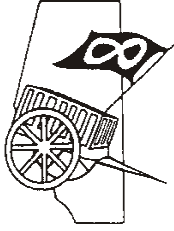


**Métis Nation of Alberta Association
Local Council #1990 of Grande Prairie**



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December 23, 2016

**RE: Grande Prairie MNA Métis Local 1990 submission in the CEAA Review of
Environmental Assessment Processes Introduction letter**

Dear Ms. Gélinas and distinguished Panel Members,

Please accept the following document and submission as our local community contribution towards the Review of the Federal Environmental Assessment Processes.

Our President passes this message to you, "Merry Christmas! May the best of the Christmas season with treasured memories and loving moments fill your heart with Joy and Peace for the holiday period". --Angie Crerar, Métis Elder.

Respectfully,

Walter Andreeff, BSc. Applied and Environmental Geology
Métis Local #1990 Vice President
Submitting for President Angie Crerar and
Grande Prairie Metis Local #1990 Board of Directors
(780) 380-1468

CC: Angie Crerar, President of Métis Local 1990
CC: Métis Local 1990 Board of Directors



Métis Nation of Alberta Grande Prairie Métis Local 1990

submission to

the

**Expert Panel Review of the Environmental Assessment
Processes (2016)**

December 23, 2016

Part I: Introduction to Métis people

In our experience, many in industry and the federal and Alberta governments have very little knowledge or understanding of Métis people and specifically Grande Prairie Métis Local #1990 (Métis Local). Before an environmental assessment involving the Métis can be effective, it is critical to know who the Métis people are, our governance structure and where the rights-bearing Métis communities are located. Therefore, the first part of this paper will give some introduction to the Métis people in this area, and specifically the Métis Local.

The Métis Local is the representative organization of Métis Nation of Alberta in the Grande Prairie area. Our Métis local organization was incorporated in 1990 but Métis people have been in this area over 150 years. We are within Métis Region VI, one of six Metis regions in the province of Alberta. We are under the leadership of Sylvia Johnson who is our Métis Region VI President and we have a close bond to the leader of the Métis Nation of Alberta President Audrey Poitras. We primarily represent the non-settlement based Métis people in this area who are members of the Métis Nation of Alberta.

There are more than 4100 Métis people who live in the City of Grande Prairie and within the county of Grande Prairie.¹ Our Métis Local is consistently engaged with the Métis people in this area in annual local activities such as workshops, our Elders Caring shelter organization, cultural events, social programs, economic development and involvement in other cultural Indigenous events. We have local members who are traditional harvesters\hunters, elders and fishermen and during the past five years our community has participated in meetings with the National Energy Board, the Canadian Environmental Assessment Agency, local forestry stakeholder groups and Oil and Gas producers.

The Métis people of the Grande Prairie region have a rich and colorful history. Métis people have used the land and water to sustain their economic, social, spiritual and cultural way of life for over 200 years in this area. The earliest occupation of the Dunvegan area by Métis people was noted in Hudson's Bay Company (HBC) post records as early as 1806 which showed over 40 Métis people living in and around the Dunvegan post.² By 1828, HBC Post records indicate that many Métis Freeman or HBC servants were in competition with bands of Beaver Indians who lived in the area of Grande Prairie.³ The Hudson's Bay Company first set up a trading post in the Grande Prairie area in 1881 but earlier federal geologists had travelled to view a place known as

¹ See <http://www12.statcan.gc.ca/nhs-enm/2011/dp-pd/aprof/index.cfm?Lang=E>.

² Leonard, David, Dunvegan Post Journals for 1806 and 1808, pub. 2014, available at the Peace Heritage Press, Edmonton, pg. 14.

³ Leonard, David, The Grande Prairie during the Fur Trade Era 1824-1910, pub. 2002, available at the Peace Heritage Press, Edmonton, pg. 2.

Le Grand Prairie and noted the land as having great agricultural and natural resource potential. At the time, local Métis people were hired to act as guides and interpreters to work with the geologists from Ottawa.

