

Diane McDonald, Ya'thi Néné
Presentation to EA Review Panel

Tuesday September 20, 9:00 to 5:00 PM

Radisson Hotel Saskatoon
405 20th Street East
Room: Michelangelo A
Saskatoon, Saskatchewan

Greetings to Madame Chair Gélinas and the Panel. My name is Diane McDonald and I am the Executive Director for Ya'thi Néné Land and Resource Office, representing the interests of the three Athabasca First Nations in Northern Saskatchewan.

I am representing the three Athabasca Chiefs, but they are also separately registered to give comments, but unfortunately 2 chiefs were not able to be present due to the fact of the short notice to our nation. I will present on behalf of the 2 chiefs during their time slot.

Ya'thi Néné Land and Resource Office will be representing the interests of and engaging with the three communities of Black Lake Denesuline First Nation, Fond du Lac Denesuline First Nation, Hatchet Lake Denesuline First Nation. Ya'thi Néné Land and Resource Office works to promote and enhance the environmental, social, cultural and economic health and well-being of the Athabasca Basin Communities and their greater than 5,600 members.

We have been asked to address a range of topics and questions. I will start with a comment on the timing of this Expert Panel. There are five ingredients for adequate public participation – they are adequate notice, access to information, opportunity for public comment and participant assistance and follow-up. These are basic requirements for environmental assessment.

The process used by this Expert Panel is flawed – because it has not given adequate notice to nations from the time of application deadline to the hearing today, there was a lack of proper information given to the nation well in advance of this hearing, insufficient time to respond adequately on the presentations today and consult with our membership well in advance. It is an entirely unreasonable expectation to give us less than a week notice for the hearing that is being held today. While participant funding is in place and confirmed, yesterday. Our team was notified of the hearings only on late Thursday afternoon, and this really doesn't give us sufficient time to prepare our thoughts on this legislation. This is an example of the kind of flawed process that we have always been concerned with. We feel that it is unfair and this type of process needs to be rethought and given more time for public participation. This does not accommodate our nation to nation relationship.

The timing is not sufficient, and the short notice of the panel is an example of this. It puts us in a very awkward position because our communities really want to make comments to you about the CEAA legislation, but we are rushed into it without time to

brief our leaders or our teams. Yesterday we were contacting the Chiefs to make sure they could travel over 800 km out of the communities to participate in this session. This directly goes against one pillar of the United Nations Declaration on Indigenous Peoples, that of adequate notice of an issue or a review PRIOR to it being reviewed.

Going forward, we recommend that this Expert Review Panel and the Minister in particular give further clarity on the question of how legislation will be introduced, how it will be reviewed, and the timeframes for this review. We request that the Panel share their Indigenous Engagement Plan that is required in their Terms of Reference as soon as possible. We also ask that the Panel carefully consider how this process aligns with the United Nations Declaration on Indigenous People. Adequate notice of an issue or a review PRIOR to it being reviewed is a critical element.

Now turning to the Environmental Assessment, generally the timelines for EA should be longer. The fundamental key concern in the EA process is the capacity issue we are faced with in the three Athabasca First Nations whom do not have the financial capacity or technical staff to initiate a review that is very comprehensive and technical in nature. We are always bringing in technical expertise that cost a lot of resources and both governments and industry have staff and capacity, unlike the First Nations. For industry and government, when industry puts a claim in for exploratory of minerals, they go through the Province to get the necessary permits, from an exploration point of view, the Province needs to consider the initial consultation at the start of the staking process,

as they issue the permits to mineral companies. Every year the mineral company has to meet certain exploration stage to continue its efforts to carry on their exploration projects, during this process, the Province should include the nations involvement throughout the exploration process into the development stage. It takes at least 30 years to get from an exploration level to a development stage, 30 years of work has gone through the system and we end up with 30 days or less to review what they have done in a very long period of time.

We need to be involved at the very outset, from the beginning of the design of the process at the terms of reference stage, and through to the design of the project and review of it.

Part of the problem that exists with EA Panels and reviews is that even where traditional knowledge is recognized, the panel itself does not have the expertise to actually understand traditional knowledge. Chemists and chemistry is always peer reviewed and interpreted by chemists. Traditional knowledge should be given this equal treatment. There are very rarely aboriginal people on panels. They are usually all scientific driven and they don't understand the oral history and background of aboriginal people's culture and values and the distinct language barriers that could give a misperception of understanding of traditional knowledge.

The EA process has no understanding of aboriginal people and where they come from in terms of their social and economic issues and their understanding of being in remote communities. The social and environmental issues and impacts are unique to Aboriginal communities and unique to our communities. They don't understand that people continue to live off the land, they hunt trap and fish off the land. We don't go to a grocery store and buy beef and chicken. You have to understand the food chain we rely upon, and in terms of big developments, there has to be more consideration of the food chain and the closed cycle that we are in.

So we recommend that there be a requirement that there be aboriginal people on the panels to understand what is presented, particularly when it comes to TEK. They need to understand TEK. A strong traditional knowledge expert is always beneficial when review TEK reports and how it is presented. The expert then can argue the key points with the other members of EA reviews, so that its understood the nature of the culture, language and way of life of us, the Dene people.

When we do give our guidance, we want to know what is being done about it. It's the same with this Expert Panel: we want to know what is being done with the information we are giving you. How are you going to change the legislation? Will we have the opportunity to give comment again when there is draft legislation? The same goes with projects. When we give really clear guidance based on our knowledge and our land, we want to see this guidance brought into measure of EA. If they are not brought in as

measures, then what happened to them? If you didn't agree with us, then we need to have a conversation about why some things are being brought in, while others are left behind.

It is the technical science people who end up making all the determinations about impacts and what is a significant impact, but it is our people that really feel the impact. It is our people that are best able to judge the significance. That is why we think there should be our people involved on panels, and in decision-making. We should be making up their own minds about how a change will impact us. This EA process has to get closer to the communities, meetings need to be held in the communities, especially scoping sessions, and we have to be able follow the process all the way through. It is our judgment of how a project might affect us that has to be carried into the Crown's final decision.

You also have asked us to speak on how the United Nations Declaration on the Rights of Indigenous Peoples applies. Based on UNDRIP, we need to be able to give our free, prior, and informed consent, in relation to projects that are in our lands and territories. Consent is something that builds with time, and with information. However it should certainly be given prior to approvals.

When we are involved in the beginning of processes, we have a better security and understanding of the process. Prior to consent, there needs to be social impact

agreements in place for our communities before approvals are issued. We are giving up a certain amount of land for developers within our territory, and our hunting and trapping and fishing rights should be compensated in advance of the development taking place.

I thank the Expert Panel for your time, and your consideration. We are eager to contribute to this review of the federal EA process, and we make this plea to you: Don't rush us into a high speed debate on this topic. Even if you are having your timelines set by the Minister, the United Nations Declaration calls for consideration and consent to be given on changes in the legislation. We need to be consulted properly from the outset, and out of the mark you have already erred. We suggest you give this fact some deep consideration, and push back on the timelines set for you.

Thank you to Madame Chair and the Panel for this time to present.