Ya'thi Néné Land and Resource Office – Submission to the Federal EA Review Panel

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Introduction

This intervention has been prepared by Ya'thi Néné Land and Resource Office on behalf of the Communities of Black Lake Denesuline First Nation, Fond du Lac Denesuline First Nation, and Hatchet Lake Denesuline First Nation. All are Athabasca Denesuline nations.

Ya'thi Néné Land and Resource Office (or "Ya'thi Néné") represents the interests of the three communities of Black Lake Denesuline First Nation, Fond du Lac Denesuline First Nation, and Hatchet Lake Denesuline First Nation, in relation to lands and resource development activities in the territories of these Nations, including environmental assessment. 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 in northern Saskatchewan.

Ya'thi Néné Land and Resource Office held community consultation sessions on 18-Nov in Fond du Lac (45 attendees), 17-November in Black Lake (with 30 attendees) and 16-November in Hatchet Lake (with 78 attendees).

In this submission, Ya'thi Néné Land and Resource Office focuses on the following community-identified issues, and provides proactive recommendations to the Panel that we believe are the best means to overcome current gaps in the federal EA system

Unless otherwise noted, all quotation citations are from oral testimony before the Panel on September 20, 2016.

Assessment of Impacts on Treaty Rights in Federal Environmental Assessment (EA)

There is a lack of proper consideration of Aboriginal and Treaty rights and title issues in the current federal EA system. The Athabasca Denesuline possess Aboriginal and Treaty rights and title to their traditional territories which they have occupied and used and continue to occupy and use in –and as - their homeland since time immemorial. They actively practice and exercise such rights in relation to land, water, and minerals and other natural resources.

Rights assessment be properly integrated in the federal EA system through nation-to-nation identification and review of Aboriginal and Treaty rights, and by determining what factors influence – positively and negatively - such rights. This is something that has to be given time and effort in advance of entering into the EA planning process.

> "From our perspective in the Athabasca region, the federal government has made statements about nation-to-nation relationships in the [recent federal electoral] campaign. From our perspective in the Athabasca region, we feel we are forgotten about. We haven't been approached or given any consideration to speak to the federal government about our issues and concerns thus far. Any

> time new policies are being developed and re-written with the federal agencies, there is always the lack of opportunity for aboriginal people to be involved“ (Chief Tsannie, 2016, 1).

What tends to happen, instead of reviewing the impact on title and rights, is that extensive consultation records are kept by Proponents and agents of the Crown. These records list how so-called consultation occurred and with whom. These lists generated are often little more than paper exercises that do not result in strong dialogue between the parties on:

1. The nation's estimation of the impact on title and rights; and
2. The potential for the mitigation or accommodation that is identified (in the case where impacts are identified) to actually redress the harm.

The present federal EA process and individual EAs don't meet Athabasca Denesuline standards and promises of protecting the land, nor do they protect those people most vulnerable to changes on the land – the Denesuline. The spirit and intent of Section 5(1)(c) of the *Canadian Environmental Assessment Act (CEAA, 2012*), is not being followed. For example, there is generally inadequate human environmental baseline data collected for affected indigenous groups, due in large part to a lack of minimum standards for project-specific socio-economic, cultural and traditional use/Aboriginal interests and use studies. These studies tend to be negotiated late, if at all, and as a result are not available to inform the EA from the outset.

> "[Proponents] need federal guidance on the spirit and intent of Section 5(1)(c) of the Canadian Environmental Assessment Act 2012. And this guidance needs to be informed by Aboriginal communities“ (Chief Sayazie, 2016, 2).

> "We seem to always fall into the same footsteps when it comes to the regulatory process, we are always in this position. We as a nation feel that when we are not given time to understand a project and have not been fully involved, we are the ones blamed for not participating. Today should not be considered consultation, we don't want to see this as another checkmark for consultation, as the check-list that you keep at the Crown level is filled up with black marks against us“ (Chief Tsannie, 2016, 2).

> "There is no guidance for understanding how treaty rights are being impacted. There is guidance on consultation, but there is no technical guidance on how to conduct an effect assessment of a project on our Treaty rights. The guidance on consultation is simply about how to work and speak with us but not on how to assess impacts on Treaty rights. There needs to be clear guidance on this, not open to interpretation, and clearly articulated. When there are impacts, we need to find ways to accommodate those impacts, or reject projects, because Treaty rights should be prioritized. " (Chief Sayazie, 2016, 2).

Any estimation of the impact on Aboriginal and Treaty rights and title issues necessarily must engage the nations as the only reputable experts, as discussed by Chief Sayazie: "we need to be engaged in the assessments of Treaty rights impacts because they are OUR rights being impacted. No one knows our rights better than we do, and no one feels the impacts more clearly than us (2016, 4).

