

ECOLOGICAL STEWARDSHIP

RESOURCE CONSULTATION



CULTURAL CONTINUITY

TRADITIONAL LAND USE

HORSE LAKE FIRST NATION INDUSRY RELATIONS CORPORATION

WRITTEN SUBMISSION FOR THE REVIEW OF THE ENVIRONMENTAL ASSESSMENT PROCESSES

December 23, 2016

Box 18 ▪ Hythe, AB T0H 2C0 ▪ 780-356-2472 ▪ 1

Table of Contents

Executive Summary	3
A. Horse Lake First Nation.....	4
B. Environmental Assessment in Context	4
C. Overarching Indigenous Considerations	5
D. Planning Environmental Assessments	6
E. Conduct of Environmental Assessment	7
F. Decision and Follow-up.....	7
G. Coordination.....	8
H. Conclusion.....	8

Executive Summary

Environmental assessment processes have been unsuccessful for First Nations for several years now. Environmental assessment processes have not been successful because First Nations have been excluded from developing the process. In addition, Treaty and Aboriginal rights have not been protected through environmental assessment processes. Instead, First Nations have had to watch as governments issue environmental assessment certificates and permits, without considering the impacts to the exercise of Section 35.1 rights and other interests.

There have been multiple examples where First Nation culturally significant sites have been destroyed in favour of industrial development. The TransMountain Pipeline Project and the Site C Hydro-Electric Project are just two examples of recent environmental assessment certificates being awarded, despite significant concerns from First Nations with respect to impacts on the exercise of Section 35.1 rights and other interests.

The environmental assessment processes in Canada should be amended through several means. These include: implementing the United Nations Declaration on the Rights of Indigenous People, setting up a parallel process with First Nations, revenue sharing with First Nations, having industry engage with First Nations prior to submitting their environmental assessment application to government, having Traditional Knowledge at par with western science, providing adequate funding to First Nations and long-term benefits flowing back to our Nation and mandating that First Nation Environmental Inspectors are a part of any and all Projects within our territory.

Horse Lake First Nation IRC provides this written submission and asks that the Crown acknowledge the seriousness of our concerns and implement our recommendations with sincerity. This report is structured based off of the Panel's suggested themes: Environmental Assessment in Context, Overarching Indigenous Considerations, Planning Environmental Assessment, Conduct of Environmental Assessment, Decision and Follow-up, and Coordination.

A. Horse Lake First Nation

Horse Lake First Nation is headquartered near Hythe, Alberta. Horse Lake First Nation is a party to Treaty #8, and is a member of the Western Cree Tribal Council. Horse Lake First Nation has two reserves: Clear Hills 152C and Horse Lake 152B with a total Land base of 31 km².

The exercise of Treaty and Aboriginal rights requires an ecosystem sufficiently intact to sustain viable populations of flora and fauna that our members harvest, and therefore we place enormous emphasis on the importance of preserving these areas. In addition, our Treaty guarantees the integrity of our traditional way of life, which includes protection for such things as trails, campsites, cultural gathering areas and spiritually significant or sacred sites. Horse Lake First Nation is very concerned regarding the potential cumulative impact of industrial activities on our constitutionally protected Section 35.1 rights and other interests.

Horse Lake First Nation IRC has been asked to review the Environmental Assessment Processes and discuss some of the inadequacies and recommendations for what a tangible Environmental Assessment Process would like for Horse Lake First Nation. This report is structured based off of the Panel's suggested themes: Environmental Assessment in Context, Overarching Indigenous Considerations, Planning Environmental Assessment, Conduct of Environmental Assessment, Decision and Follow-up, and Coordination.

B. Environmental Assessment in Context

Current environmental assessment processes in Canada do not address culturally significant aspects for First Nations. Environmental assessments only look at the environment, social and economics. It is unfortunate that economics seems to outweigh the cultural, environmental and social matters for all environmental assessments.

Federal environmental assessment processes need to weigh culturally significant concerns, environmental concerns and social concerns of a project against economics. Furthermore, Traditional Knowledge needs to be supported and given the same recognition as Western Science. Moreover, studies need to incorporate Traditional Knowledge in the study design and come from a First Nation perspective.

Investor certainty, community and environmental wellbeing can be achieved if proponents develop strong relationships with First Nations by engaging early and often in the process and developing long-term benefits with the community. Long-term benefits can be achieved through negotiating Impact Benefit Agreements, Ownership and/or equity in a project. In addition, Proponents need to fund First Nations to undertake Traditional Use Studies and Site Assessments to ensure that culturally significant sites are not disturbed and proper mitigation and/or accommodation measures can be achieved.

Horse Lake First Nation IRC believes that climate change can be achieved if First Nations are given a lead role. Addressing climate change may mean more opportunities for setting areas aside for carbon offsets which goes hand-in-hand with areas being available for the exercise of Treaty and Aboriginal rights. Legislation and regulations would need to be amended to address climate change. The focus would also need to shift from an economic lens to a cultural and environmental lens. Sustainable economic growth can only be achieved with substantive planning and involvement of First Nations.