One example was Geologist George Mercer Dawson. In his report of the North West survey written in 1879 he said, “...on arriving in Dunvegan on Saturday...I set out to the southward on Monday morning, having with me a packer, three British Columbia Indians, and a half-breed (Métis) as guide.....Several trails run southward from Dunvegan toward Grande Prairie....Many little hunting trails and dim tracks ramify from the main trail in all directions, in conducting us among which our guide was of great service”.⁴

During that time, Métis people lived near Flying Shot and Bear Lake/Bear Creek that are near present day Grande Prairie. Many Métis people worked in the area as trappers, hunters, transporters and farmers during the 1890’s and early 1900’s. One of the early account of farming in the area was mentioned by Métis-Iroquois Louis Calihoo who said in an interview in 1939, “I left my old home in St. Albert coming to Grande Prairie in September 1896...we moved to Bear Creek where the present town of Grande Prairie stand now. We camp there for the spring fishing....in the spring of 1899 I moved up here with all my outfit, horses, cattle, and what little machinery I had. I still got part of the plow I had to break an acre of land that same spring. Sowed oats and barley that late summer there”. This account was given to pioneer Robert Cochrane in a letter printed by historian Isabelle Campbell.⁵

The Canadian Constitution recognizes Métis people as part of the Aboriginal peoples of Canada: “In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.”⁶ The United Nations has recognized the Métis as one of Canada’s Indigenous peoples within the meaning of UNDRIP: “Over 1.4 million of Canada’s overall population of approximately 32.9 million (4.3per cent) are Indigenous. Approximately “30 per cent are Métis...”⁷

In 2003 Powley case, the Supreme Court of Canada recognized that Métis people have Aboriginal rights-bearing communities. The court went on to say that “the purpose and the promise of section 35 is to protect practices that were historically important features

⁴ Dawson, George M., Report on an Exploration of a Portion of The Northern Part of British Columbia and the Peace River Country, 1879, Geologic Survey of Canada, pg. 52B.

⁵ Campbell, Isabel M., Grande Prairie: Capitol of the Peace, pub. 1968, printed by the City of Grande Prairie.

⁶ Canadian Constitution Act, 1982, s. 35(2).

⁷ James Anaya, Report of the Special Rapporteur on Indigenous Issues: the situation of indigenous peoples in Canada (July 4, 2014) at para. 2.

<http://unsr.jamesanaya.org/docs/countries/2014-report-canada-a-hrc-27-52-add-2-en.pdf>.

of these distinctive communities and that persist in the present day as integral elements of their Métis culture.”⁸

In the 2011 *Cunningham* case, the Supreme Court of Canada held that the Métis people are a distinct Aboriginal people with a special relationship to their lands and traditional territories as well as distinctive practices, customs and traditions in relation to these lands and territories.⁹ In *Cunningham*, the Supreme Court also noted that “the constitutional amendments of 1982 ... signal that the time has finally come for recognition of the Métis as a unique and distinct people.”¹⁰

There have been some cases that recognise where the Métis people lived in Alberta. In 2013, the Supreme Court of Canada noted in the *Manitoba Métis Federation* case that on the prairies, there were mainly two groups -- the First Nations, and the Métis.¹¹ In the 2010 *Hirse Korn* case, the Alberta Provincial Court concluded that there was a large regional Métis community in Alberta. The court stated that “the evidence has shown that an historical Métis community existed in the region of what is Edmonton and District. This group of North Saskatchewan Métis included the settlements of Fort Edmonton, St. Albert, Lac St. Anne, Victoria, Lac La Biche, and Rocky Mountain House. The Métis people in this region had a distinctive collective identity, lived together in the same geographical area and shared a common way of life.”¹² The Court of Appeal *Hirse Korn* decision pointed out that “I conclude that the historical rights bearing communities of the plains Métis are best considered as regional in nature, as opposed to settlement-based.”¹³ Later, in the 2015 *Caron* case, the Supreme Court of Canada held that “the Métis communities outside of the Colony included Lac La Biche, Peace River, St. Albert and Slave Lake which were well established and dynamic.”¹⁴

The Métis Nation of Alberta (“MNA”) represents the Métis Nation and its citizens within Alberta. The MNA has established a democratic governance structure, which includes a Provincial Council, Regional Councils (“Regions”), and Local Councils (“Métis Locals”). The MNA’s consultation policy states:

The MNA takes the position that in Alberta and in all the territory of the Old Northwest, the Métis rights-bearing community is the Métis Nation, that is, the collectivity made up of the descendants of the historic Métis Nation that emerged in the Old Northwest prior to its takeover by Canada, who continue to identify as Métis and who are accepted as such by the community, and not some dots on a map (individual villages,

⁸ *R. v. Powley*, [2003] 2 SCR 207 at para. 13.

