COLD LAKE FIRST NATIONS
CONSULTATION DEPARTMENT

P.O. BOX 389
COLD LAKE, ALBERTA
T9M 1P1

PHONE: (780) 594-7183 EXT. 229
CONSULTATION@CLFNS.COM

December 23, 2016

Expert Panel for the Review of Federal Environmental Assessment Processes
Comments submitted to the Panel via: http://eareview-examenee.ca/send-your-submission/

Re: Cold Lake First Nations' Written Submission regarding the Expert Panel review of Federal Environmental Assessment Processes

Dear Expert Panel,

Cold Lake First Nations is submitting, for your consideration and incorporation, comments in relation to the Government of Canada's review of federal environmental assessment processes associated with the *Canadian Environmental Assessment Act 2012* (CEAA 2012). This submission is based on information provided by Cold Lake First Nations Chief and Council and its members, and was developed with the assistance and guidance of a number of resource people. According to our information, this is the first time that our Nation has been consulted on any Federal legislation.

Meaningful engagement in the regulatory process and the management of the natural and cultural resources within our traditional territory, *Denne Ni Nennè*, is of critical importance to our Nation. Cold Lake First Nations emphasizes the need for this review to reflect the principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the importance of considering the relationship between environmental assessment processes and the Aboriginal and Treaty rights of Indigenous People.

The regulatory process and the western model of engagement does not translate to First Nation communities well. The funding for participation in this complex review process is not adequate. The timeline of December 23rd for this particular submission did not allow the work to be vetted properly through leadership and community. A key lesson our Nation would like you to be informed of is that the western model of engagement is not designed to be respectful to the

protocols and processes of First Nations. Cold Lake First Nations first raised these concerns in our July 20, 2016 Comments on the Draft Terms of Reference for the Expert Panel for the review of federal environmental assessment processes and reiterated them in the submission of our funding application.

Our comments in the attached submission are of reflect concerns of Cold Lake First Nations and align, as practicable, with the themes laid out by the panel. The issues noted in our comments are reflected in many of the submissions already provided to the panel by other Nations and Indigenous groups, and we hope that the problems inherent in the current federal environmental assessment processes will be clear to the panel and the Minister. This document provides the Panel with 26 Issues with 26 recommendations. We anticipate our efforts will be reflected in your report to the Minister. Even with technical support, the transfer of this complex information to our Nation's leadership and members has been a challenge.

In June 2016, CLFN submitted comments on the *Canadian Environmental Assessment Agency's Technical Guidance for assessing the Current Use of Lands and Resources for Traditional Purposes under the Canadian Environmental Assessment Act, 2012.* We request these comments be taken into consideration in the present review of environmental assessment processes.

As the federal government has committed to a renewed Nation to Nation relationship with First Nations people, we hold new optimism that you will see the added value of our submission and our participation in this review process. The Panel's willingness to explain how, specifically, it has considered our comments would be a significant indication of Canada's serious intent towards ensuring that concerns of Indigenous groups are heard and taken into account in the review process. Should there be instances where the Panel does not incorporate our input, we expect an explanation of why our comments were not incorporated. This request has been made in previous correspondence with no response to date. Showing how input is or is not incorporated is key in building the Nation's capacity to understand the process and gives the Government the opportunity to fulfill the requirements of the Indigenous Engagement Plan and demonstrate consequential efforts towards meeting the goal of "renewing its relationship with Indigenous people in Canada and moving towards reconciliation".

Inadequate resources, limited timelines and capacity remain a challenge for our First Nation along with all First Nations in Canada. Our members continuously express their desire to meet face to face, government to government. There is much frustration with processes that are not respectful of the protocols of Cold Lake First Nations.

This complex regulatory process has never been explained to Cold Lake First Nations by Alberta or the Federal regulators. An explanation of how various environmental assessment and regulatory reviews interrelate to each other would be helpful. We request that both governments design and deliver an education process to our Nation. We further invite the Federal and Provincial governments to respect the protocols of our First Nation and meet with our leadership, government to government. This initial face to face meeting is pivotal in ensuring all support resources, both government and First Nations are directed more effectively with the optimism of creating more value added input.

In closing, more could be written to express our recommendations for restoring trust in Environmental Assessment processes and having these processes better involve Indigenous people and properly assess impacts to their rights. Cold Lake First Nations expect our efforts will reflected in your report to the Minister. Please note that this letter and attached submission should not be construed as a complete and total representation of Cold Lake First Nations' comments. We reserve the right to raise additional comments as new information arises and after we engage with Cold Lake First Nations leadership in January.

Regards,

Darren Frederick
Consultation Director, Cold Lake First Nation Consultation Department
Darren.frederick@clfns.com***Please copy all correspondence to consultation@clfns.com*

cc: Cold Lake First Nations Access Committee

Cold Lake First Nations Submission to the Expert Panel For the Review of Federal Environmental Assessment Processes

Submitted December 23, 2016

via: http://eareview-examenee.ca/send-your-submission/

Background

Cold Lake First Nations (or 'the Nation') is a *Denesułine* Nation located in what is now identified as Alberta, about 300 kilometers northeast of Edmonton and close to the Alberta-Saskatchewan boundary. The Nation's traditional territory, *Denne Ni Nennè*, is largely centered around *Ah 'Touwe* (Primrose Lake) and encompasses lands and waters within both Alberta and Saskatchewan, including *Łouwe Chok 'Touwe* (Cold Lake). According to the Nation's Elders and oral tradition, *Denesułine* people have lived on the lands surrounding *Ah 'Touwe* and *Łouwe Chok 'Touwe* for thousands of years and local archaeological digs confirm an unbroken pattern of use and occupancy in the area for over thousands of years.

Cold Lake First Nations has 2,858 registered members, over 1,300 of whom live on our own reserves. These include Cold Lake 149 (Le Goff), 149A Indian Reserve Fish Camp square mile water boundary (Cold Lake Town), 149B (English Bay) and 149C (Martineau River). The Nation also shares the Blue Quills First Nation Indian Reserve with five other Nations. CLFN's administrative offices are located on reserve No. 149, east of Bonnyville and south of Cold Lake. The entirety of Cold Lake First Nations' traditional territory is called *Denne Ni Nennè*, meaning 'Our Land' or 'The People's Land.' These traditional lands extend northeast to La Loche and

Southeast to Paradise Hill in Saskatchewan; westward along the Sand River south to Beaver Dam (Angling Lake) and as far north as Winefred Lake (see Figure 1).