There has general to be a lack of assessment of effects on Aboriginal and Treaty rights and title issues in the projects that occur in the traditional territory of the Denesuline, as discussed by Chief Bart Tsannie:

> "A real nation-to-nation dialogue is going to be one in which the parties speak together about setting the frame. First, our treaty rights have to be clearly protected and understood. " (2016, 3).

He went on to say:

> "It is our view that Aboriginal rights protected under Treaty and the *Constitution Act, 1982*, are priority rights and need to start to be weighted higher in decision-making and the identification of accommodation. This is a legal principle as well as an EA principle of "impact equity" - those most likely to be impacted by a Project or other Crown decision should both be the major focus of the assessment and be subject to demonstrably higher benefits to offset the adverse changes they are likely to see. The current CEAA process is not set up to examine and implement these trade offs, or protect these minority rights (Chief Bart Tsannie, 2016, 5).

Recommendations the nations and Ya'thi Néné are for more effective consideration and protection of Aboriginal and Treaty rights and title issues in the federal EA system include:

- **CEAA to provide funding for, or require proponent funding for, more community (individual Aboriginal groups) directed social, economic, cultural and traditional use studies so that the impacts on rights in the current and Project Cases can be established by the rights holders themselves.**
- **Require that the results of these studies are in the Proponent's Environmental Impact Statement (EIS), not delegated to a later stage of the assessment. In other words, a finding of EIS Completeness should not be issued without adequate data from affected First Nations being integrated.**
- **CEAA to work with Aboriginal groups to develop better guidance on how to assess indirect effects on specific indigenous groups under Section 5(1)(c) of *CEAA 2012.***
- **Enshrine in legislation a requirement to assess impacts on** Aboriginal and Treaty rights and title issues **in federal EA.**

- **CEAA to develop in consultation with indigenous groups federal guidelines on how rights and title impacts will be assessed.**
- **Design clear guidance for protection of sacred sites, archaeological sites, and protection of Treaty 10 rights.**
- **Ensure continual engagement and consultation of community members, trappers, land users, fisher's throughout the EA process..**

Free, Prior and Informed Consent (FPIC) and its role in EA

The new federal government has made commitments to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This commitment will require that any proposed legislative changes to *CEAA 2012* be reviewed with the Athabasca Denesuline, as per article 19 of the UNDRIP.

> "The governments simply create their legislation without concern or review about how to design legislation. That is what happened with CEAA 2012, and we are not sure how this new round of legislation review will go. There are no clear guidelines, except for the fact that there will be a review. We were never invited, when the transition occurred between CEAA to CNSC Major Projects" (Chief Tsannie, 2016, 1).

The Declaration also provides useful insight into a range of conditions that should be fulfilled, on early engagement, timing, transparency and information needs. As Diane McDonald of Ya'thi Néné said in her oral testimony:

> "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" (2016, 6).

Early Engagement

CEAA holds the mandate for setting a schedule for the process of engagement, information sharing, and the required steps in federal EA, but CEAA review is only triggered for major projects. However, a key component of informed consent is early engagement and information sharing, from exploration through to closure. When reviewing a project, the agency may need to consider the history of the project.

> "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 " (Diane McDonald, 2016, 3 & 4).

It is often before a project is in the construction phases (i.e., when it is in regulatory phase) that major project changes can occur to avoid or reduce impacts. The Agency may need to set stronger terms set for the type of coordination and engagement that is expected of proponents, in particular so that engagement begins early on and so there is a clear understanding by proponents that there is a need to review and revise project plans, in order to reduce impacts.

> "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" (McDonald 2016, 4).

Specific recommendations for more effective and earlier community engagement include:

- **Federal legislative revisions incorporating the spirit and intent of FPIC into the federal EA process by defining in federal EA legislation and policy how UNDRIP will be adhered to, including but not limited to FPIC..**
- **There needs to be substantial engagement of affected indigenous groups at each critical juncture of legislative review and change.**
- **Enhanced federal funding capacity for community-developed consultation and engagement protocols.**
- **CEAA to issue early community engagement guidelines, including defining early engagement and how it will be tracked at the indigenous community level.**

Timing in Federal EA

Both the expectations the communities will be informed and that this will occur prior to decision-making, mean that to conform to FPIC, the CEAA process also needs to adjust expectations for timing. For example, currently the process occurs very quickly and often the speed prohibits substantive community input and review. This frustrates community members and efforts to both develop engagement capacity and project understanding. The speed of the process also interferes with relationship building between the company and the nations. Further, the proponent generally has more time than communities; given current system effectively presses "pause" on the process while the Proponent is developing reports or information request responses.

The process tends to focus on the timelines associated with the Crown and the Proponent, without understanding the timing needs of the Athabasca Denesuline. A first job for our staff is to negotiate funding arrangements for engagement and studies. The

receipt of funds (and the amount that is received) is always out of step with the process. A good example of this was the receipt of funds for this Expert Panel itself, which required the nation to present oral testimony on a Tuesday, after receiving funding commitments on the previous Friday, at a much lower level than requested. This is very consistent with our experience of federal funding announcements and amounts as well.