⁹ *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, [2011] 2 SCR 67 at para. 75.

¹⁰ *Alberta v. Cunningham*, [2011] 2 SCR 670 at para. 70.

¹¹ *Manitoba Métis Federation Inc. v. Canada*, [2013] 1 SCR 623 at para. 2.

¹² *R. v. Hirsekorn*, 2010 ABPC 385, para. 115.

¹³ *R. v. Hirsekorn* ACCA para. 63.

¹⁴ *Caron v. Alberta*, 2015 SCC 56, para. 210.

settlements, towns, cities or localized areas). Consequently, the rights-bearing Métis community in Alberta is the Métis Nation, collectively represented by the Métis Nation of Alberta. Métis rights co-exist with First Nations rights throughout all of Alberta.¹⁵

Thus, the MNA takes a view that the current Government of Alberta Métis harvesting policy which is limited to only 17 communities with a 160 km radius is inconsistent with the Alberta court decisions; however, the MNA is currently in negotiations with the Alberta Government on this policy.

The Métis worldview:

Well-respected Métis author Yvonne Vizina carefully articulated a Métis view of indigenous knowledge which states that Métis indigenous knowledge takes basic sciences such as biology, chemistry, physics or geology and extends beyond the content of those sciences into affective and spiritual beliefs resulting in a unique Métis holistic worldview.¹⁶ Ms. Vizina also clarified what is meant by Métis Traditional Ecological Knowledge (MTEK):

When specifically applied to Métis People, traditional environmental knowledge becomes contextualized to the history, culture and languages of Métis People, extending the scope beyond a hub of ecological knowledge to a holistic paradigm. Métis traditional environmental knowledge is built from community practices which form the foundation for understanding the natural world, building skills and behaviour adaptable and applicable to other facets of Métis life, maximizing use and benefit of natural resources within community accepted ethical boundaries, and contributing to personal and community spiritual, physical, intellectual and emotional health and development. While the phrase ‘traditional environmental knowledge’ does not mention contemporary life, the purpose of understanding Métis traditional environmental knowledge is intended for adaptation and use in everyday life.¹⁷

The Métis National Council (MNC) describes the Métis view of the environment as “sacred relationships linking such things as language, learning, people and social structures, traditions, land (including all parts of the Earth and atmosphere), spirituality,

¹⁵ <http://albertametis.com/wp-content/uploads/2013/08/MNA+FINAL+CONSULTATION+POLICY.pdf>.

¹⁶ Vizina, Y. (2010) *Métis Traditional Environmental Knowledge and Science Education*. University of Saskatchewan. Pp. 12-15.

¹⁷ Ibid. pg. 13.

self development, harmonious interactions, Indigenous knowledge, health, imagination, economic conditions, balanced approaches to life, political systems, and values.”¹⁸

Métis Author Brian Joubert writes that many Métis Elders are strong believers in the traditional Métis conservation ethic and connection with the land that supports their traditions, diets and social activities. Joubert notes that Acco describes the thinking as, "respect for the land and that which lives on the land is deeply ingrained in the Métis"¹⁹ This Métis worldview is expressed when describing valued components such as fish. It is the difference between “fish population” versus fishing as a right; which includes access to fish, quality of fishing areas, values, Métis traditional ecological knowledge preservation and transferring that knowledge to other community members.