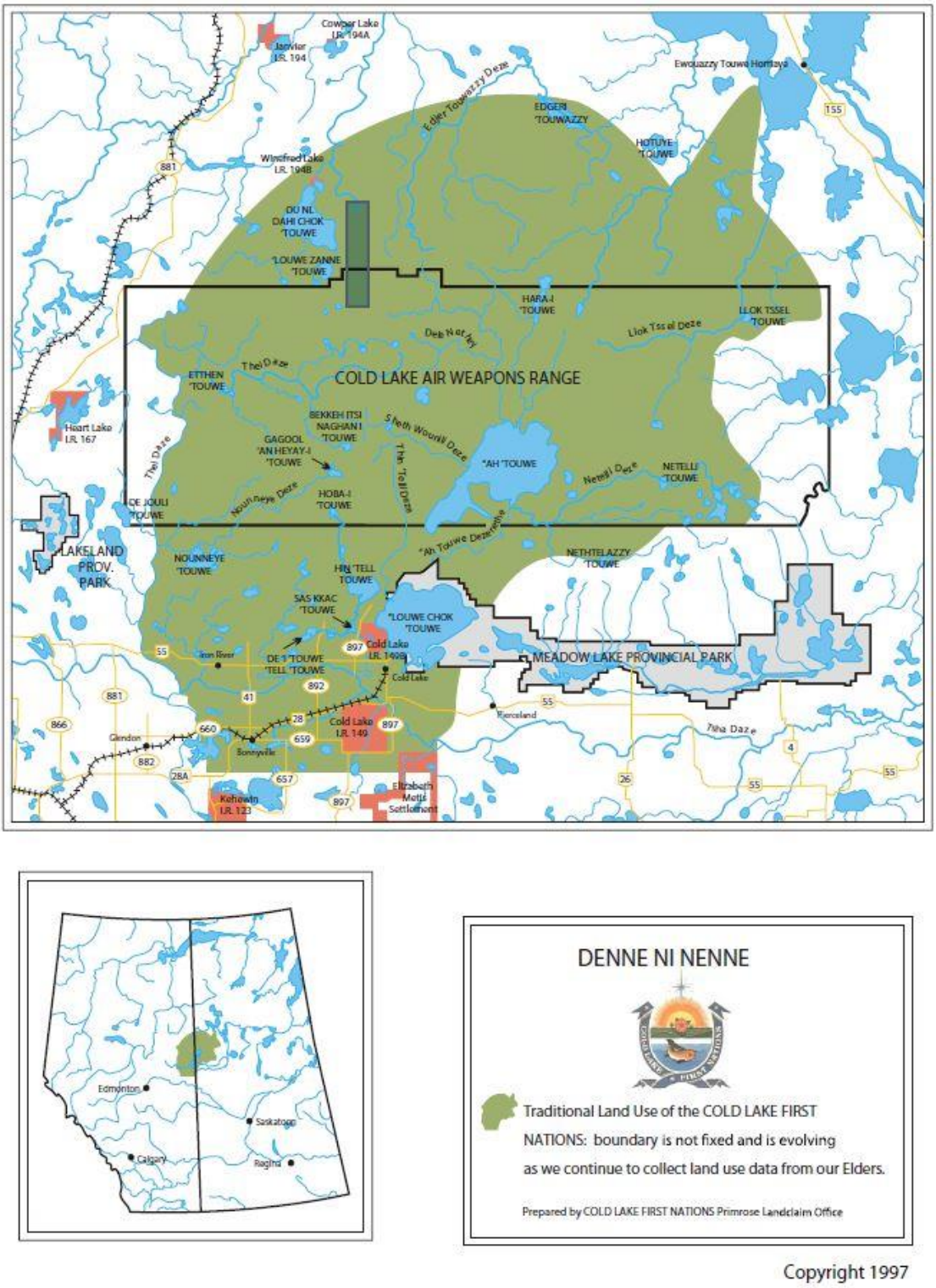

Figure 1: *Denne Ni Nenne* as Recognized in the Cold Lake Air Weapons Range (CLAWR) Claim Settlement Agreement

Cold Lake First Nations is an Indian Band pursuant to the *Indian Act*, an Aboriginal people under s. 35 of the *Constitution Act, 1982*, and an Indigenous people as defined by the United Nations Declaration on the Rights of Indigenous People (UNDRIP). Our members are the beneficiaries of Treaty 6, which affords land use rights pursuant to the Treaty, the *Natural Resources Transfer Agreement* and the *Constitution Act, 1982*. Amongst these rights that we prefer to call Treaty rights are the right to carry on our traditional activities of hunting, fishing, trapping, gathering food and medicinal plants, carrying out ceremonial activities, engaging in wildlife management practices, and teaching future generations the *Denesųłine* language and way of life in a manner consistent with the way these activities were conducted prior to Treaty. In addition to its Treaty rights, the Nation asserts unextinguished Treaty, Aboriginal and Indigenous rights. These rights include the opportunity for Cold Lake First Nations' economy to grow and change in a modern environment.

Cold Lake First Nations was the only Dene Nation to sign Treaty 6. Chief Uldai (meaning 'jackfish' in Dene, or Kinoosayoo in the Cree language) signed Treaty 6 on behalf of the Cold Lake First Nations people at Fort Pitt on September 9, 1876. The historic record of treaty negotiations demonstrates those negotiations were conducted with the intention that the *Denesųłine* traditional economy and way of life would be maintained. Ensuring a sufficient supply of game, fish, plants and other ecological resources for Cold Lake First Nations was a solemn promise to be kept by the Crown. Courts have long recognized that the oral promises made by the treaty negotiators must be included in understanding and interpreting the treaties. As with other Treaty 6 Nations, Cold Lake First Nations members saw Treaty 6 as a sacred contract, grounded in mutual respect and guaranteeing that both parties to the treaty would share the lands and resources included in it in a spirit of peace and friendship in perpetuity.

The Supreme Court has clearly confirmed that Treaty and Indigenous Rights are not frozen in the past and that modern methods of engaging in these rights are also protected. Cold Lake First Nations and other First Nations have been compelled to modify their traditional economies to meet the realities of the modern world and the Nation has risen to meet this challenge by continually seeking a "livelihood for a livelihood" and ensuring that if others seek to benefit from the resources within *Denne Ni Nennè*, then Cold Lake First Nations should as well. These fundamental rights and values must be considered and protected in meaningful consultation with the Nation, and must

form the foundation of any consultation process if Alberta, Saskatchewan and Canada hope to achieve reconciliation with Cold Lake First Nations.

The Treaty and Indigenous rights held by Cold Lake First Nations depend on the ability of Nation members to access and use lands containing the resources, environmental conditions and history uniquely known to our people, and Cold Lake First Nations has a duty to protect these natural and cultural resources for future generations. This connection to the land and commitment to future generations guide our evaluation of any proposed government actions that have the potential to impact our rights and traditional land use, including the processes under review in this document.

Since the 1950s our Nation members have been impacted both individually and collectively by the taking up of lands, industrialization of the local environment and shifting economies which have had a profound effect on the social structure and culture of our community. Our environment, culture, economy and society have been impacted by resource developments for decades. . We do not believe that the impacts of this development have been comprehensively examined, tested or understood through previous Environmental Assessments.

Denesułine culture and the way of life of the Nation are wholly bound with the land, waters, habitat, animals, fish, plants and particular geography of the territory where generations of Cold Lake First Nations members have lived. The most fundamental tenet of *Denesułine* teaching and beliefs is that humans are to act respectfully and wisely in the natural environment, taking care to ensure that the abundance of the land will be there for future generations. The land is not understood to be owned by the people; rather, the people are the stewards of the land. Based on an understanding of animate and inanimate aspects of the world as sacred, originating from the Creator, *Denesułine* connections to their homelands are fundamentally spiritual.

After the signing of Treaty 6, the Cold Lake *Denesułine* people continued to derive their livelihood from the land through traditional practices of hunting, trapping and gathering. This was the case until 1952 when the Primrose Lake Air Weapons Range, later known as the Cold Lake Air Weapons Range (CLAWR), was created by the Government of Canada. As a result of this action, Cold Lake First Nations families were removed from and prohibited from using the 11,630 kilometres^2 area encompassed in the CLAWR, which extends across the centre of *Denne Ni Nennè*

and takes up the majority of the Nation's traditional lands. The area encompassed by the CLAWR was the basis of Cold Lake First Nations' economy. According to Nation's Elders who appeared in 1993 before an Indian Claims Commission regarding the creation of the range, it was their understanding that Cold Lake First Nations' traditional lands within the CLAWR would be returned to the Nation after the Federal twenty-year lease from the Provinces expired. Contrary to these understandings and to the great detriment of the Nation, the lands have never been returned to Cold Lake First Nations. The Claims Commission concluded the following regarding the creation of the range and the effects on Cold Lake First Nations:

> When the range was finally closed to the public in the late summer of 1954, the economy of the Cold Lake communities collapsed almost immediately …
>
> … There can be no dispute that the exclusion of the people of Cold Lake from the air weapons range substantially impaired their livelihoods and their access to food and other resources. The results of that event continue as a sense of loss and a source of grievance in the community and the results are still painfully evident. The damage to the community was not only financial, it was psychological and spiritual.
>
> … We do find that the creation of the Primrose Lake Air Weapons Range had such a profound impact on the Cold Lake First Nations that, in less than one generation, a self-reliant and productive group of people became largely dependent upon welfare payments. The cumulative impact was to destroy the community as a functioning social and economic unit. (ICC 1994)[1].