> "I will start with a comment on the timing of this Expert Panel. There are key 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. " (McDonald 2016, 2)

Next, staff or consultants are reviewing the timeframe, ensuring the engagement of the nation at critical junctures, and trying to ensure there is internal work done on key components (such as traditional use or socio-economic studies). This effort, of negotiating funding relationships for studies with Proponents, is similarly time consuming.

Finally, the staff need to have time and capacity to digest their own studies, understanding the impact the project will have on traditional use or social and economic realities, and then ensuring the studies and impacts are clearly written or spoken of for the Agency. The control over funding and timing of studies is often out of the hands of the nation, and therefore these studies are not always done in lockstep with the CEAA process. This tends to promote written interventions only, and allows very little time for in-person meetings. As the Denesuline are an oral society with oral history as our primary form of communication – and our canon of proof, this time pressure does a disservice to our elders and historians.

> "You have to give more sufficient time, even where you say we can send in our written comments. We are an oral people, and we prefer to give our comments and our thoughts to you in person, and sometimes we want to do that in our language. There are things we can get across in Dene that we just can't get across in English" (Tsannie, 2016, 22).

Specific recommendations for issues with timing in EA:

- **First Nation involvement in setting timelines for EAs on a case-by-case basis through direct consultation with the federal Crown agency.**
- **Ensure notification timelines are reviewed and accepted by nations.**
- **Replacement of the federal 305 day "clock" with joint decision-making process on information sufficiency at different steps in EA, with ability to stop the process to fill critical information gaps.**

- **Require the completion of indigenous studies prior to the acceptance of the EIS, so EIS completeness test criteria includes the completion of Traditional Use and Occupancy studies and other community-led studies being completed.**

Funding and Capacity

Another key component for FPIC is adequate funding and capacity. Generally, funds tend to be very limited from the CEA Agency for engagement in the process. Both the Crown and Proponents underestimate (or wilfully ignore) the funding required for engagement and review of a project. Funding needs for indigenous groups occur at different times and for different reasons. First, there are costs associated with simply having staff in the offices of the nation whose duty it is too complete reviews, coordinate internal engagement and connect with the Crown or the company on the project itself. Second, there is often the need for independent technical support for review of a project and its particular impacts on traditional lands, animals or waters.

> "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 " (McDonald 2016, 3)

Finally, there are often costs associated with the negotiation of contractual agreements with Proponents, sometimes known as Impact and Benefit Agreements (IBAs). These funds, while providing a source of funding, can be restrictive in how they constrain First Nations to meaningfully engage in the EA.

Specific recommendations to address funding and capacity issues in federal EA:

- **Develop a roster of federally-funded Subject Matter Experts available to support indigenous groups via third party review of technical EA submissions.**
- **Conduct more technical sessions on Working Group pre-defined topics during EIS review.**
- **Provide further federal funding to environmental assessment training for First Nations members.**
- **Develop a federal funding approach for First Nations Major Project Coordinators on a Nation-by-Nation level.**

The Critical Need for Transparency

Increased transparency in the federal EA process was another key principle brought forward during Ya'thi Néné community consultation sessions. Athabasca Denesuline would like to hear back from the CEA Agency and the proponent on how information

was used, how it changed the process, and how mitigation measures or accommodation will redress harm. There is a need to have strong community based engagement, reporting back to communities, and ongoing feedback from the Agency to local people. Right now, our members feel like our advice is treated as refusable without recourse or even a stated rationale/counter-argument. We keep hearing that the federal government "hears us", but we have reason to question whether they are actually listening.

As Diane McDonald said:

> "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 " (McDonald, 2016 5 & 6)

This was echoed by Chief Tsannie's comments:

> "You need to follow up with us, each individual First Nation, and our Executive Director from Yathi Nene Lands and Resource Office, on how these issues that we raise will or won't be addressed. Panel reviews very rarely get back to you. Then the Panel itself is a failure, and we end up in the court system again" (2016, 2).

We need a clear process, with strong and consistent contacts, and meaningful follow-up. As stated by Chief Rudy Adam:

> "We need a space for us at the table to discuss not just impacts but the solutions that we want to see. We would like to be checked in with more frequently by the regulatory bodies to confirm that the process is supporting our involvement. And we want to ensure that our voice is included in decisions" (2016, 1 & 2).