A 2010 Métis Nation of Ontario (the MNO) traditional ecological knowledge study extensively detailed a variety of plants and delineated how the plants were being utilized by the Métis community. That TEK study noted that:

Rights-bearing Métis communities throughout Ontario have deep connections – social, cultural, spiritual, economic - to their traditional territories. These connections lie at the core of Métis identity and culture. The health and well-being of the land directly correlates with that of the people whose history and future is tied to it...The relationship between Métis communities and their traditional territories is a symbiotic one. One cannot be healthy without the other one being healthy. As such, what happens to these traditional territories in relation to use, development, ecosystems and sustainability are of fundamental importance to the survival of Métis communities. If these territories are indelibly changed or damaged, the Métis people and communities will be too.²⁰

We know that that the Métis Local's culture and traditional lands have been and continue to be affected by industrial development, and those effects are linked to changes in air quality, loss of wildlife habitat, habitat fragmentation and other land disturbances to our traditional lands, practices and activities. Further, the Métis Local is concerned that continued industrial development would accelerate the loss of our spiritual connections to the land being experienced by many youth.

It is important to point out that within the diverse Métis communities; there are a variety of appropriate Elder protocols. For example, with the book entitled: “*In The Words of Our Ancestors: Métis Health and Healing*”, it was stated that “appropriate procedures for

¹⁸ Métis National Council: <http://www.Métisnation.ca/wp-content/uploads/2011/05/Métis-Traditional-Knowledge.pdf>. pg. 2

¹⁹ Thesis: Land Uses and Boreal Forest Management in Northwest Saskatchewan: Contextualizing Perception Culture and Conflict by Brian Anthony Joubert 2008, pg. 49.

²⁰ Traditional Ecological Knowledge Study: Southern Ontario Métis Traditional Plant Use Spring/Summer 2010 Métis Nation of Ontario.,

inviting Elders, obtaining consent, making offerings for shared knowledge, prayers and sharing circles were followed differently at each of the four meetings.”²¹

Métis governments across Canada have developed their own consultation protocols. In 2009, the MNA developed its own protocol, wherein it stated that, “*assessments should include assessment of impact on exercise of Métis Aboriginal rights, both present and future; assessment of impact of proposed development on the cultural, economic and social well-being of the Métis community; and impact the proposed project will have on the environment, including potential future health effects on the Métis population of the region.*”²² Additionally, we are aware that the Métis Nation of Ontario has a consultation policy as does Manitoba and British Columbia.²³ More recently, in August, 2016, the MNA passed a document entitled “Statement of Principles on Crown Consultation and Accommodation with Métis in Alberta” at its annual general assembly (the Statement of Principles).²⁴

The Statement of Principles stated that the five inter-related objectives of Métis consultation and accommodation were: protection of the environment, protection of Métis rights, claims and interest, protection of Métis culture, traditions and quality of life; advancing Métis self-determination and self-government and moving towards a modern-day treaty.

Part II: Environmental Socio-economic Assessment (ESA) Issues and Recommendations

Shared Decision Making:

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) must be implemented as promised by the Government of Alberta and the current Federal government. Some particularly relevant articles of UNDRIP are:

Article 26 states:

- (1) “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”
- (2) “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.”

²¹ Métis Centre, National Aboriginal Health Organization (Métis 2008). *In The Words of Our Ancestors: Métis Health and Healing*. Ottawa: National Aboriginal Health Organization.

²² Métis Nation of Alberta, 2009, <http://albertametis.com/wp-content/uploads/2013/08/MNA+FINAL+CONSULTATION+POLICY.pdf>.

²³ Métis Nation of Ontario, Pub 2015, <http://www.metisnation.org/media/652755/mno-canada-consultation-agreement-july-2015.pdf>.

²⁴ Statement of Principles on Crown Consultation and Accommodation with Métis in Alberta, 2016, <http://albertametis.com/wp-content/uploads/2016/07/MNA-Statement-of-Principles-on-Consultation-Accommodation.pdf>.

Article 18 of UNDRIP states:

“Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.”

Article 28 states:

“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.”

As yet, the federal government and Métis Nation have yet to collaboratively define how the concept of “free, prior and informed consent” from UNDRIP will be implemented. Thus far, it appears that consent has been obtained through negotiated impact benefit agreements (IBAs) between proponents and First Nations. There are some, though a very small number of those agreements between Métis communities and proponents. IBAs typically require that a letter of consent or a letter of non-objection be sent to the regulator to indicate consent and that satisfactory consultation with the proponent has occurred.

