and not comply with or take shortcuts with the regulatory frameworks that are there to protect the environment.

The best form of addressing First Nations potential impacts through the environmental assessment process is to have a consent mechanism from the affected First Nations that provide you with their concurrence that the issues that they have raised have been adequately considered by the proponent and the First Nation is satisfied that their impacts have been addressed to their satisfaction.

With any multi-party process interpretation of the form of relationship and the results of engagement are subjective. The proponent may be spending considerable time engaged with the regulators telling them that they have a wonderful working relationship with the First Nation but having a First Nation feel that they have been neglected and misinformed about the entire process. We have no doubt that this happens and we need to find a way to ensure that the interests of the First Nations are as important as the interests of the proponent.

Long Lake #58 First Nation believes that the Canadian Environmental Assessment Agency must ensure that there are adequate consent mechanisms at each of the critical stages of the environmental review to ensure that First Nations have been meaningfully engaged.

In fact, we would strongly recommend that early notification be included in any revisions to the Act to get proponents on the front-end of their required engagement, rather than on the back-end. Long Lake #58 First Nation believes that it would be beneficial to have a formal seat at the table where project-scoping is being developed. This would allow the First Nation the opportunity to let proponents know their thoughts, concerns, issues, potential impacts, etc. and it would make for a better process if proponents could engage early on rather than developing their scope before meeting with the First Nation. In addition to early notification, we need to include consents at each of the stages of the environmental assessment process:

- Completion of the base line studies
- Completion of the alternatives assessment
- Completion of the cumulative effects assessment
- Completion of the risks and mitigation assessment
- Completion of the draft and final environmental assessment reports

Without a defined process for consent and steps that proponents have to undertake, First Nations are often left with the daunting task of having to deal with too much information and having no time to deal with it. The review process is an important step in the environmental assessment process and we must make sure that the process has the right steps to provide comfort that the process can accomplish what it is expected to do.

While the goal of reconciliation is important as a societal concept, the most important aspect of the Agency's and Government's responsibility is to make

sure that First Nations can trust the process and that their voices will be heard and their requests acted upon. Governments have a long history of muting the voices of First Nations people and if we are going to have substantive and meaningful change in how First Nations participate in the federal environmental process then there must be trust in how that system is going to impact them directly.

Environmental Assessment in Context

As a regulatory board, the Canadian Environmental Assessment Agency should ensure that the regulations and how they are interpreted are clear. Long Lake #58 First Nation believes that where there is subjectivity there is ambiguity. If the regulations are clear and specific, do not allow for broad interpretation or hollow actions then the rules of engagement suddenly appear much clearer.

Investors want certainty, and Long Lake #58 First Nation recognizes and accepts that. But certainty must extend to each of the levels of Government, including First Nations governments, who are providing regulatory frameworks to ensure that projects are done in a manner consistent with protecting the environment and affording application of the highest and best possible standards, including standards that could develop in the future.

We all recognize the role that technology plays in our society. Technological change is inevitable. The regulatory approvals should always permit the regulator to amend their approvals to apply new proven technologies that provide mutual benefits. While this element does apply a degree of uncertainty for proponents, the idea of mutual benefits must be adhered to and proponents should not be unduly harmed by forcing new technologies upon them. The benefits must outweigh the risks of inaction and that is a principle that Long Lake #58 First Nation would support.

First Nations also want certainty. Long Lake #58 First Nation wants certainty that the processes that are being championed by the Canadian Environmental Assessment Agency go far enough to ensure that environmental reviews are as complete and detailed as they can be. Like most First Nations, Long Lake #58 First Nation does not believe that the 2012 amendments to the Act enshrined the spirit and intent of protecting the environment and gave too much power to politicians and bureaucrats.

In this review process, it is important that new steps are added to the environmental review process to make it stronger and more beneficial to those who have to participate in it. First Nations are not alone in their request for a stronger Act, most Canadians want an environmental regulatory framework that affords strong protection for the environment and provides proponents with additional key steps that will provide that protection.

Long Lake #58 First Nation would certainly suggest that when considering a new scope for environmental reviews that the Expert Panel consider enshrining each of the following steps in that process:

- Notification [early stage notice is preferred]
- Completion of the base line studies
- Completion of an alternatives assessment
- Completion of a cumulative effects assessment
- Completion of a risks and mitigation assessment
- Completion of a draft environmental assessment report
- Completion of a final environmental assessment report

By ensuring these steps are part of the process, Long Lake #58 First Nation would consider that there is certainty in what the First Nation can expect from the environmental review process and the environmental assessment process.

