

# Smith's Landing First Nation

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Dear Ms. Saely and Mr. Murphy,

Thank-you for providing the Smith's Landing First Nation with a copy of the Draft Environmental Impact Statement ("EIS") Guidelines for the proposed Site C Project.

Smith's Landing First Nation has reviewed reviewed the Draft EIS Guidelines, and are providing these comments for further discussion with the Crown and with the proponent, BC Hydro. While SLFN is pleased to see some positive steps taken in these Draft Guidelines, we remain concerned about several issues. One of our specific concerns is the lack of attention given to potential downstream effects. As a signatory to Treaty 8, we also share many of the other concerns raised by Treaty 8 BC and other Treaty 8 First Nations in Alberta and have indicated that by providing additional general and specific comments.

## GENERAL COMMENTS

### **Role of the CEAA and CEA Agency Policy in Cooperative Environmental Assessments with British Columbia**

With the signing of the JRP Agreement in February 2012, the federal and provincial governments agreed on a cooperative process to assess the environmental effects of the proposed Site C Project.

Based on the Canada-British Columbia Agreement for Environmental Assessment Cooperation (2004), the lead party for this environmental assessment is British Columbia.<sup>1</sup> The designation of British Columbia as the lead party has implications for how the environmental assessment will be carried out, and how the information requirements (i.e. the EIS Guidelines) need to be prepared:

*"Cooperative environmental assessment" means the environmental assessment of a project where Canada and British Columbia both have an environmental assessment responsibility and they cooperate through the Lead Party's assessment process, to meet the legal environmental assessment requirements of both Parties through a single environmental assessment.<sup>2</sup>*

*The Parties will make every reasonable effort to agree, as early in the review as practicable, and, where British Columbia is the lead Party, no later than the finalization of information requirements for the application on a common set of information requirements to allow both Parties to fulfill their respective environmental assessment responsibilities and to produce a single environmental assessment report.<sup>3</sup>*

Our understanding, based on the above, is that the BC EAO Application Information Requirements Template forms the starting point for the development of the information requirements for the assessment, and this Template is augmented to address federal requirements. This understanding is consistent with Agency policy outlined in Guidelines for the Preparation of an Environmental Impact Statement for the Comprehensive Study Process Pursuant to the *Canadian Environmental Assessment Act* (the "CEAA Guidance Document"):

*In situations where there is a coordinated federal/provincial environmental assessment (EA) being conducted and the province is the lead Party, these Guidelines [i.e. the*

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<sup>1</sup> Government of Canada and British Columbia. March 11, 2004. Canada-British Columbia Agreement for Environmental Assessment Cooperation, at p.5.

<sup>2</sup> *Ibid*, at p.1.

<sup>3</sup> *Ibid*, at p.4.

CEAA Guidance Document] are meant to complement rather than duplicate any provincial specific guidelines or terms of reference.<sup>4</sup> (our underlining)

In “complementing” the Province’s specific guidelines or terms of reference, the Draft EIS Guidelines are to address those matters contained in the CEAA Guidance Document and in the *Canadian Environmental Assessment Act* (the “CEAA”) in a manner that complements and does not duplicate the information requirements of the BC EAO Application Information Requirements Template.

While the above appears to provide relatively straightforward advice for the preparation of the Draft EIS Guidelines, there are several concerns with the actual content of the Draft EIS Guidelines. These are discussed below.

### **Limited Consideration of the CEAA and Agency Policy**

In preparing the Draft EIS Guidelines, BC Hydro has relied exclusively on the BC EAO Template. BC Hydro acknowledged this at the Working Group meeting on March 1 in Fort St. John. This approach is inconsistent with the Agreement on EA Cooperation, contrary to CEAA policy and, unaddressed, would result in Final EIS Guidelines that do not meet the requirements of the CEAA. Importantly, these EIS Guidelines are substantially different from those for other similar projects within Canada, including competing energy projects within British Columbia.<sup>5</sup> This sets a double standard in which there is one set of rules for a Provincial Crown proponent and a second set of rules for everyone else.

Throughout our comments, we have attempted to indicate instances where the requirements of the CEAA Guidance Document need to be addressed in the Draft EIS Guidelines. However, we anticipate that the federal Agencies and Responsible Authorities will undertake a thorough review of the Draft EIS Guidelines to ensure that CEAA policy is addressed and the requirements of the CEAA are met.