Recommendation: shared decision-sharing is critical; therefore, the Canadian Environmental Assessment Act (CEAA) must recognise that the Grande Prairie Métis Local 1990 has both a right and a responsibility to participate in ESA decisions. The issuance of terms and conditions in ESAs are powerful tools. Relying on promise made by a project proponent is not appropriate as the Métis Local is simply unable to hold the proponent accountable.

Recommendation: Environmental accommodation agreements with the Crown would be appropriate in certain circumstances.

Recommendation: Currently only the Provincial regulatory processes are considered for CEAA substitution pursuant to section 32 of CEAA. CEAA should include a provision to allow “Indigenous regulatory bodies” to conduct ESAs by substitution.

The Métis Local recognises that the federal government uses the joint review panel (JRP) process as part of its Aboriginal consultation strategy and uses the information as one element in its Aboriginal consultation adequacy determination. Nonetheless, the ultimate decision for approval of the project is made by the Federal Cabinet (Cabinet), pursuant to section 52(4) of CEAA. Currently there is no transparency to Cabinet’s decision; no criteria, guidance or constraints on Cabinet’s determination of whether significant adverse effects are justified in the circumstances. In our opinion this approach may

undermine public trust in Cabinet decisions and therefore the link between science and decision-making is questionable. Moreover, consultation that occurs after the National Energy Board issues its decision report cannot be meaningful as the conditions of approval will have already been set; and to date, Cabinet does not add any additional conditions to the project approval.

Recommendation: The Federal Cabinet should be clear about why it is making the decision that it is doing and how it balances Aboriginal interests with Canadians as a whole.

Engagement with the Métis Local

It is vital to engage with the Grande Prairie Métis Local 1990 to understand our preferred engagement protocols, culture, values, and Aboriginal rights. The 2016 Statement of Principles adopted by the Métis Nation of Alberta at its Annual Assembly mentioned above should be reviewed and adhered to closely by Federal agencies including CEAA. Jointly defining the engagement and consultation processes with the Métis Local as early as possible in ESA is a best practice. Collaboration in developing the terms of reference for the ESA is critical.

Lifestyles of the Métis Local

Section 5(1) of the CEAA states that the environmental effects that are to be taken into account in relation to an act or thing, a physical activity, a designated project or a project are...

c) with respect to aboriginal peoples, an effect occurring in Canada of any change that may be caused to the environment on

- health and socio-economic conditions;
- physical and cultural heritage;
- current use of land and resources for traditional purposes; or
- structures, sites or things that are of historical, archaeological, paleontological or architectural significance.

However, the *Yukon Environmental and Socioeconomic Assessment Act*, section 42(1) g refers to matters which must be considered and states the following:

(g) the need to protect the rights of Yukon Indian persons under final agreements, the special relationship between Yukon Indian persons and the wilderness environment of Yukon, and the cultures, traditions, health and lifestyles of Yukon Indian persons and other residents of Yukon;

(g.1) the interests of first nations;

Recommendation: Métis culture and lifestyle must be considered in environmental socio-economic assessments.

Recommendation: the phrase “current use of land and resources” needs to recognise that Métis people often must continually expand their traditional territory as the animals’ habitat is destroyed or limited and therefore Métis have to go further afield in order to hunt.

Baseline data

Baseline information is often collected in short timeframes and information that is submitted to regulators sometimes conflicting. Additionally, proponents prefer not to fund or undertake baseline studies until they know that the project is likely to be approved.

One best practice is a Cultural Heritage baseline Assessment (CHA), such as the one completed by the Fort McKay First Nation (Fort Mckay) in 2010. Their study was completed to provide an assessment of the cumulative impacts of industrial development on the cultural heritage of Fort McKay. They envision that the CHA will be utilized as a baseline from which Fort Mckay could assess the impact of future projects on its cultural heritage.²⁵ Fort Mckay’s CHA utilized a five-step methodology that was consistent with the established approach for the assessment of environmental effects. That methodology is summarized in the “Technical Guidance for Assessing Physical and Cultural Heritage or any Structure, Site or Thing that is of Historical, Archeological, Paleontological or Architectural Significance under the *Canadian Environmental Assessment Act, 2012*”.

Recommendation: Provide funds to enable the Métis Local to undertake a cultural heritage baseline assessment.