Finally, there is another type of certainty that plays a role in project consent and that is the relationship between economic certainty for First Nations and investor certainty. While the current review does not necessarily require the Expert Panel to delve head on into this issue, Long Lake #58 First Nation wants to make sure that the Expert Panel is aware that there should be a link between environmental certainty and economic certainty where First Nations are concerned.

At the present time, Governments try their best to offload their responsibilities to proponents and want to only engage at the end of the process. This isn't good enough anymore. First Nations expect governments to be engaged from the start of the process and not to come in at the end or to ignore the requests of First Nations for meaningful engagement. If we are anticipating a 3-4 year process, or perhaps, longer than governments must come to the table sooner to ensure that they are engaged.

Governments must also be aware that they cannot abdicate their responsibility to provide accommodations to affected First Nations. While the Expert Panel may not have a mandate to deal with this issue, it is an overriding principle in developing consent that meaningful accommodation has been agreed upon as part of project consent. While you may hope that there is a distinction between environmental consent and economic consent that distinction may not always exist for First Nations.

Planning Environmental Assessment

Long Lake #58 First Nation believes that any project that has an impact on elements important to its culture [air, land, water and extraction of resources from its traditional territory] should be required to enter into an environmental assessment process. The scope of the environmental assessment process should be reflective of the project itself. Guidance and rules on which types of

projects fall into which categories should be scoped and included in a detailed project environmental assessment table that would allow proponents to quickly reference the type of environmental assessment process that they will be expected to participate in.

For example, if we examine some individual project types and we try and categorize them we can see how a potential table could work to everyone's benefit:

Type of Project	Corresponding Environmental Assessment Process
<ul style="list-style-type: none"> • Mine 	<ul style="list-style-type: none"> • Regional
<ul style="list-style-type: none"> • Elementary School 	<ul style="list-style-type: none"> • Project
<ul style="list-style-type: none"> • Highway 	<ul style="list-style-type: none"> • All three [Comprehensive process]
<ul style="list-style-type: none"> • Hydro-generation [Run of the River] 	<ul style="list-style-type: none"> • Regional
<ul style="list-style-type: none"> • Solar Farm 	<ul style="list-style-type: none"> • Project
<ul style="list-style-type: none"> • Forest Management Plan 	<ul style="list-style-type: none"> • Strategic

These ideas give some reference to how our First Nation views how potential projects should be classified and how a project reference table could help point proponents and First Nations towards the type of process that they should be anticipating that they would have to participate in.

Long Lake #58 First Nation has several items that it believes should be scoped into an environmental assessment including:

- Establishing an dispute resolution mechanism that will assist with disputes between First Nations, proponents and the Canadian Environmental Assessment Agency. It is imperative that legal independence form part of the process where that independence does not require one to reach out to the Federal Court for guidance and interpretation
- An independent body to assess whether or not proponents are providing adequate resources to First Nations during the environmental assessment process. At the present time, proponents control the amount of funding and therefore have an ability to reduce the amount of participation that a First Nation is entitled to and therefore can dictate outcomes within the process:
- Adequate funding for participation in the Federal review processes. At the present time, the \$62,500 that is being provided for First Nation participation by the Canadian Environmental Assessment Agency, including participation at both the draft environmental assessment report and final environmental assessment report stages is not adequate if there

is to be adequate engagement between the Canadian Environmental Assessment Agency and the First Nation;

- Funding also needs to be expanded to include early stage discussions amongst the Canadian Environmental Assessment Agency and First Nations and a process must be developed that incorporates the various stages that have been identified within this letter
- Processes must ensure that they are not about the minimum standards but about having companies achieve the highest standards possible. If a project is no longer feasible since it has to meet higher standards then it wants to meet as a result of on-going discussions with the First Nation, and recognition of First Nations values and participation, then First Nation should be willing to accept that result. No project should be built that does not meet the enhanced requirements that are created from First Nation participation
- The process should also ensure that Cabinet does not have the unilateral right to approve projects even if they oppose the views of the Canadian Environmental Assessment Agency. If the Agency is to function and perform its role in an independent and effective manner that it should be the sole body that makes recommendations. Once the Canadian Environmental Assessment Agency has made its determination on a project then that recommendation should be given to Cabinet with a view to a final review at which time Cabinet should only be able to reject a project that has been approved rather than approving a project that has been recommended by the Canadian Environmental Assessment Agency
- The process should endorse an enhanced definition of community well-being that would include:
 - Employment
 - Training
 - Education
 - Health
 - Social investments in elders including care, accommodations, income supplements, etc.