During the process of the Primrose Land Claim, the Cold Lake First Nations Elders shared their experience, knowledge and understanding to establish the three 'Circles of Livelihood' (Figure 2). The first circle represents pre-colonialism and how the Nation derived a harmonious lifestyle from their traditional land, following purposeful monthly activities within seasons, and the Nation's traditional laws given by the Creator. The second circle of livelihood represents the chaos and disruption that occurred after the creation of the CLAWR, where the Nation lost most of its' independence. The third represents the Elders vision of the future, where members can once again regain interdependence and have a sustainable livelihood whereby the community can function in accordance of a blended modern lifestyle along with their traditional ways.

[1] Indian Claims Commission (ICC) 1994 "Cold Lake and Canoe Lake (Primrose Lake Air Weapons Range) Inquiries," Indian Claims Commission Proceedings 1. Ministry of Supply and Services Canada. Ottawa. On. Available online at https://www.landuse.alberta.ca/Forms%20and%20Applications/CLFN%20-%20Application%20Appendix%20Indian%20Claims%20Commission_2014-03-05_PUBLIC.PDF

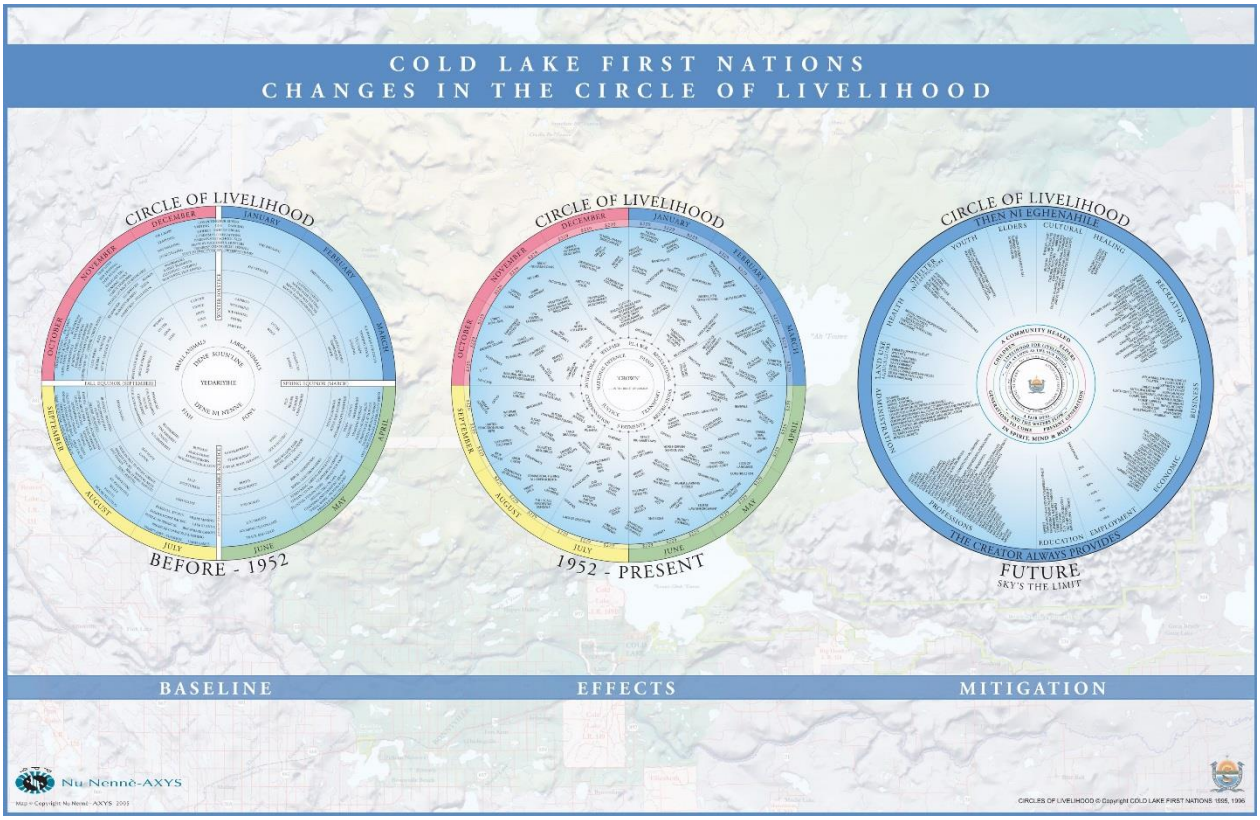

Figure 2

It took fifty years of effort on the part of Cold Lake First Nations to obtain a final settlement with the Department of National Defense for compensation related to grievances arising from the social and economic impacts from the creation of the CLAWR. An agreement was finally reached on July 12, 2002. Cold Lake First Nations have exclusive rights to access and utilize the CLAWR. The Traditional Territory map (see Figure 1) was formally recognized and acknowledged by Canada, and the Provinces of Saskatchewan and Alberta through its inclusion in the Access Agreement.

The Access Agreement provides exclusive access to most of the CLAWR for Nation members to practice Treaty rights, traditional uses, and other uses. The Access Agreement is to be renewed every five years and there is a 1986 Memorandum of Agreement between Alberta, Saskatchewan and Canada—called the "Principal Agreement" which is to be renewed every twenty years. Cold Lake First Nations have recently been invited to engage and discuss concerns and "modernizations" of the Agreements. Cold Lake First Nations will be taking a serious stance on providing changes that will protect and enhance the Nations' Treaty, Aboriginal and Indigenous rights.

Both federal and provincial governments are adopting protocols and are setting targets to address the issues of climate change. As traditional people on the land, we recognize what is happening with climate change and cumulative impacts. What the government's call biodiversity and ecosystem 'shift', we call a loss of our livelihood and an infringement of our rights. The current extent of cumulative effects within Cold Lake First Nations' traditional lands has rendered the exercise of Treaty rights difficult for Nation members. If past and current environmental assessment processes were working, this would not be our reality.

With this in mind, in 2012, Cold Lake First Nations commissioned ALCES to assess the cumulative effects of historic, current and future land-uses on the peoples and landscape of Cold Lake First Nations[2] (ALCES Report). The ALCES Report contains is critical information for Government decision makers to understand the context in which their decisions in relation to Cumulative Effects are being made—specifically, that there is very little land and water left for Cold Lake First Nations members to exercise their Treaty and Aboriginal rights and that future predictions for the health and sustainability of our fish, plants, animals and waters is bleak if the government does not immediately change its course.

The profound transformation and drastic changes to the lands and resources within *Dene Ni Nenne*, witnessed firsthand by our members have left few areas with ecological integrity within our traditional territory that are accessible to Cold Lake First Nations members. The Nation has a strong cultural bond and an unbounding reliance on the health of the lands, waters, and resources, and urges the Federal Crown to broaden the discussion about regional land management with special consideration for a cooperative governance land management model with Indigenous communities that focuses on cumulative effects.

Cold Lake First Nations cannot wait for government and has taken active steps towards controlling land management decisions within our traditional territory. Cold Lake First Nations want to manage their own lands and will do so guided by the Circles of Livelihood which provide teachings from our ancestors, as told by our Elders.