This was echoed again by Chief Tsannie:

> "There needs to be a clear process, in which we have faith. Our faith will be placed in EA if we are able to see that our rights are protected. This means we need to have a clear set of contacts and strong initial meetings with staff. There needs to be ongoing meetings with staff, and we need to be provided with sufficient information so that we are able to speak to the matter at hand that is

> being presented by the government. There has to be an initial meeting, then follow up, and responses on the ideas we have brought forward. Right now, everything is weighted toward industry – they write the rules, and they write how the assessment will be conducted. We need to see the EA become much more centred on Aboriginal communities." (2016, 4)

Specific recommendations to increase transparency in federal EA include:

- **Requirement of regular feedback and reporting directly to community, including specific information about how mitigations or accommodations redress the harm to the First Nations' rights and interests.**
- **High-level decision-makers to visit community and spend time on the land.**
- **The federal Crown to recognize our existing process and policies e.g. our regional based consultation protocol, and require Proponents to adhere to it.**

Lack of indigenous involvement and perspectives in effects characterization, significance determination and decision-making

Environmental assessment panels, and the staff that make up the Agency tend to have little understanding of traditional knowledge, Treaty Rights, and the social and economic issues of Aboriginal people. Indeed many of them fail to understand the close connection that Denesuline people have to the land, and that many people continue to live off the land.

> "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" (Diane McDonald, 2016, 4).

There are specific issues that are only experienced by Athabasca Denesuline, because of our unique relationship to the land, and because of our remoteness.

> "The EA process has no understanding of aboriginal people and where they come from in terms or 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 " (Diane McDonald, 2016, 5).

This is generally not understood or appreciated through the process. Our people are remote, they cannot easily travel to Saskatoon, and their voice deserves to be heard.

Athabasca Denesuline are often lumped in with other Nations north of Prince Albert – there is a lack of understanding of our individuality.

> "There is a need to embrace some of the ideas that are in the legislation. For example, there is in CEAA 2012, Section 5(1)(c), that assessment of effects on Aboriginal groups will be done on a "per Aboriginal group" basis, not on an communal basis. We have always been lumped in with all the First Nations north of Prince Albert. We are very different groups, and we want to see real recognition of our individuality, we are the primary impact communities in the Athabasca Basin, where all uranium mines are located, within our traditional territory" (Chief Tsannie, 2016, 4)

The failure to have people who understand our way of life, culture and connection to the land ensures that the determinations of significance are weighted. They privilege the western science point of view, which is often accorded "objective" status. This masks the privilege associated with the dominant culture and the western science viewpoint.

> "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" (Diane McDonald, 2016, 6).

> "The estimations of significance on impacts to Treaty Rights are being done by the hired consultants to the company based on a narrow and limited viewpoint. These estimations don't live up to the standards and promises of protecting the land and our communities because there is no ground truthing of the data or the estimations of impact in the communities" (Chief Sayazie, 2016, p 1 & 2).

The result is that very few decisions take into account the perspective and views of Athabasca Denesuline people, even though they occur on our land. While we may have a strong voice at some points in the process, we are essentially erased in the significance determination stage.

The "public interest" test has also become a very strong test that always tends to outweigh the specific interests of the Athabasca Denesuline. Chief Tsannie clarified this:

> "that broad principle of "public interest" - it seems like no matter how many concerns we bring to light, we are seen as small, "remote" Aboriginal communities. The rights of the people in the south seem to be always given greater weight than our rights. The projects are always going ahead in the "public interest" (2016, 4 & 5).

There are good examples of engagement in EA, and here the Athabasca Denesuline point to the Gunnar project. Chief Rudy Adam describes this:

> "I want to tell you about a good example of engagement - Fond du Lac First Nation was involved in the Gunnar Remediation Project EA with the proponent Saskatchewan Research Council, through the Canadian Nuclear Safety Commission. For us this was a great example of good process because careful and strong relationships were formed between SRC and the communities with the help of CNSC. We were not undermined during this EA process. We were able to come to the table and be directly involved in development of the EA from the beginning. We were asked how the clean up should happen and we were able to share our Traditional Knowledge and know that we were listened to. Our traditional knowledge changed the project – like for example, there was better and stronger monitoring done in areas that we depend on for muskrat harvesting and drinking water. The scientists used our knowledge to protect our ways as they continue to clean up those old abandoned mine sites, it's a starting point and other process should consider this approach with making some recommendations some key issues that still arose during the EA process." (2016, 2).