It is very clear that many of Canada's First Nations lack many of the quality services and lifestyle amenities that non-First Nations people enjoy. One of the goals in assessing projects should be to see how they enhance community well-being through direct socio-economic inputs into First Nation. The review process must emphasize how projects will contribute, both directly and indirectly, to affected and impacted First Nations and this analysis must receive a higher weight in the overall decision-making to permit projects to proceed.

While the environmental assessment processes are in the purview of the Federal Government the implications of projects reach beyond governments. It is important that the process is all encompassing and that equal opportunities are provided to other governments, including First Nation governments, as well as

other impacted Parties. The government has an obligation beyond its Duty to Consult to ensure that all impacts are assessed and measures are included/adopted that ensures impacts are properly and fully mitigated.

Conduct of Environmental Assessment

The issue of timeliness is a regulatory concern and not necessarily a concern of Long Lake #58 First Nation. The First Nation would say to the Panel that their only concern relates to having enough time to ensure that they have meaningful engagement and accommodation before a project reaches the stage where an approval is pending the consent of the First Nation.

Too often Governments create service windows and targets that may not be realistic. If we consider our own situation, we lack significant internal resources that can assist with meaningful participation. The time it takes our First Nation to receive a document, engage our experts to provide a peer review or summary, engage with our membership, provide written feedback to a proponent, meet and discuss comments and feedback with a proponent and, if possible, arrive at a consensus on the information going forward generally takes 18-24 months prior to the submission of the environmental assessment document. When you add in the time to review, comment and engage the contents of the environmental assessment submission we believe that process is a further 18-24 months. Therefore, at a minimum, Long Lake #58 First Nation expects that its time with a proponent would be in the range of 3-4 years and that a meaningful process will and has been engaged in.

Our experience is that proponents have their own timelines that are often driven by their shareholders and not by the quality of the engagement. Lots of time spent in conversation with a proponent does not always translate into a quality process if the proponent is not taking the First Nation seriously. An extensive record of consultation does not always translate into meaningful consultation and it is up to Government to ensure that as part of their review that they ensure that First Nations have been adequately engaged.

You have asked us to consider who should be responsible for the conduct of environmental assessments. While the Canadian Environmental Assessment Agency is federally mandated it should maintain responsibility for the process and compliance with the process. The rules and regulations should be made in accordance with the prevailing legislation giving due consideration to the impact of indigenous considerations.

What the Canadian Environmental Assessment Agency may wish to consider is whether or not it wants to enact a public advisory committee [PAC] that would key consist of key stakeholders to provide on-going advice to the evolution of the role it has in the environmental review process. While we have not given much thought to the make-up of such as PAC needless to say it would have strong representation from First Nations, and possibly other indigenous groups,

scientific and legal representation, as well as corporate and project representation. With this type of representation and dealing with an extensive range of interests, the PAC could be a valuable member of the on-going evolution of the Canadian Environmental Assessment Agency.

Decision and Follow-up

Long Lake #58 First Nation has taken the view that while the Agency is responsible for the process and compliance with the process, project evaluation activities should be done by an independent review panel/board. As independent reviewers, they should have a number of predefined considerations in their evaluation including:

1. The science behind the Project – has the science been done correctly and are the projected outcomes predictable and reasonable;
2. The economics behind the Project – can the project provide significant long-term economic benefits across all sectors of society and do those benefits outweigh the risks that have been presented
3. Has the project considered the impact and benefits to First Nations, and other indigenous groups? Are these groups satisfied with the outcome of engagement and have they provided their consent to the Project?
4. Has the broader public been consulted and are they satisfied with their outcomes and can the government reasonably expect that a majority of people support the project including those in the local and regional areas where the project will have the greatest impact?
5. What conditions will have to be placed on the project as part of the approvals process and how will the implementation of those conditions be monitored and have the risks associated with these conditions been evaluated and those evaluations disclosed?