[2] ALCES Landscape and Land-use Ltd. (ALCES). 2012. The cumulative effects of historic, current and future land-uses on the peoples and landscape of Cold Lake First Nations. Prepared by ALCES. Prepared for Cold Lake First Nations. PDF available online: https://www.landuse.alberta.ca/Forms%20and%20Applications/CLFN%20-%20Application%20Appendix%20Cumulative%20Effects%20-%20ALCES%202012_2014-03-05_PUBLIC.pdf

Cold Lake First Nations and other First Nations have modified their traditional economies to meet the realities of the modern world. Cold Lake First Nations has risen to meet this challenge by continually seeking a "livelihood for a livelihood" and ensuring that if others seek to benefit from the resources within *Denne Ni Nennè*, then so shall Cold Lake First Nations. We do this while prioritizing sustainability and the needs of future generations, and also ensuring our members retain important connections to the lands and waters within *Denne Ni Nennè*. These fundamental rights and values must be considered and protected within meaningful consultation processes in the conduct of Environmental Assessment's (EA's) and must form the foundation of any consultation process if Canada hopes to achieve reconciliation with First Nations.

The rest of this submission speaks specifically to the technical components that we have responded to with the best of our ability.

Issues and Recommendations

Please be advised that due to capacity and timeline constraints, Cold Lake First Nations was unable to add as much detail to the issues and recommendations as we would have liked.

Cold Lake First Nation's motivation to participate in this federal environmental assessment review processes stems from our desire to protect the lands and waters within our traditional territory, *Denne Ni Nenne*, in the attempt to provide for the current practice of our treaty rights, our culture and our livelihood, and to preserve and protect these for future generations. After many years of government and industry making decisions about the lands and resources of our traditional territory, we know that Cold Lake First Nations requires more than assessment and consultation about what happens to those lands and resources. We need more than even co-management with government bodies: we need decision-making authority regarding our traditional lands that will result in greater sovereignty, independence and dignity for our people to enable us to achieve the 'Future Circle of Livelihood' envisioned by our Elders twenty-five years ago (see Circles of Livelihood diagram, Figure 2).

Two key themes emerged from the engagement with Cold Lake First Nations members regarding this review of Federal Environmental Assessment processes. These themes have also arisen through numerous other consultation and research processes with the Nation. The first is a general distrust of the current regulatory regimes in Canada, which have failed to protect the land, water and other resources that Cold Lake First Nations' livelihood depends on, and have thereby also failed to fulfill the Crown's obligation to protect our Nation's Treaty and Indigenous rights. Cold Lake First Nations members observed that if past or current regulatory systems were effective in protecting the environment and Aboriginal and Treaty rights, things wouldn't be in the state they are now. The lands, waters, wildlife, plants and fish within *Denne Ni Nenne* have been damaged, contaminated, reduced and destroyed to the extent that the current and future exercise of Cold Lake First Nations Treaty rights is extremely tenuous, as it is for many Aboriginal people in this country. One member described some of the deterioration of the environment she has seen in her lifetime, particularly to water and fish, and concluded: "Obviously, they didn't do a very good job in protecting our waters." This same Elder stated: "I am not trusting the whole process about Environmental Assessment because you know…you just

have to go fly over the plants…up in Fort Mac…It's just amazing….It blows me away." Another Elder commented that "The Government itself has destroyed all our lands, waters and our air, everything. They have allowed industry to destroy everything."

Cold Lake First Nations understand that the intent of Canadian environmental law is to ensure that the government takes environmental and social impacts into consideration in decision-making, and to provide accountability in decision-making processes so that short-term economic or political gains are not prioritized over long-term environmental protection. In assessing whether or not these laws and regulations have been successful to date, we share Olszynski's (2016)[3] observation that the available evidence shows "a continuing trend of environmental degradation…" Nation members are concerned that the existing damage may already be irreversible, and this also led them to question the utility of providing their input through this process:

> *…is it recoverable, like is the damage already gone too far where it's not recoverable? Like you take a look at Primrose (Lake), like I have seen all these fish … the meat's gone soft, like you can just take your finger and stuff it right through, that's how soft the fish are. They're gross, there's worms … is that recoverable? I think it's too far gone to even be recoverable so where do we get in there before it's too late?*

The second theme expressed by members during our engagement sessions regarding these federal regulatory processes was a deep disillusionment with consultation processes, including those undertaken by government and by industry. Members stated that these consultation efforts are rarely are conducted through face-to- face meetings between government representatives and Nation members, and do not seem to result in tangible outcomes:

> *We never really were involved in any decision making over the years I have been here anyway. Our people, the older people that I know didn't like what was going on but no one listened to them. The first thing that ever happened tragically was our land bring taken away from us in Primrose. That was the biggest hurt in this community. They weren't consulted. All of a sudden, they had to move out. So I don't trust this Federal government … The Government*

---

[3] Olszynski, Martin. 2016. "Avoiding the "Tyranny of Small Decisions": A Canadian Environmental Assessment Regime for the 21st Century." November 21, 2016 ABlawg (University of Calgary Faculty of Law) blog post regarding the Expert Panel Review of Environmental Assessment Processes. PDF available online: http://ablawg.ca/wp-content/uploads/2016/11/Blog_MO_EA_Review_Nov2016.pdf.

> *itself has destroyed all our waters, our lands and our air, everything. They have allowed industry to destroy everything. So when I'm sitting on a committee like this, I would like to talk to the government people that are leading this. I don't know if they will ever listen. We are the last people on this land that are being listened to. We are right on the bottom. We are land owners of this country but no one listens to us."*
>
> *They came back and say, 'Yup, we consulted with Cold Lake First Nations elders' and we sat at the table with them and they fulfilled that without really doing anything. We are like token, and I'm tired of being that you know like, for me, it's got to be more than just consulting. There's got to be some action and more you know, follow through by the people that are coming to us, rather than say oh yeah they consulted with us….That's my only concern with this whole thing. I am very leary. We haven't been heard today.*

The Government of Canada and the Provincial governments of Alberta and Saskatchewan have a responsibility to Cold Lake First Nations from the Settlement and Access Agreements. The Agreements provide for exclusive rights to access and utilize the CLAWR and recognize Cold Lake First Nations territorial lands.

The Environmental Assessment and regulatory processes need to address cumulative effects and the impacts to First Nations at a much broader level. It is clear that both the federal and provincial governments have not effectively planned for cumulative effects. There are only failed land management plans that attempt to deal with the Treaty rights. Cold Lake First Nations know that we are the stewards of the land and given the capacity and opportunity will be able to develop a management approach to properly address cumulative effects. This approach will not be the traditional silo model focussed on the environmental aspects but impacts that extend to capacity, livelihood, health, infrastructure, education etc. Creating a long tem plan and managing all aspects of impacts is key. Capacity given from the standpoint of legacy would provide a long term approach to building the right resources for Nation building and coping with the ever changing modern world.

Overarching Indigenous Considerations

1. ***Issue:*** Cold Lake First Nations consider Treaty and constitutionally protected rights as being special and unique to our people. This is reinforced through the UNDRIP in various articles, such as Article 25 "Indigenous peoples have the right to maintain and strengthen their distinctive relationship with their traditionally owned or otherwise occupied and used lands, territories, waters, and coastal seas and other resources and to uphold their responsibilities to future generations in this regard". Another important article to consider is Article 32.2 "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources". We are a rights holder, the nature of Treaty, Aboriginal and Indigenous rights and title should allow for us to decide how the land is used and the right to benefit from those uses, to proactively use and manage the land.