Specific recommendations from community sessions for good EA practice include:

- **There is a need for more Aboriginal people on panels. "There are very rarely aboriginal people on panels." (McDonald, 2016, 4), and "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. (2016, 5)**
- **Indigenous groups need federally-funded capacity training for our members to be more involved in EA (as panel members, project coordinators, leading our own assessments).**
- **The EA process needs to get closer to communities, including use of scoping in the communities.**
- **Significance estimation for culture, rights, title, and traditional land use should be the purview of a Nation-to-Nation Working Group only.**
- **Panel sessions/hearings/Meetings should be done in our area/small communities if assessing impacts to our area. The adoption of a Mackenzie Valley Review Board style "community hearing" structure more conducive to respectful oral testimony gathering is recommended.**

Better Incorporation of Traditional Knowledge of Athabasca Denesuline in EA

Proponents often conflate both simple engagement with "consultation" and as "traditional knowledge collection", so that one engagement with multiple land users becomes an inaccurate proxy replacement for Project-specific traditional knowledge

and land use occupancy studies. This frustrates our membership immensely. Athabasca Denesuline are not sharing our knowledge to tick a box. Our traditional knowledge (TK) is used by us for decision-making, and it is not anecdotal and needs to be part of EA decision-making. TK can be used for more than baseline information. Too often TK is treated as an afterthought and confined to baseline and not effects assessment.

> "It is important to us that both companies and government clearly understand and agree on what a good TK study is and how it can be used in EA. Coming to our community and talking to us is not a TK study. Consultation is not a TK study. TK collection and analysis must always be conducted by following our communities' protocols. " (Adam 2016, 3).
>
> It must be understood that we are not sharing our knowledge to tick a box. We do not want to see our Knowledge stuck in an appendix at the back of a report. When we share our Knowledge it is to help make decisions. We would like to see a new EA process ensure that strong TK studies are funded and initiated at the beginning. We want to see the projects changed by our TK. For an example, we want to see tailings moved or new tailings management approaches designed based on the findings of our traditional knowledge. We want to see the measures of EA changed and guided by our knowledge. (Adam 2016, 3).

Our nations have to be involved in setting the frame, the approach, and the methods, for traditional knowledge and traditional land use studies. It is critical that our communities set the study parameters and methodology protocols.

When it comes to the assessment of effects on traditional land use (TLU - called "current use of lands and resources for traditional purposes" in the current federal EA system), a biophysical proxy (the mere presence or absence of wildlife within an area) is too often used as the primary metric (along with access) for current use of lands and resources for traditional purposes, when there should in fact be consideration of a multitude of factors that influence our ability to meaningfully practice our Aboriginal and Treaty rights in preferred areas, at preferred times, in preferred ways.

> "There is no consistency in the way use and occupancy is assessed, which really undermines the process. Sometimes a consultant is hired by a company, and they interview a few people and then table a traditional use study without understanding the protocol and methodology, we need to set the parameters and methodology protocols in place when industry is conducting studies, utilizing local experts to assist in these matters. We as First Nations, sometimes find funding to do proper descriptions of our traditional use and knowledge when making our voices heard for such projects in the past." (Chief Coreen Sayazie 2016, 4).

Scientific studies are always started earlier, and always given deeper consideration, than TK and TLU studies. Equal weight has to be given to western science and traditional knowledge, something that has been promised by the new federal government, in new ways. While scientific evidence is peer reviewed, the Athabasca Denesuline need to ensure our TK and if it is interpreted correctly in a Proponent's submissions. If we do not agree, just like in any other peer review, revisions must be made.

> "If other scientific studies are started at the beginning of an EA process, so too, our TK studies. The EA process needs to make sure that this is done and our communities have the support to do it right. Our traditional knowledge can inform many things. TK is critical not only for understanding baseline conditions and what the impacts might be, but it also can inform solutions. When I say solutions, I mean that TK can be integral for developing and designing mitigation and monitoring. TK can and has been successfully and meaningfully included as part of an EA. As I mentioned, through the Gunnar Remediation Project EA we were able to share our Nation's TK and have it inform the clean-up." (Adam, 2016, 3).

Proposed Solutions for the Meaningful Inclusion of TK in EA

- **Require early funding of TK for projects**
- **Look to use TK throughout each stage**
- **Promote verification of any data or assumptions made by Proponent by TK holders**
- **Need more aboriginal federal officials with EA responsibilities who understand importance of TK and TEK**
- **Establish an independent federal (or several regional) TK support office to provide input to federal agencies running EAs, to arbitrate disputes between indigenous groups and Proponents, and generate guidance on incorporation of TK**
- **Develop support and capacity for FN self-directed assessment**
- **Develop guidelines with Aboriginal groups for better assessment**
- **Prohibit estimation of significance of impacts on traditional land use of indigenous groups by Proponent, and fund and support new technical approaches to significance determination**
- **Adoption of multi-criteria "sufficiency of resources" approach to joint indigenous-federal assessment of effects on traditional land use**
- **Improve the federal EA process to recognize Aboriginal and Treaty rights and title issues also includes having clear guidelines on traditional use and occupancy.**
- **Prepare updated federal guidance documents needed for incorporation of TK and TLU**

Socio-Economic Impacts

The impacts of a project on our communities tend to be a neglected area of review. There is a great deal of fondness for – and focus by Proponents on - characterizing the jobs and the business that will come to the region, but critical considerations of what groups have the ability to take advantage of the procurement and employment on offer – most often non-indigenous in-migrants in our case – must be built into the federal EA process.