### **Aboriginal Traditional Knowledge**

The Terms of Reference for the JRP Agreement scope thirteen factors for consideration in the environmental assessment.<sup>6</sup> All of these factors are scoped in the Draft EIS Guidelines, with the exception of “community knowledge and Aboriginal traditional knowledge”. For reasons that are unclear, the Draft EIS Guidelines make no effort to scope this factor, making only a single mention of it (in s.8.5.2).

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<sup>4</sup> CEAA. 2011. Guidelines for the Preparation of an Environmental Impact Statement for the Comprehensive Study Process Pursuant to the *Canadian Environmental Assessment Act*, at p.1.

<sup>5</sup> See “ BC EAO and CEAA. March 2009. Bute Inlet Hydroelectric Project. Proposed By Bute Hydro Inc. Terms of Reference for an Application for an Environmental Assessment Certificate Pursuant to the British Columbia *Environmental Assessment Act* and Guidelines for the Preparation of an Environmental Impact Statement Pursuant to the *Canadian Environmental Assessment Act*.

<sup>6</sup> Agreement To Conduct a Cooperative Environmental Assessment, Including the Establishment of a Joint Review Panel, of the Site C Clean Energy Project Between The Minister of the Environment, Canada and The Minister of Environment, British Columbia. February 2012, at p.14.

Aboriginal traditional knowledge is integral to the assessment process. The Draft EIS Guidelines do not currently provide any role for Aboriginal traditional knowledge. This deficiency could be addressed as follows:

- by including Aboriginal traditional knowledge as a guiding principle for the environmental assessment, consistent with other environmental assessments in Canada
- by incorporating and considering Aboriginal traditional knowledge throughout the environmental assessment and the preparation of the EIS, not only in the context of Chapters 15 and 20 of the EIS, as currently proposed in the Draft EIS Guidelines

“Guiding Principles” are addressed below, and we have identified in the Draft EIS Guidelines where Aboriginal traditional knowledge could be relevant to the environmental assessment.

### **Guiding Principles**

It is standard practice for EIS Guidelines to include guiding principles to provide adequate direction to the proponent and Panel in conducting the assessment, and to government agencies, interveners, Aboriginal groups and the public in reviewing the EIS and participating in the assessment. Examples of core principles from recent environmental assessments are summarized in Table 1 below.

Since BC Hydro did not consider the CEEA Guidance Document when preparing the draft EIS Guidelines, principles are not included. The CEEA Guidance Document provides language for inclusion in the Draft EIS Guidelines in relation to each of the principles contained in Table 1, with the exception of “recognition of Treaties and/or land claims”. We are requesting that a section entitled Guiding Principles be included in Section 1 of the Draft EIS Guidelines and include the following:

- Environmental Assessment as a Planning Tool
- Public Participation
- Aboriginal Consultation
- Aboriginal Traditional Knowledge and Community Knowledge
- Sustainable Development
- Precautionary Approach
- Use of Existing Information
- Recognition of Treaties

We request that the language for the first seven Guiding Principles be taken directly from sections 2.1 through 2.7, inclusive of the CEEA Guidance Document.<sup>7</sup> We are proposing the following language for Recognition of Treaties:

*Treaty 8 governs the relationship of aboriginal people to the land where the Project will be located. Treaty 8 covers northeastern British Columbia, two-thirds (2/3) of Alberta,*

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<sup>7</sup> CEEA. 2011. Guidelines for the Preparation of an Environmental Impact Statement for the Comprehensive Study Process Pursuant to the *Canadian Environmental Assessment Act*, at p.1-5.

northwestern Saskatchewan, and a large portion of the southern and southeastern Northwest Territories. The Crown's promises under the Treaty included that the Indians would have the same means of earning a livelihood after the Treaty as existed before it; that the Indians would be as free to hunt and fish after the Treaty as they would be if they never entered into it; and that the Treaty would not lead to "forced interference with their mode of life. Five Treaty 8 First Nations in northeastern British Columbia are engaged with the federal and provincial governments in negotiations to settle their outstanding Treaty Land Entitlement claims. These negotiations will result in the creation of new Treaty 8 reserve lands in northeastern British Columbia and northwestern Alberta.