Cultural Keystone Species in Reclamation

Another best practice was identified by Author Ann Garibaldi, ethnobotist with experience in traditional environmental knowledge and traditional land use studies. She observed that:

“one approach useful for focusing interdisciplinary research efforts in conservation and restoration arenas is to target species that both are foundational to cultures and offer meaningful ecological targets for landscapes requiring reclamation. These “Cultural Keystone Species” (CKS), are culturally salient species that shape the cultural identity of people in a major way, as reflected in the fundamental roles these species have in diet, material, and/or spiritual practices (Garibaldi and Turner 2004).”²⁶

²⁵ Fort Mckay First Nation Cultural Heritage Assessment Baseline Pre-development (1960s) to Current (2008) 2010.

²⁶ Garibaldi, Ann, 2009, *Moving from Model to Application: Cultural Keystone Species and Reclamation in Fort McKay, Alberta*.

Recommendation: Promote the use of cultural keystone species methodology for purposes of reclamation.

Socio-economic monitoring system:

Authors Fonda and Anderson point out that "We know that well-being in the Aboriginal context is closely related to health and the integrity of the eco-system. One conclusion, therefore, might be that reporting should seek to go beyond simple economic cost-benefit analysis and apply instead a holistic approach that clearly links complex interrelationships of social, economic, political and cultural determinants to the natural environment. " ²⁷

Fonda and Anderson suggest that what is required is "a socio-economic monitoring system that is neither limited to conventional measures of economic well-being nor reliant on existing data sources. A system is required that takes Aboriginal interests into consideration and is able to measure direct social impacts from a community's own observations."

Making Métis Traditional Ecological knowledge mandatory

MTEK, as noted herein, is a critical part of the Métis worldview. As such, it is vital that any project development in Canada utilize this knowledge in project planning and ESAs. Additionally, traditional land use studies (TLU) are critical in ESAs.

Recommendation: While we prefer to utilize the phrase Métis Traditional Ecological Knowledge, we note that Indigenous Knowledge is referenced in section 19(3), of CEAA. It is our view that Indigenous Ecological Knowledge is a more accurate term than Traditional Knowledge. Moreover, we recommend that the phrase "may take into account" in section 19(3) be replaced with the prescriptive language "must take into account."

Capacity to participate in environmental assessments and environmental related studies:

The Local 1990 community is severely underfunded and the office is not staffed with a permanent full time employee as a result of the current provincial and federal government funding practices with Métis people. The executive board members are volunteer positions. Hence, we as a group are challenged to assess CEAA projects or studies that may infringe on our Métis rights. We have limited time, and small financial or administrative capacity to respond to major projects that may be developed on our traditional lands. Currently, we are excluded from municipal and provincial organizations that undertake review of local crown land use planning and local municipal groups that undertake watershed monitoring. As a result of our small level of financial resources, we are forced to defer or decline involvement in project reviews that may require paid expert

²⁷ Fonda and Anderson Diamonds in Canada's North: A lesson in measuring socio-economic impacts on well-being, 2009, pg. 110.

consultants to review CEEA information. We also may not have the financial resources to rent office space for meetings nor have the ability to undertake Métis Traditional Land Use study, socio-economic or health studies.

We request that all project proponents under your federal jurisdiction as well as any related federal agencies be asked to meet with our Métis Local board of directors on any resource development of federal/provincial proposed projects in this area that are currently in the planning stages. We are an incorporated Métis Nation Organization and we have the capacity, responsibility and the obligation to undertake our own direction on these matters as Métis Local #1990 pursuant to the Métis Nation of Alberta Bylaws.²⁸

We prefer direct engagement with our Métis Local on Federal projects with your agency and other crown agencies in the assessment of project impacts to our Traditional Use areas and other related study matters. We ask that your organization undertake direct discussion with our Grande Prairie Métis Local #1990 office when it is required by your agency.

Under section 58 of CEEA, the responsible authority must establish a participant fund. However, those funds as noted above are simply not sufficient, and that was recognised by at least one joint review panel. For example, the 2013 Review Panel in the Shell Jackpine mine expansion project stated that it “*believes that capacity is an issue that makes it difficult for the Métis Locals to provide detailed, project-specific TLU information for use in assessments and to effectively participate in the review of projects such as this one.*”²⁹ It is our strong view that the Grande Prairie Métis Local severely lacks sufficient monies to fully and meaningfully participate in ESAs.