The scope of the *CEAA* needs to be expanded beyond the indirect effects to characterize indigenous socio-economics, health, and culture (beyond 5(1)(c)) and recognize that expenditures, in-migration, employment and business that come with Projects (non-biophysical changes) can have significant impacts on indigenous groups. There needs to be socio-economic impact assessment guidelines for assessing effects on our communities.

> "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. " (Diane McDonald, 6 & 7).

Recommendations from community meetings for socio-economic impact assessment include:

- **Adopt a federal requirement for assessment of direct socio-economic impact assessment from Projects on Indigenous people to supplement current 5(1)(c) indirect effects assessment requirements, Including food security and the traditional and mixed economies.**
- **CEAA to develop socio-economic impact assessment guidelines for assessing effects specific to indigenous communities.**

Cumulative Effects

Cumulative Effects are inadequately scoped and weakly conducted in environmental assessment. This inadequacy is exacerbated by the fact that smaller sub-threshold projects no longer require an EA as screening level assessments were removed with *CEAA 2012*. In Saskatchewan, we see smaller projects generated from larger projects that go un-assessed, such as ancillary facilities and roads built to support uranium mines. Furthermore, when cumulative effects assessment is undertaken the Athabasca Denesuline have had limited to no engagement in this process. As exploration is increasing in our territory we need to be engaged to a greater capacity in cumulative effects assessment.

> "A failing that we see in environmental assessment is that there is no ability to really consider cumulative effects, or that the consideration is very weak. When there is a uranium mine already operating, we see connector roads, access roads, and more as well as increased exploration in our region. These projects are often too small to get fully assessed, and we find that there is no assessment of potential cumulative environmental effects in this manner, let alone engaging us with these assessments." (Chief Tsannie, 2016, 4).

Recommendations from community for cumulative effects assessment include:

- **Bring back federal Screenings for all projects, especially for smaller projects, with joint federal-indigenous group regional standing committees reviewing whether Projects require a higher level of assessment.**
- **Establish a federal requirement for the EIS to establish total cumulative effects loading to date (and thereby resilience and vulnerability of a Nation to further change) prior to the assessment of effects in the Project Case.**

Implementation of Certificate Conditions and Post EA Follow-up

Presently there is no guarantee that monitoring and mitigation plans, required by Federal EA conditions, will be implemented or implemented effectively. How can we be assured that our rights will be protected if the conditions put in place to avoid and mitigate harm are never carried out? Or do not work as they were intended? We see a need for a condition management process in Federal EA.

> "Being involved in finding solutions is important to us. The Gunnar Remediation Project EA was successful to us because we were involved in developing mitigations. But developing mitigations, monitoring, and other approval conditions is not enough. It is implementation of these conditions successfully that will accommodate our rights. Developing mitigations is a pointless exercise if there is no real commitment to follow through after the EA process is over. Right now we have no guarantee that conditions we support in a Federal EA will ever be undertaken. Furthermore, we have no guarantee that even if conditions are implemented they will be done correctly or will work as they were intended. A solution must be put into place in the new EA process to address this." (Chief Adam 2016, 4).

> "I would like the Expert Panel to look to Saskatchewan as an example of how to ensure successful follow-up after an EA. Saskatchewan has found a way to ensure that conditions are followed through successfully through mandatory reporting. In 2012, Saskatchewan initiated a mandatory conditions management process requiring companies to create and submit a commitments register as part of their EIS. Companies are now required to report annually on how their

> conditions are being followed through on. Having a condition management process as part of the EA process would not only ensure that conditions are being implemented but that they are also effective at addressing environmental impacts. We at Fond du Lac First Nation and the Athabasca Communities would support the institution of a mandatory reporting requirement for approval conditions as part of the New EA process. " (Adam 2016, 4 & 5).

Measures also need to be taken to ensure conditions are in line with their original intent and serving those impacted. The effectiveness of conditions must be monitored and adaptive management employed.

> "[this] …requires day to day monitoring and follow up to see how we the impacts really occur in our communities. " (Chief Sayazie,2016, 2).

Currently, Proponent environmental monitoring/management plans issued in EIS' lack thresholds, triggers, and required actions. In other words, there are no plans in place to act on what you find in monitoring. This is especially the case for impacts to our Treaty rights. The current post-EA consultation process has no accommodation power because failure to establish thresholds and actions with us allows impacts to our Treaty rights to occur. Our caribou are declining, and due to gaps in monitoring plans, we do not know why. Monitoring plans need to be effective to protect our way of life and they cannot be without the inclusion of thresholds, triggers and actions.

> "It doesn't do us any good to monitor caribou or water quality or food safety if there are no plans in place to act on what you find. In the monitoring plans, there has to be a defined point that will trigger action to make things right if you find something is wrong. Instead of assuming a project won't have a significant effect, there also needs to be a plan for how you will measure those effects, and how you will manage any negative outcomes. " (Chief Sayazie,2016, 2 & 3).