While this list is by no means exhaustive it does provide some feedback on some of the expectations that one might place on an independent review panel/board. It is also important to note that Long Lake #58 First Nation would consider it a colossal failure if the independent review panel/board did not have adequate First Nation representation.

Once an independent body has made its decision and placed its conditions on a project then those should be sent to Cabinet for final instructions. We would strongly recommend that where a project has been approved, whether with conditions or not, then the only options for Cabinet would be to add more conditions or to reject the recommendation of the independent review panel/board. Cabinet may be given specifics on projects that have not been approved but they would not be given a right to approve any project that has been rejected.

With respect to the placement of conditions on a project, we all recognize that the stage of approval of the environmental assessment will pre-date the actual construction and operation of the project and there will inevitably be changes to the project. It is important that changes are monitored through amendments to the environmental assessment process and that the Canadian Environmental Assessment Agency maintains the right to withdraw project approvals where the scope of change with respect to any project is dramatic enough to merit the filing of a new environmental assessment report. Not having this type of hammer in the post-approval period gives proponents a license that just isn't in keeping with the need for environmental approvals.

It is also important for the Canadian Environmental Assessment Agency to monitor and participate in project permits. For the Canadian Environmental Assessment Agency, the process should not end with the approval of the environmental assessment and its' on-going compliance monitoring. If the Canadian Environmental Assessment Agency grants an project approval then it should remain as a party to the permitting process and should participate in the review and issuing of all relevant permits, regardless of the jurisdiction that is issuing those permits.

Public Involvement

As we have stated earlier in this letter, it is important that all environmental processes maintain public participation. There are numerous interested parties and contributors who can make for a stronger review of projects, baseline studies, impacts and effects, remediation measures, etc. and those parties need to have continued and unfettered access to the environmental review process and to the opportunity to review the environmental assessment documentation.

What is concerning to Long Lake #58 First Nation is when politics mixes or overrides the science of reviewing projects and political interests interfere with the need for an unbiased review of the data and outcomes so that a project can be evaluated on its merits. We may not always agree with a project or the outcomes that led to its approval, however, if we have been meaningfully engaged and we have contributed through our engagement and accommodation protocol and traditional knowledge and we have had our own peer review, and some of our concerns has received strong consideration for the process going forward, we should feel comfortable enough to stand back from the process and allow the independent reviewers to determine the fate of the Project.

Similarly, we would expect [but may not always see] that when the public has had its input into a project and it has fully participated in the process, including voicing its concerns about the environmental impacts and risks associated with the project then it should accept the recommendations of the independent review panel/board in the same way that First Nations would also expect to conduct themselves in a case where there has been meaningful participation.

Coordination

Long Lake #58 First Nation endorses the need for coordination amongst the two senior levels of government when it comes to the environmental assessment process. At the present time, Long Lake #58 First Nation feels that there is a considerable amount of duplication when it comes to engagement with both levels of government and certainly when it comes to responding to reports given that each level of government has a different approach to reviewing environmental assessment submission.

Given that Long Lake #58 First Nation is suggesting a comprehensive approach to the environmental review process that culminates in the environmental assessment submission it would make imminent sense for there to be a coordinated approach where both Ontario and Canada require environmental assessment submissions.

Long Lake #58 First Nation would also see that coordination would include First Nation participation from the onset and not after the Project Description has been submitted.

Establishing "project coordination committees" [PCC] could provide economies of scale in terms of ensuring meaningful engagement on the part of First Nations. Without getting into the specifics of membership numbers, the PCC would have representation of the impacted First Nation, proponent, Canada and Ontario and would have a specific mandate that would include the various stages of environmental review process from initial project concept through to approval of the environmental assessment submission.

It is important to note that Long Lake #58 First Nation has not considered the issue of overlapping interests, nor the interests of other indigenous groups, in our view those considerations can only be made on a project by project basis and at this time, Long Lake #58 First Nations recommendation on the PCC is of self-interest only.

While we may not have tackled every question or issue raised by the Expert Panel we are pleased to have had the chance to participate and we respectfully thank you for taking the time to review and consider these responses.

Miigwech,



Chief Veronica Waboose

cc: Long Lake #58 First Nation Council
Wayne Greer, President, Aboriginal Business Network