   Recommendation: More than simple consultation or basic involvement in EAs is required to meet the right to free, prior, and informed consent. We will continue to assert our rights and should play a serious role in the management of our lands and resources. The EA legislation needs to acknowledge and define how Indigenous people can institute UNDRIP, uphold the constitutionally protected rights, and actively manage the decisions that directly affect the lands, waters, and resources.

2. ***Issue:*** The UNDRIP builds on principles which are inherent in the nature of human beings. The UNDRIP rests on equality, self-determination, culture and way of life, and all aspects of lands and resources. Several articles refer to traditional lands, historical use and occupancy that imply an obligation on the part of Canada and the provinces to recognize those rights. The UNDRIP represents a moral and political commitment on the part of Canada, it is now time for Canada to recognize those principles and work with the Indigenous peoples to implement that commitment.

Recommendation: Creating a defined role for Indigenous governance within the federal EA process would demonstrate progress in this regard. Indigenous governance in EA means ensuring the federal Crown can uphold their duties and responsibilities, implement their commitment to UNDRIP, validate the due diligence of proponents through the execution of project development, EA, decisions, and monitoring phases to ensure the infringement of rights and properly accounted for, and appropriate remedies are in place and implemented. We, in turn, recognize that there is a gap in the implementation of UNDRIP, but that defining this integral role for Indigenous people over their lands and resources in the EA process will serve as an important first step towards meeting Canada's commitment.

3. ***Issue***: The separation of Aboriginal consultation and assessment processes in federal (and Alberta provincial) project application and review processes creates significant complexities and problems when the 'subject matter' of what is commonly referred to as the 'Traditional Land Use' portion the EA can provide independent conclusions regarding the effects of a project or decision. Often (if not always), these conclusions are at odds with those of the proponent and their consultants. Current EA practices are based on western science paradigms that compartmentalize 'the environment', rather than approaching it holistically. The separation of Aboriginal consultation from assessment of impacts to rights and land use, combined with the separation of various valued components within EAs, creates unnecessary confusion and duplication of effort, and does not reflect the realities of how impacts occur to Aboriginal people and their communities – in a circle that connects lands and waters, land use, health, economies, and culture. Canadian EA processes result in compartmentalized descriptions of 'the environment' – including Indigenous people, their communities, lands, land use, culture, livelihood and rights. (See Figure 2 Circles of Livelihood diagram).

   ***Recommendation*:** Aboriginal consultation and the assessment of impact to Aboriginal/Indigenous rights need to be combined in project application and review processes, and the scope of any assessment of impacts to Indigenous people needs to be at the level of rights, not 'traditional land use'. The British Columbia Environmental Assessment Office (BCEAO) model could be used as a starting point to develop a process through collaboration between the Crown and Indigenous groups.

4. ***Issue***: Environmental assessment and associated consultation processes do not achieve the outcomes they are intended to achieve. Current environmental assessment laws, legislation, guidelines and best practices are designed to ensure that projects or government actions are 'in the interests of Canadians', but these processes are embedded within a capitalist framework that fundamentally prioritizes economic gain over environmental protection. They reflect a worldview that is centered on humans, development of natural resources and the growth of the economy, rather than on ecosystems, biodiversity, the livelihood of Indigenous people and the preservation of 'the land' for future generations.

   Canadian EA processes do not reflect Aboriginal or Indigenous worldviews, which are commonly based on beliefs and values about equality, reciprocity and connection between the land, water and all living things. These traditional values and beliefs continue to guide Indigenous harvesting and resource management practices. Protection of the environment and Treaty and Indigenous rights need to be prioritized in final decision-making if the government is to achieve the goals of reconciliation and implementation of UNDRIP it has committed to.

   ***Recommendation*:** *Canadian Environmental Assessment Act 2012* (CEAA 2012) does not allow for a fair and transparent process where s. 35 rights and impacts on those rights can be heard prior to approval of the project. The result is a failure to respect the duty to consult and transparent identification of infringement of Treaty and inherent Indigenous rights. Accordingly, the requisite compensation and accommodation measures are not apparent or are conditional to project approval conditions or accommodation discharging the Crown of their duties. Further consultation and research is required, potentially through a working group created to address these issues. A recognition of Indigenous jurisdiction and cooperative assessments should be instituted to ensure that Indigenous people are appropriately represented in environmental assessment (EA) processes, determination of infringement of rights, significant and cumulative environmental effects, and final decision making.

5. ***Issue:*** There is a significant lack of consistency between various jurisdictions (federal, provincial and territorial) regarding the assessment of impacts to Aboriginal groups and their rights (including traditional land use or TLU). While some such variability is necessary in order to reflect various contexts of historical Treaties, modern-day land claim agreements and non-Treaty areas, greater standardization regarding these assessments is urgently needed. Given the

need for all levels of government to evaluate impacts to Treaty and Indigenous rights consistently and considering the relationship between Indigenous people and the federal Crown, assessment of impacts to Indigenous rights should be managed by the federal government.

***Recommendation 3*:** Any Project with the potential to impact Treaty and Indigenous rights should require a federal EA regarding those impacts, or requirements should set at the federal level to prescribe standards for assessment of impacts to Treaty and Indigenous rights.

6. ***Issue***: Greater transparency and accessibility is required for Cold Lake First Nations (and other Indigenous groups) in environmental assessment processes. The impacts of projects and decisions on Aboriginal rights are real and are felt in people's everyday lives, but as this particular review process has made clear, understanding how and why particular decisions are made by government is not common knowledge for most Canadians, including Cold Lake First Nations members.

   ***Recommendation*:** The Crown needs to conduct Nation to Nation consultation in combination with some form of cooperative assessment with Indigenous groups. Additionally, the Crown needs to establish standards and best practices for proponents to ensure this is done properly. This process should involve the Crown.

7. ***Issue***: Cumulative effects and climate change are of key importance in understanding impacts to Aboriginal rights. Cold Lake First Nations has seen significant change on the land, water and air quality that has been a direct impact of resource development. Scientific evidence regarding climate change and cumulative impacts now support what Cold Lake First Nations have been observing on their traditional lands. As stated in the ALCES report (ALCES 2012), a series of land-uses have unfolded that have profoundly affected landscape composition and ecological function within *Denne Ni Nenne* since the arrival of European culture. Overlapping land-uses that include residential, agriculture, Provincial Parks and Recreation Areas, and the sectors of oil and gas, mining, transportation, and military have collectively, and incrementally, transformed the landscape. Each land-use has affected Cold Lake First Nations members in many ways, and impacted or constrained the ability to continue traditional activities.

It is important to recognize that each of these land uses currently exist in the Traditional Territory and are intended to increase in both area, intensity and productivity in the decades to come. This became clear when ALCES undertook a cursory review of the business plans of the Government of Alberta (Alberta Agriculture, Alberta Energy, Alberta Transportation) and industrial associations (Canadian Association of Petroleum Producers, Alberta Beef Producers) which predict incremental growth in each of these sectors.

***Recommendation*:** Both cumulative effects and climate change should be key factors considered in any EA. It is important to explore the consequences of intended intensity and productivity growth trajectories of development on a suite of social, economic, and environmental indicators within Environmental Assessment processes in Canada.

8. ***Issue:*** The history of environmental assessment in Canada and the current regulatory structure of Alberta Energy Regulator in Alberta emphasizes and endorses a "project by project" approach to understanding land-use and its implications. This constrained view does not permit a full comprehension of historical, current and future land use trajectories, or their risk/benefit ratios, and as such is not in the best public interest.

   The consequences of adopting a project by project approach to assessments seldom concludes that any individual proposed project will have any significant effect at regional scales. Simply put, placing a few new landuse footprints on a large regional landscape already busy with activity, and then comparing the future condition to a reference point defined as today, cannot predict impacts.