C. Overarching Indigenous Considerations

The federal government has an important role in environmental assessment processes. In order for Horse Lake First Nation IRC to be actively engaged on a federal environmental assessment, adequate resources (i.e. funding) needs to be provided. With the environmental assessment processes to date that Horse Lake First Nation IRC has participated in, adequate funding has not been provided. Limited amounts of funding really affect community engagement, as in order for substantive community engagement to occur, funding is required for multiple meetings and levels of engagement with membership.

In order to address potential impacts to the exercise of Treaty and Aboriginal rights, a separate parallel process needs to be set up. Furthermore, First Nations need to design the parallel process so that it meets the needs and interests of First Nations. Once the parallel process is set up properly then First Nation interests and concerns can be better addressed. Adequate funding would need to be provided by the federal environmental assessment office and the Proponent for this parallel process to work effectively.

On May 10, 2016, the Federal Crown endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP includes the standard of free, prior and informed consent of Indigenous Peoples. Article 32 states:

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
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.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

For Free, prior and informed consent to be effective in environmental assessments, a substantive process designed by First Nations would need to be set up in order to measure, monitor, enforce and implement. The federal government should hold face-to-face meetings with First Nations to discuss free, prior and informed consent.

Horse Lake First Nation IRC believes that Traditional Knowledge needs to be given the same recognition as western science. Traditional Knowledge has been gathered and passed down by First Nation experts (i.e. Elders and Land Users) and Traditional Knowledge is invaluable to any environmental assessment process.

In order for the federal government to renew its relationship with First Nations, Government-to-Government agreements need to be structured with First Nations. Such agreements need to include revenue sharing with First Nations from resource development, as well as resource management agreements for each industrial sector.

D. Planning Environmental Assessments

Horse Lake First Nation IRC believes that First Nations need to have more of a say when environmental assessments should be undertaken at a regional, strategic or project-level. The current scope for environmental assessments is not adequate because culturally significant sites are not provided the recognition that they deserve. Furthermore, the cumulative impact on the exercise of Treaty and Aboriginal rights is not assessed adequately. Moreover, timelines are inadequate for First Nations to participate in environmental assessment processes.

A regional cumulative effects assessment should be undertaken for environmental assessments using a pre-Treaty #8 (1899) baseline. The regional cumulative effects

assessment also needs to consider future potential impacts on the landscape. First Nations need to be a part of the decision on when a federal environmental assessment is required.

E. Conduct of Environmental Assessment

Horse Lake First Nation IRC believes that First Nations working with the federal government should be responsible for designing and conducting environmental assessments through a parallel process. The federal government, provincial governments and Proponents should be responsible for funding the process, including covering the costs for First Nations to undertake regional and local land-based studies.

In order for environmental assessment processes to be more timely early engagement by the Proponent with First Nations is required. This process would occur prior to the Proponent submitting their application to government. Early engagement could potentially speed up the process once the environmental assessment application is then submitted to government.

F. Decision and Follow-up

Clear and concise information should inform environmental assessment decisions. Furthermore, environmental assessments need to be linked to regulatory decisions. Horse Lake First Nation IRC believes that the only way for the process to be effective is for First Nations to have shared-decision making authority over their lands and resources.

First Nation Environmental inspectors could be responsible for the follow-up and monitoring of a Project. The First Nation Environmental Inspectors could be paid through a program set up by the federal government. The First Nation Environmental Inspectors would also be responsible for compliance and enforcement and setting appropriate fines for industry infractions. The federal government could mandate that First Nation Environmental Inspectors be engaged in any and all Projects on their respective territories.

Scientific uncertainty for environmental assessment decisions could be managed through validation with Traditional Knowledge.

G. Coordination

Given that the Federal Crown is responsible for the signing of Treaty #8 with Treaty 8 First Nations, the Federal Crown should be responsible for maintaining process integrity with First Nations. The Federal Crown offloading this responsibility to provincial jurisdictions is not effective.

Duplication between federal environmental assessment processes and provincial environmental assessment processes can be greatly reduced if there is a separate parallel process for First Nations.

Horse Lake First Nation IRC believes that First Nation jurisdiction can best be achieved through shared decision-making on Horse Lake First Nation's territory.

H. Conclusion

Prime Minister Justin Trudeau has vowed to renew the federal government's relationship with First Nations throughout Canada. However, very few of these promises have made their way to Horse Lake First Nation. The Federal Crown needs to renew its relationship with First Nations in Canada through reconciliation.

Horse Lake First Nation IRC has been involved with both federal and provincial environmental assessments for several years now. We have stated that changes need to be made to both federal and provincial environmental assessment processes. In order for this to come to fruition, we need the federal government to stay true to their word and work with First Nations on making this a reality.

Horse Lake First Nation IRC believes that if we can implement UNDRIP, set up a parallel process for First Nations, give Traditional Knowledge the recognition that it deserves, engage with industry prior to industry submitting their environmental assessment to government, and have shared-decision making authority, the environmental assessment processes may work in the near future. What Horse Lake First Nation IRC does not want is having to undertake more work for our voices to be heard.