Recommendation: Enhance the participatory capacity of Métis Local to ensure that we can meaningfully participate in environmental assessments. The Métis Local requires sufficient funds for the costs of retaining experts, consultants, and legal counsel and to complete TLU and traditional ecological knowledge (TEK) studies required to effectively understand the impact of the proposed project on the Métis Local. It is important to involve Métis community members in indigenous plant identification and cataloguing prior to commencement of any project. ESAs must consider the historic use of traplines by Métis people. Traplines are often passed from one generation to another through kinship ties. The traplines are also sometimes shared with family members and other Métis people. Additionally, the Métis Local must also be involved to identify and delineate critical caribou range and habitat in the Grande Prairie area. The local caribou herd is under stress from local industrial development and must be protected.

²⁸ See MNA Bylaws 15.3 and 15.5, <http://albertametis.com/wp-content/uploads/2014/05/MNA-Bylaws-2016.pdf>.

²⁹ Joint Review Panel Report, Shell Canada Energy, Jackpine Mine Expansion Project, Application to Amend Approval 9756 252 • 2013 ABAER 011 (July 9, 2013) (para. 1547).

Recommendation: We also feel that given the number of Indigenous people and the history of the local area, the review panel should come to Grande Prairie to meet the indigenous people of this area.

Collaborative Decision-Making:

United Nations special rapporteur, James Anaya noted about environmental assessments under CEAA 2012 that assessments were far fewer and “when they do occur, they often require indigenous governance institutions - already overburdened with paperwork -to respond within relatively short time frames to what has been described as a “bombardment” of notices of proposed development; the onus is placed on them to carry out studies and develop evidence identifying and supporting their concerns.”³⁰ Anaya went on to add that “*Indigenous governments then deliver these concerns to a federally appointed review panel that may have little understanding of aboriginal rights jurisprudence or concepts and that reportedly operates under a very formal, adversarial process with little opportunity for real dialogue.*”³¹

Anaya recommended that “*Canada should endeavour to put in place a policy framework for implementing the duty to consult that allows for indigenous peoples’ genuine input and involvement at the earliest stages of project development.*”³²

Recommendation: In collaboration with Aboriginal governments, develop a legal framework for strategic-level and application-level collaborative decision-making processes.

Recommendation: Consistent funding for the development of capacity of the Métis Local to strengthen its lands stewardship obligations is needed. The Métis Local requires monies to build a governance structure to create a land stewardship department to oversee negotiations with government and industry. A community-based consensus process is critical.

Monitoring:

Monitoring is necessary in order to test and improve impact predictions and the actual success of mitigation options; and in order to develop best practices. We note that monitoring reports are not generally available to the public, and there may be capacity or expertise concerns within the regulator which may limit the ability for a thorough review of monitoring. Moreover, it appears that the CEAA focus has been on monitoring for compliance rather than for environmental effects.

Recommendation: Increase the long-term capacity of Métis Locals to monitor impacts within their traditional territories and which have the potential to affect their rights.

³⁰ Anaya *ibid*, para. 72.

³¹ Anaya *ibid*, para. 72.

³² Anaya *ibid*, para. 98.

Recommendation: Employ Métis people as monitors with Project proponents and federal agencies, as well as compliance and enforcement officers in the local area.

Recommendation: A protocol is required for the Métis Local to communicate to authorities for any CEAA non-compliance issue or potential environmental effect is discovered by a member of the Métis Nation.

Recommendation: Devise a detailed and transparent monitoring system in collaboration with the Métis Local and any federal project proponent. The monitoring system should include requirements for investigations of any concerns reported by the Métis Local.

Recommendation: All monitoring reports should be made available to the public in an accessible, searchable e-library of collected data and analysis.

Increased access and access restrictions:

The Jackpine Joint Review Panel stated that “the Panel does note MNA’s concerns that it has trouble accessing areas for traditional use because the Métis do not have agreements with industry. The Panel therefore recommends that the Government of Alberta require Shell to offer to enter into access agreement discussions with MNA and the Métis Locals to provide for Métis access to areas of TLU.”³³

Recommendation: Before any project is approved, access agreements with the Métis Local should be required.