   Recommendation: The Government of Canada should adopt and incorporate the criteria of comprehensive cumulative effects assessments in environmental assessment processes. An predisturbance baseline should be used to assess impacts.

9. ***Issue***: The history of industrial development such as the oil sands and extractive sector and the resulting cumulative impact on Cold Lake First Nations and other Indigenous groups has not been properly documented. This leads to a lack of understanding regarding the nature and

extent of effects on Treaty and Indigenous rights and culture, creates problems for properly understanding cumulative effects, and allows inadequate standards and practices to be perpetuated.

Recommendation: Research needs to be conducted by Cold Lake First Nations and other Indigenous groups, with support from the federal Crown, industry or a combination thereof. Federal environmental assessment legislation should require a regional Cumulative Effects Assessment where a region has shown a significant decline in key ecological values or environmental health benchmarks and prior to further development activity in the region, or where the decline in the environmental benchmark is a matter of national concern.

10. ***Issue:*** EA and consultation processes have become procedural rather than substantive and are not effective information gathering tools that support balanced decisions based on detailed facts and evidence combined with rigorous and standardized methodologies (particularly with regards to understanding impacts to Treaty and Indigenous rights).

    ***Recommendation*:** Further consultation and research is required, potentially through a working group created to address these issues. Change in the regulatory process must include government to government interface between First Nations, Federal and Provincial regulators.

Indigenous Involvement

11. ***Issue:*** As noted by many Indigenous groups, the funding and timeline limitations for EA processes create barriers to meaningful involvement.

    Recommendation: Indigenous groups should be involved from the initial stages of project planning and scoping, right through to final decision, follow up and monitoring. Appropriate schedules and funding for Indigenous involvement should be determined between Indigenous groups and the Crown. Capacity and timeline constraints impede Cold Lake First Nations from providing more detail with respect to this recommendation.

12. ***Issue:*** Indigenous involvement in current EA processes is often superficial and secondary, coming after priorities such as economic and environmental evaluations. When involvement

does occur, it is often limited to consultation and conduct of 'TLU' studies, which are not always clearly or adequately reflected in project application, assessment or decision processes.

Recommendation: Ideally, Cold Lake First Nations and other Indigenous groups should have the ability to conduct their own assessment regarding impact to their rights, using whatever technical expertise they require to undertake such assessments. If this is not feasible, then these assessments should be undertaken collaboratively between Indigenous groups and the Crown.

13. ***Issue*:** The capacity required to participate in any EA process taxes the resources of many, if not most, Aboriginal groups.

Recommendation: Addressing this issue requires more than funding for a consultation office. It requires Nation members who have been offered educational, training and work experience opportunities, coupled with adequate services such as schools, housing, health care and childcare to support this work force on reserve.

Planning and Coordination

14. ***Issue:*** The lack of coordination between the Provincial and Federal government and the lack of recognition that First Nations are a government make the process even more challenging. Prime Minister Trudeau directed Minister Bennet in her letter of appointment as follows:

> "your overarching goal will be to renew the relationship between Canada and Indigenous Peoples. This renewal must be a nation-to-nation relationship, based on recognition, rights, respect, co-operation, and partnership. I expect you to re-engage in a renewed nation-to-nation process with Indigenous Peoples to make real progress on the issues most important to First Nations, the Métis Nation, and Inuit communities"

Recommendation: In the spirit of respect and change we suggest a multi Government steering committee would provide the appropriate forum to address the challenges that we face with respect to resource development that is impacting our Nation.

15. ***Issue:*** The current process is layered, taxing to all, and even has us competing for the same technical resources. It is disconnected and flawed.

    Recommendation: Dialogue needs to occur to ensure that all parties understand each other's needs in order to build effective process that can mitigate impact, balance resource development and provide certainty for Indigenous land users. A harmonization of processes is required and standards should not be higher in one jurisdiction over the next. There should be one standard for Environmental assessment across the country. For example, in the BC Environmental Assessment process, potentially affected First Nations are directly engaged through all aspects of the EA process, from scoping, assessment, consultation, consideration of Indigenous interests and values, development of avoidance, mitigation, and accommodation remedies, and are directly involved in the review of conditions. Benefits agreements are in turn negotiated to provide compensation for residual impacts and infringement of rights.

16. ***Issue:*** CEAA 2012 drastically reduced the number of federal assessments required. In determining what activities should be considered, it is essential that those linked with the major environmental problems in our society and the most significant causes of environmental harm be assessed. The designated list includes oil sands mines, however, there is no rational reason that in situ projects are excluded. In situ projects represent the majority of the recoverable oil sands reserves in the region. This means that the majority of development in the area will proceed without any federal environmental assessment despite the cumulative impacts on the region's fish and wildlife populations and the significant effects on air quality further contributing to increases in greenhouse gases. Despite requests by Indigenous groups, no in situ development has yet to undergo a Federal assessment by the Minister under the discretion provided under s. 14(2) of CEAA 2012.

    Meaningful and transparent Indigenous participation in the environmental assessment process in Alberta is ineffective because the decision maker with authority to approve projects is not required to consider Aboriginal interests and impacts to rights and the arm of government required to consult with Indigenous groups has no decision-making power over project

approvals. Ultimately, the crown's duty to consult and accommodate infringement of rights of Indigenous people is not adequately discharged.

***Recommendation*:** Cold Lake First Nations recommends mandatory federal assessments of in situ developments. Any project that may cause adverse impacts to the environment or Indigenous people within federal lands (i.e. CLAWR, Indian Reserves) should require a federal environmental assessment. Further, if a project may cause adverse impacts on Indigenous traditional lands that have already have significant cumulative effects, should require a federal EA.

17. ***Issue:*** The CLAWR is federally leased land, yet federal EAs are not undertaken for projects occurring within the range.

***Recommendation*:** Any project that may cause adverse impacts to the environment or Indigenous people within federal lands (i.e. CLAWR, Indian Reserves) should require a federal environmental assessment.

Conducting Environmental Assessment

18. ***Issue:*** Regarding Indigenous people, the *Canadian Environmental Assessment Act, 2012*, requires the assessment of "any change that may be caused to the environment on: health and socio-economic conditions; physical and cultural heritage; the current use of lands and resources for traditional purposes; or any structure, site or thing that is of historical, archaeological, palaeontological or architectural significance." In recent EAs, effects on 'current use of land and resources for traditional purposes' are usually assessed in isolation from other aspects of effects on Indigenous communities (such as socio-economics, health and historical resources). More intangible aspects of Indigenous culture (such as language or intergenerational knowledge transfer) are frequently not assessed at all. Separating these various aspects of Indigenous communities and cultures disregards the deep linkages between ecology and Indigenous land use, society and culture, and fragments the assessment relevant to Indigenous communities across different disciplines, components, sections and volumes of

project applications. This renders comprehension of the nature and extent of these effects difficult.

***Recommendation*:** Assessments to predict impact to Indigenous groups should be undertaken by each group, with support from the proponent and collaboration from the Crown. In each assessment, all aspects of Indigenous communities (including rights, land use, culture, health, socio-economic conditions, etc.) should be addressed using methods that acknowledge and address the linkages between ecological and social systems – between the land, the community, their culture, livelihood and well-being. Such assessments could achieve a more integrated assessment through the use of frameworks that reflects linkages between ecological change, change in land use activities and cultural change (see, for e.g., Ts'elxwéyeqw Tribe Management Limited et al. 2014; and Parlee, Geertsema and Willier 2012).[4]

19. ***Issue:*** Cold Lake First Nations members speak constantly about the need to protect the preserve the land for future generations, and have significant concerns about the ability of their grandchildren and greatgrandchildren to continue to live and pass on their *Denesuline* way of life, harvesting plants and animals and using the traditional resources found within *Denne Ni Nenne.* Current CEAA guidelines and other regulatory guidance documents require the assessment of project impacts on 'current' traditional land use activities – or exercise of Treaty and Indigenous rights. This focus on current use, whether defined as a 5 or even 10 year temporal boundary, does not reflect the terms of the historical treaties ("as long as the sun shines"), Canada's commitment to protect Treaty and Indigenous rights, or CLFN's land and resource management (or stewardship) values that prioritize a focus on generations to come.