> "On the topic of caribou, the numbers have declined in most regions, and we have a very hard time answering the question of what it was that caused the decline. If you lived off the land for 12 months of the year, and now you're not able to use that wildlife for subsistence, how do you prove why they have declined? Not only is it harder and harder for our harvesters to find wildlife for subsistence, there's no way for us to know if the ones that do remain are safe for us to eat. Our confidence in the food we have traditionally relied on is getting smaller and smaller because there is no certainty in what is going to happen to our wildlife. These impacts to caribou, fish, water levels, and so on, are all impacts to our Treaty rights because we rely on these things for our individual subsistence and for our communities and cultures to thrive." (Chief Sayazie, 2016, 3)

Recommendations from community sessions for improving post-EA follow up include:

- **Mandatory reporting requirement to be established for approval conditions**
- **Minimum pre-, during- and post-construction indigenous monitoring and management conditions in all federal EA Decision Statements, and more involvement of Aboriginal communities in the development and implementation of monitoring and other mitigation plans, and local hiring of Indigenous monitors**
- **Co-management of compliance and enforcement between federal Crown and indigenous groups**
- **Ensure that monitoring is planned for the protection of Treaty rights**
- **Ensure that there is rotation of the time of year and areas where testing occurs**
- **Monitoring plans must involve the contracting of different companies (non-biased) & independent groups doing environmental testing**
- **Review and tracking of contaminants in our traditional foods, berries – natural foods and animals within the area**
- **Federal funding for environmental training for First Nations members and meaningful involvement in project monitoring (i.e., Indigenous Guardians)**
- **Build an empowered post-EA consultation and accommodation framework that allows for adoption of additional mitigation, monitoring and accommodation measures into federal Decision Statements and regulatory instruments.**

Final Considerations for Protecting Aboriginal and Treaty rights and title in EA

We trust that the Panel will faithfully consider our recommended changes and embrace what virtually all Canadian indigenous groups have stated – that the federal EA system is broken - and in a world where Free, Prior and Informed Consent and a Nation-to-Nation based, reconciliation-focused decision-making process is required, that fundamental, rather than incremental, changes are necessary to the federal EA process.

We have left the last word for one of our Chiefs:

> "We are not against economic development, but it needs to be a balanced approach. Part of that approach needs to include recognizing our Treaty rights as fundamentally important, involving us in monitoring any impacts to those rights, and having guidance on determining traditional use and occupancy. We would like you, the Panel, to take this review seriously because the changes you make or don't make have real impacts on us. We want to see the process changed so that our Treaty rights are given due weight and consideration in making project decisions so that we don't have to compromise our rights in the name of development".
>
> "If your process is done in a way that respects aboriginal and treaty rights, there

wouldn’t be a lot of court cases where we have to prove our rights. That is the last resort that we have when we feel our arguments to the regulatory processes are not strongly considered. That part of that process needs to change. You have to weigh that information in the balance. We need to avoid those decisions and approaches by the agencies so that aboriginal people are respected (Chief Sayazie Speech, 2016, 5).

References

Adam, Chief Rudy. 2016. Presentation to EA Review Panel. EA Review Panel Session: September 20, 2016. Saskatoon, SK.

McDonald, Diane. 2016. Presentation to EA Review Panel. EA Review Panel Session: September 20, 2016. Saskatoon, SK.

Sayazie, Chief Coreen. 2016. Presentation to EA Review Panel. EA Review Panel Session: September 20, 2016. Saskatoon, SK.

Tsannie, Chief Bart. 2016. Presentation to EA Review Panel. EA Review Panel Session: September 20, 2016. Saskatoon, SK.