Métis-specific traditional land use studies:

It has been our experience that project proponents are reluctant firstly to consult with Métis people and also to fund traditional land use studies. We are of the view that traditional use studies are extremely important. This was recognised in the Jackpine Joint Review Panel which stated that it “finds that it is unclear how and to what extent Shell incorporated or considered Métis TEK or TLU information in its assessment. Except for the information provided by Fort McKay that incorporates information provided by the Fort McKay Métis, Shell’s EIA makes few specific references to Métis TEK or TLU information. Shell’s EIA and cultural assessment also do not provide a specific assessment of the effects of the Project on Métis TLU or discuss specific impacts on Métis Locals 1935 or 125. While the Panel accepts that TLU information collected from First Nations may be somewhat representative of Métis TLU, the Panel believes that a more explicit treatment of Métis TEK and TLU information and assessment of impacts on Métis TLU and rights would have been helpful.”³⁴

The Métis Local is in full concurrence with these statements and believes that it is of paramount importance to identify exactly how our information is incorporated or considered in assessments. Moreover, the Crown must show that the project fulfills a compelling public purpose and that its proposed actions will “minimally affect” rights.

³³ Jackpine Joint Review Panel para. 1557.

³⁴ Jackpine Joint Review Panel para. 1553.

Further, the Crown must demonstrate that it has balanced the interests of the affected Métis community with those of other Canadians and prove that the impacts and benefits will be proportionate.

Recommendation: Métis-specific traditional land use studies must be required for all ESAs.

Transparent Decision-making:

In a 2014 Métis traditional land use and occupancy study, it was found that “Métis community members have stated in interviews that proponents often ask the public and community members to raise concerns, but are not committed to responding to issues that are raised.”³⁵ The Métis Local agrees with this assessment.

Recommendation: Report back to the Métis Local about how their concerns were considered and how their information was utilized in the decision-making process is a good best practice.

Cumulative effects:

The Métis Local has observed that there is no definition of cumulative effects in CEAA. It is our strong view that a meaningful cumulative effects assessment is vital in any ESA. Further, collaboration on methodology for indicators is required.

Recommendation: Assess cumulative effects at the appropriate scale and the project stage.

Regional Strategic Environmental Assessments:

Establishing regional targets, limits and thresholds is critical to real sustainable development. Engaging in strategic level assessment efforts to examine and analyze responses to cumulative effects, broad alternatives; and to consider the implications for project level planning and assessment in the relevant regions and sectors would be a wise way to move forward in sustainable development.

Aboriginal trigger for environmental assessments:

Under CEAA 2012 some projects that should get a federal ESA do not trigger the Act; and many smaller projects add up into significant cumulative effects. The scale of environmental impacts rather than solely being based on the resource extraction capacity of a project should be a trigger. Métis concerns of a proposed project, however small in scope should be a trigger for a response by the CEAA.

³⁵ Fort McMurray Métis Local 1935 Land Use and Occupancy, October 2014, written by Willow Springs Strategic Solutions Inc., <https://www.ceaa-acee.gc.ca/050/documents/p65505/100848E.pdf>.

Recommendation: The Métis Local should be able to request that a particular project undergo an environmental assessment should the project be of particular concern to the community. A delineated list of factors that would trigger a Métis Local ESA could be developed.

Plain Language documents:

The lengthy, jargon-filled project descriptions filed by project proponents are too unwieldy to effective review and consideration by community members. Computer files and data are increasingly difficult to locate on federal government websites, proponent websites and quasi-judicial agencies such as the National Energy Board.

Recommendation: Develop a plain-factual language description of the project that the Métis Local can review and also distribute to its members. In particular, the Métis Local is interested in the environmental aspects, proposed mitigation plans and potential monitoring and economic opportunities for the community.

ESA Terms of Reference (TOR):

The development of the project TOR must occur earlier in the processes and involve greater Métis Local involvement. This would allow for early scoping guidance to a project proponent.

Part III: Conclusion

It was with great eagerness and hope that the Métis Local embarked on the CEAA review. We sincerely hope that this submission will be treated with due consideration and respect.