***Recommendation*:** Consideration of impacts to future exercise of rights must be considered in any assessment of impacts to Treaty and Indigenous rights.

[4] Parlee, Brenda, Karen Geertsema and Allan Willier. 2012. "Social-Ecological Thresholds in a Changing Boreal Landscape: Insights from Cree Knowledge of the Lesser Slave Lake Region of Alberta, Canada." Ecology and Society 17(2): 20.
Ts'elxwéyeqw Tribe Management Limited, Stó:lō Research and Resource Management Centre, and Human Environment Group. 2014. "Integrated Cultural Assessment for the Proposed Trans Mountain Expansion Project." Available online: http://www.theheg.com/wp-content/uploads/2016/05/Stolo-Chapter-1-to-11-Integrated-Cultural-Assessment-for-TMEP-March-2014.pdf.

20. ***Issue:*** Many challenges in the assessment of impacts to Treaty and Indigenous rights and culture stem from the lack of knowledge, research and understanding regarding the complex nature of change to these rights that result from changes in the ecological and socio-economic environment. While completed EAs and academic (published, peer-reviewed) literature are available to project proponents and their consultants, this information is not regularly applied in the assessment of impacts to Indigenous groups, perhaps due to limitations of time, financial and research resources. Further, this available information may have limited applicability if it is not specific to the region, the type of development, or the Treaty and Indigenous groups involved in the project under review.

    Based on these knowledge gaps regarding the effects of various types of projects on Treaty and Indigenous rights in various settings, assessment conclusions regarding Treaty and Indigenous rights and 'Traditional Land Use' almost always rely heavily on the professional judgment of the individuals conducting the assessment. It is questionable whether many or most of these individuals have adequate experience or training to know how the project they are reviewing will impact Indigenous groups' rights and culture, as such experience would depend on many years of working closely with communities who have experienced impacts from the type of development under review. The resulting high level of uncertainty, or 'low confidence' in assessment conclusions is usually not openly stated or reflected in EAs. Aboriginal consultation regarding a project and its effects can help to close this gap, but the disparate timing and lack of coordination of EA and consultation activities frequently prevents this opportunity from being fully realized, and the structure of project applications often means that these two bodies of information regarding impacts to Indigenous groups and rights are not well correlated.

    Associated with the knowledge gap regarding effects on Treaty and Indigenous rights and culture, there is a lack of understanding regarding the effectiveness of mitigation measures for such impacts. As follow up and monitoring of project effects on Indigenous groups is rarely (if ever) undertaken, this knowledge gap regarding the effectiveness of mitigation measures is considerable and creates an issue for proponents, the Crown and Aboriginal groups with regards to the accuracy of assessment conclusions (which are, in part, based on assumptions regarding the efficacy of mitigation measures).

Recommendation: As noted above, assessments to predict impact to Indigenous groups should be undertaken by each group, with support from the proponent and collaboration from the Crown. Additionally, research conducted jointly by government, Indigenous groups and academia could help to address these knowledge gaps, and this research could also be achieved through the TLU studies frequently funded by project proponents and undertaken by Indigenous groups in relation to a project. Such studies need to use standardized, rigorous methods to determine baseline conditions (both current and pre-disturbance), and should also pursue details from Indigenous groups and their members regarding impacts experienced from other similar projects in the past, impacts anticipated from the project under review, experiences with standard mitigation measures and suggestions for mitigation of project and cumulative effects. Research into effects of development on Treaty and Indigenous rights and culture, combined with more rigorous monitoring programs and more time in the regulatory process for consultation with Indigenous groups will help to address these knowledge gap regarding the assessment of impacts to Treaty and Indigenous rights and culture.

21. ***Issue:*** Cumulative effects within *Denne Ni Nenne* are of utmost concern to CLFN members, and are a reality that pervades members' daily lives through impeded land access and movement; depletion of plant, animal and water resources; fears of contamination and associated health risks; and loss of livelihood and community (see Figure 2, Circles of Livelihood diagram). Any assessment of impacts to Indigenous groups needs to acknowledge and attempt to address the reality that Indigenous rights and culture have already been significantly impacted over the last 100+ years for many (if not most) Indigenous groups in Canada. This cumulative impact has occurred to the extent that the meaningful exercise of constitutionally protected Section 35 rights is only marginally viable in much of this country, despite the fact that continuing traditional harvesting, community and spiritual practices connected to the land is of critical importance to many Indigenous people.

***Recommendation*:** Proponents or the Crown should develop a pre-disturbance baseline in addition to a current baseline required in EAs, and project conditions should require reclamation activities that restore lands (and land use access and conditions) to a pre-disturbance capability that supports the meaningful exercise of Treaty and Indigenous rights. This baseline context can and should be recognized and utilized in the assessment of both

project effects and predicted cumulative effects. Additionally, regional assessments and land use planning activities are also required to address this gap.

22. ***Issue*:** While current guidelines indicate that Traditional Ecological Knowledge or TEK may be considered and integrated in environmental assessment, this integration is usually superficial if it is attempted at all. TEK and its associated time-depth are difficult to consider in current EA methods, and the understanding of interrelation of ecosystem components across time and space is also difficult to fit into EA boxes. The perceived equality and respect for other living things that is foundational to traditional resource management is virtually absent from the western approach to resource and industrial development, which renders comparisons and 'integration' between these two worldviews very difficult. Unfortunately, these challenges serve to perpetuate the reduction of TEK's scope and depth, and the applicability of TEK to land and resource management.

***Recommendation*:** The inclusion of TEK in environmental assessment should be mandatory. The belief that all living organisms have equal rights to survival and well-being may ultimately lead to the implementation of sustainable harvest and management practices. In order to address the challenges with integrating TEK and western science, a working group or research group is required to establish methods and best practices.

Consultation and Accommodation

23. ***Issue:*** The fundamental principle governing the relationship between the Crown and First Nation's peoples in Canada is reconciliation. In no fewer than 20 cases from 1996 to-date, the Supreme Court of Canada has recited and relied upon this concept as the only fair and effective foundation from which aboriginal and non-aboriginal Canadians can move forward together.

Treaty 6 was signed between the Crown and First Nations in 1876 as a first step towards reconciliation. It was not the end of the reconciliation process, it was the beginning. Alberta interprets Treaty 6 to permit the Crown to "take up land from time to time" while First Nations, including Cold Lake First Nations, understand from their elders that no such agreement to cede *Denne Ni Nennè* was made. Cold Lake First Nations' position is that the lands and resources

within *Denne Ni Nennè* were never surrendered, but rather an agreement was made with the Crown to share the lands, to the depth of a plow, for the purposes of settlement and agriculture.

Regardless of which interpretation is preferred, it is clear that government's current approach to consultation is far too limited and narrow to meet the Crown's fundamental obligations—even if the "taking up" clause is legitimate. The Crown is obliged to consider whether:

1) The proposed taking up of land is consistent with the Crown's obligations to ensure sufficient lands, waters and ecological resources are available to support the exercise of Treaty and Indigenous Rights;

2) If the taking up of land can be accomplished while protecting the exercise of Treaty and Indigenous Rights, that any impacts arising from the taking up are mitigated or minimized; and

3) If the taking up land will proceed is compensation required.