Appendix 1: Summary of Recommendations

- CEAA to provide funding for, or require proponent funding for, more community (individual Aboriginal groups) directed social, economic, cultural and traditional use studies so that the impacts on rights in the current and Project Cases can be established by the rights holders themselves.
- Require that the results of these studies are in the Proponent's Environmental Impact Statement (EIS), not delegated to a later stage of the assessment. In other words, a finding of EIS Completeness should not be issued without adequate data from affected First Nations being integrated.
- CEAA to work with Aboriginal groups to develop better guidance on how to assess indirect effects on specific indigenous groups under Section 5(1)(c) of *CEAA 2012.*
- Enshrine in legislation a requirement to assess impacts on Aboriginal and Treaty rights and title issues in federal EA.
- CEAA to develop in consultation with indigenous groups federal guidelines on how rights and title impacts will be assessed.
- Design clear guidance for protection of sacred sites, archaeological sites, and protection of Treaty 10 rights.
- Ensure continual engagement and consultation of community members, trappers, land users, fisher's throughout the EA process..
- Federal legislative revisions incorporating the spirit and intent of FPIC into the federal EA process by defining in federal EA legislation and policy how UNDRIP will be adhered to, including but not limited to FPIC..
- There needs to be substantial engagement of affected indigenous groups at each critical juncture of legislative review and change.
- Enhanced federal funding capacity for community-developed consultation and engagement protocols.
- CEAA to issue early community engagement guidelines, including defining early engagement and how it will be tracked at the indigenous community level.
- First Nation involvement in setting timelines for EAs on a case-by-case basis through direct consultation with the federal Crown agency.
- Ensure notification timelines are reviewed and accepted by nations.
- Replacement of the federal 305 day "clock" with joint decision-making process on information sufficiency at different steps in EA, with ability to stop the process to fill critical information gaps.
- Require the completion of indigenous studies prior to the acceptance of the EIS, so EIS completeness test criteria includes the completion of Traditional Use and Occupancy studies and other community-led studies being completed.
- Develop a roster of federally-funded Subject Matter Experts available to support indigenous groups via third party review of technical EA submissions.
- Conduct more technical sessions on Working Group pre-defined topics during EIS review.

- Provide further federal funding to environmental assessment training for First Nations members.
- Develop a federal funding approach for First Nations Major Project Coordinators on a Nation-by-Nation level.
- Requirement of regular feedback and reporting directly to community, including specific information about how mitigations or accommodations redress the harm to the First Nations' rights and interests.
- High-level decision-makers to visit community and spend time on the land.
- The federal Crown to recognize our existing process and policies e.g. our regional based consultation protocol, and require Proponents to adhere to it.
- There is a need for more Aboriginal people on panels. "There are very rarely aboriginal people on panels." (McDonald, 2016, 4), and "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. (2016, 5)
- Indigenous groups need federally-funded capacity training for our members to be more involved in EA (as panel members, project coordinators, leading our own assessments).
- The EA process needs to get closer to communities, including use of scoping in the communities.
- Significance estimation for culture, rights, title, and traditional land use should be the purview of a Nation-to-Nation Working Group only.
- Panel sessions/hearings/Meetings should be done in our area/small communities if assessing impacts to our area. The adoption of a Mackenzie Valley Review Board style "community hearing" structure more conducive to respectful oral testimony gathering is recommended.
- Require early funding of TK for projects
- Look to use TK throughout each stage
- Promote verification of any data or assumptions made by Proponent by TK holders
- Need more aboriginal federal officials with EA responsibilities who understand importance of TK and TEK
- Establish an independent federal (or several regional) TK support office to provide input to federal agencies running EAs, to arbitrate disputes between indigenous groups and Proponents, and generate guidance on incorporation of TK
- Develop support and capacity for FN self-directed assessment
- Develop guidelines with Aboriginal groups for better assessment
- Prohibit estimation of significance of impacts on traditional land use of indigenous groups by Proponent, and fund and support new technical approaches to significance determination
- Adoption of multi-criteria "sufficiency of resources" approach to joint indigenous-federal assessment of effects on traditional land use

- Improve the federal EA process to recognize Aboriginal and Treaty rights and title issues also includes having clear guidelines on traditional use and occupancy.
- Prepare updated federal guidance documents needed for incorporation of TK and TLU
- Adopt a federal requirement for assessment of direct socio-economic impact assessment from Projects on Indigenous people to supplement current 5(1)(c) indirect effects assessment requirements, Including food security and the traditional and mixed economies.
- CEAA to develop socio-economic impact assessment guidelines for assessing effects specific to indigenous communities.
- Bring back federal Screenings for all projects, especially for smaller projects, with joint federal-indigenous group regional standing committees reviewing whether Projects require a higher level of assessment.
- Establish a federal requirement for the EIS to establish total cumulative effects loading to date (and thereby resilience and vulnerability of a Nation to further change) prior to the assessment of effects in the Project Case.
- Mandatory reporting requirement to be established for approval conditions
- Minimum pre-, during- and post-construction indigenous monitoring and management conditions in all federal EA Decision Statements, and more involvement of Aboriginal communities in the development and implementation of monitoring and other mitigation plans, and local hiring of Indigenous monitors
- Co-management of compliance and enforcement between federal Crown and indigenous groups
- Ensure that monitoring is planned for the protection of Treaty rights
- Ensure that there is rotation of the time of year and areas where testing occurs
- Monitoring plans must involve the contracting of different companies (non-biased) & independent groups doing environmental testing
- Review and tracking of contaminants in our traditional foods, berries – natural foods and animals within the area
- Federal funding for environmental training for First Nations members and meaningful involvement in project monitoring (i.e., Indigenous Guardians)
- Build an empowered post-EA consultation and accommodation framework that allows for adoption of additional mitigation, monitoring and accommodation measures into federal Decision Statements and regulatory instruments.