In all cases, the *process* must also be managed in an honourable way. Unfortunately, under government's past and current approach, these obligations have not been met.

Recommendation: Specifically, Government needs to be involved in the mitigation of or compensation for impacts arising from development and needs to be involved throughout the consultation process in an open and transparent manner. Assessing the adequacy of mitigation measures put forward by proponents or by First Nations is a complex issue which is not currently addressed by most levels of government in Canada. An assessment of mitigation measures must start from a common understanding of the concept of mitigation and accommodation. Mitigation and accommodation mean measures which effectively reduce the impact of the planned activity *on the exercise of Treaty Rights.* Generally, industry relies on a number of untested assumptions regarding the efficacy of their mitigation measures. Impacts are suffered by the current generation that cannot exercise Treaty Rights in the area and any "mitigation" or "accommodation" is expected to occur after 2-3 generations of disrupted land use. The most effective mitigation or accommodation proposal may require support or action by the Crown. The mitigation measures actually must be responsive to the concern/ impact and not just an arbitrary response. The Proponent should demonstrate their plans have meaningfully incorporated indigenous ecological knowledge. If there are mitigation or accommodation

proposals which require the involvement of the Crown, those been identified and responded to by the appropriate government Ministry. If application of all mitigation and accommodation proposals still result in residual effects to Cold Lake First Nations, the Crown must meet its duty of honorable fulfillment of the Treaties, including potential rejection of proposed mitigation or compensation (e.g. land, conservation areas, co-management, financial benefits, etc.). There have been very few examples of serious accommodation. Given how much land has already been taken up, government must start considering that in some cases the only way to truly accommodate for the impacts of development are to provide compensation (perhaps through land or money) which can be transformed into other meaningful opportunities to protect the Nation's Treaty and Indigenous Rights and cultural integrity. Cold Lake First Nations will continually seek a "livelihood for a livelihood" by ensuring that if others seek to benefit from the resources within *Denne Ni Nennè*, then so shall Cold Lake First Nations. We do this while ensuring our members retain important connections to the lands and waters within *Denne Ni Nennè*.

Cold Lake First Nations should be engaged in all aspects of development from planning to pre-development EA, identification of appropriate impact avoidance and mitigation or reduction mechanisms, on-going and long-term monitoring and compliance, construction, operations, closure and remediation of the development, and compensation for the loss of opportunity to use our lands due to development, including benefits and compensation agreements that provide a fair and equitable proportion of economic benefits. The use of the lands for economic gain, should be balanced with Cold Lake First Nations cultural values and traditional use. The degree of any infringements should be evaluated and determined by Cold Lake First Nations.

Decision-Making

24. ***Issue:*** CEAA 2012 places a great deal of decisions in the hands of the federal Cabinet. This political based structure makes it impossible for Indigenous communities to determine how the Crown has accommodated Treaty and Indigenous rights and interests. Once a project has undergone a federal EA and even if the project is likely to have significant adverse effects, these effects are "justified in the circumstances" without defining the relevant circumstances or providing criteria for justification. There is also no opportunity for public engagement in this

determination or for Indigenous communities to weigh in on the decision or the justification. The practice of EA is intended to be transparent, clearly identifying the terms of reference, factors to be considered, the identification of potential adverse effects to people and the environment, the evaluation of such adverse effects, the appropriate avoidance, mitigation, and accommodation measures to minimize the effects prior to a decision being rendered. The decision factors currently do not equitably consider the contributions of traditional ecological knowledge or the social factors that affect Indigenous rights and well-being, nor do their clearly characterize the infringement of rights, or involve Indigenous governance to weigh on the decision.

Recommendation: The establishment of an Indigenous governance model based on the principles of UNDRIP and EA practices will serve to bring consistency to inform the discretionary decisions made by the Crown, where Treaty and Indigenous rights are infringed and accommodation is necessary. The decision will ultimately be accompanied by the appropriate agreements with affected Indigenous communities.

25. ***Issue:*** The Crown has a constitutional duty to consult and accommodate Indigenous communities regarding "strategic, higher level decisions" that may have an impact on their rights. EA decisions must be informed by input on environmental effects from Indigenous communities; all Government of Canada departments and agencies must consult Indigenous communities respecting decisions that may impact their rights and claims. The requirement for Indigenous-specific consultation and accommodation should be mandated.

Recommendation: Environmental Assessment and consultation processes have become procedural rather than substantive and are not effective information gathering tools that support balanced decisions based on detailed facts and evidence combined with rigorous and standardized methodologies (particularly with regards to understanding impacts to Aboriginal and Treaty rights).

A better approach is necessary to harmonize and streamline the EA process with up-front Indigenous engagement, consultation and accommodation, in order to obtain free, prior and informed consent prior to the approval of any project affecting Indigenous lands, territories and

other resources. Canada should develop a Nation to Nation regulatory environmental assessment appeal process with Indigenous Nations that oversees decisions at all levels of jurisdiction through the establishment of an Indigenous review and compliance board, made up on Indigenous representatives with appropriate expertise to hear evidence and make recommendations throughout the EA process.

Follow Up and Monitoring

26. ***Issue:*** CLFN members have observed, through their time on the land and through their work in various industries that environmental standards and project conditions are regularly not met and standards are not complied with. Members have particular concerns about reclamation activities (related to spills and post-operations) within their territories and feel that the standards to which project proponents are held are not high enough.

Recommendation: Members of Indigenous groups should be given first right to contracts to undertake follow up and compliance monitoring within their traditional territories. Government should introduce enforcement measures including accountability reporting to ensure that proponents fulfill their obligations.

27. ***Issue*****:** While ongoing consultation with Indigenous groups is a standard commitment in most project applications, little to no monitoring is usually undertaken regarding effects to Treaty and Indigenous rights and culture (or TLU) after project approval and commencement of construction or operations. Given existing knowledge gaps regarding the effects of industrial development and other Crown decisions on Treaty and Indigenous rights and culture, and the success of mitigation measures frequently proposed for these effects, such monitoring is critical.

Recommendation: All projects should require community-based monitoring of effects to Treaty and Indigenous rights and culture at regular intervals during project construction and operations (separate from construction and environmental monitoring). Such monitoring should be led by potentially impacted Indigenous groups with indicators and thresholds determined by those groups. Regular reporting regarding this monitoring should be provided

to both the Crown and the project proponent, to determine adaptive management strategies, further mitigation or compensation that are required. These reports should also be made available to the members of the Indigenous group.

Conclusion

There are always ways to improve relationships between First Nations and the Federal and Provincial governments. Ensuring that the majority of Cold Lake First Nations concerns are adequately addressed are not just an obligation but a responsibility of all parties. Many general and specific points are outlined in the above submission in the hopes that these constructive criticism and our recommendations will enable those with the ability to make important planning decisions. The regulatory process is flawed. Given the increasing impacts to our traditional lands, the implementation of appropriate methods to make clear and verifiable impact predictions should become more common, as the accuracy of these predictions is of paramount importance Cold Lake First Nations. Due to amount of resource development on their traditional lands, no amount of mitigation identified in environmental assessment will address the amount of impact on the Cold Lake First Nation members and their protected Treaty and Indigenous rights. Accommodation and compensation is required move towards a place of reconciliation.

Industry hires scientists and specialists to write environmental assessments and socio economic impact assessments. Government and First Nations hire third party experts to review the Proponent the same documents. The issues and impacts are presented, debated and regurgitated over and over again with each new application through a costly legal process. Projects continued to be approved and the impacts continue to increase. The redesign and implementation of a respectful, equitably resourced, time sensitive model needs to occur. We need to change how we are engaging.