**Table 1: Typical Environmental Assessment Principles**

Project	EA as a Planning Tool	Aboriginal and Public Consultation	Aboriginal Traditional and Community Knowledge	Sustainable Development	Precautionary Principle	Use of Existing Information	Recognition of Treaties and/or Land Claims
Bute Inlet Hydro		X	X	X	X	X	
Mackenzie Pipeline			X	X	X		X
Marathon Mine	X		X	X	X		
Darlington Nuclear	X	X	X	X	X	X	
Eastmain Hydro	X	X	X	X			X
Lower Churchill	X	X	X	X	X		

## **Need, Purpose and Alternatives to the Project**

### ***Need and Purpose***

Section 4.3 states the proposed purpose of the Project as follows:

*The purpose of the Project is to maximize the development of the hydroelectric potential of the Peace River between BC Hydro's Peace Canyon generating station and the site of the proposed Site C dam and generating station in a cost effective manner.*

As stated in s.4.1 of the Draft EIS Guidelines, the "need for the Project will be demonstrated using BC Hydro's most recent load-resource balance"...and the "EIS will present the need for the Project in terms of forecasted electricity demand and in economic terms..."

Clearly, the "need" that forms the rationale for the Project is one for electricity and not one for "maximizing the development of the hydroelectric potential of the Peace River." This is also evident from the 1980 EIS:

*The Peace Site C hydro project is proposed by B.C. Hydro to meet [electricity] load*

*growth deficits...*<sup>8</sup>

Since the purpose of the Project provides the context for consideration of alternatives, the Draft EIS Guidelines as written would preclude all alternatives that did not “maximize the development of the hydroelectric potential of the Peace River between BC Hydro’s Peace Canyon generating station and the site of the proposed Site C dam and generating station”. This would mean all supply alternatives not located on the Peace River could not fulfill the “purpose” of the Project.

With respect to “cost effectiveness”, BC Hydro’s vision, objectives, and values include six core objectives, as follows:

[1] Safely Keep the Lights On

- Reliably meet the electricity needs of our customers through integrated planning, technology and safely operating, maintaining and advancing our system.

[2] Succeed Through Relationships

- Gain support for our work by building trusted relationships with customers, suppliers, First Nations and the communities we serve.

[3] Mind Our Footprint

- Create a sustainable energy future in British Columbia by carefully managing our impacts on the environment and fostering an energy conservation and efficiency culture.

[4] Foster Economic Development

- Foster economic development opportunities across B.C. through our projects, practices and advancement of the clean energy sector.

[5] Maintain Competitive Rates

- Deliver value for B.C. and maintain competitive rates by efficiently and responsibly managing our business.

[6] Engage a Safe and Empowered Team

- Empower a team that is innovative, prepared for the future and committed to safety

The inclusion of the phrase “in a cost-effective manner” supports objective 5, and to some extent objectives 1 and 6, but excludes objectives 2, 3 and 4. Since s.4.1 of the Draft EIS Guidelines already requires the EIS to describe how the Project addresses BC Hydro’s vision, objectives, and values, the inclusion of this phrase “in a cost-effective manner” in the purpose is not necessary.

We request that the purpose of the Project be written to reflect the actual need it is intended to address, in a manner consistent with BC Hydro’s own corporate objectives:

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<sup>8</sup> BC Hydro. July 1980. Peace Site C Project Environmental Impact Statement. Report No. SE 7910. System Engineering Division.

*The purpose of the Project is to generate, transmit and supply electricity to meet the need for electricity in British Columbia.*

### **Alternatives to the Project**

The EIS Guidelines make reference to the requirements of the Clean Energy Act with respect to assessment of the need and alternatives to the Project. We note, for the consultation record, that we were not consulted on the *Clean Energy Act* prior to its enactment. This is relevant because of the severe restrictions put in place by the *Act* that limit the consideration or development of feasible alternatives to the proposed Site C Project. The *Act* is designed such that inclusion of Site C within the preferred portfolio of the Integrated Resources Plan to meet the potential future electricity needs of the Province is substantially encouraged. We note, among many examples:

- all of the large-scale hydro-electric projects contemplated in the 2008 Long-term Acquisition Plan (LTAP) have been excluded from further consideration in Schedule 2 of the *Act*;
- section 3(5) of the *Act* requires that BC Hydro must plan to rely on no energy and no capacity from the existing Burrard natural gas facility, except in the case of emergency or as authorized by regulation; and
- the self-sufficiency requirements in section 6 of the *Act* make it impossible for BC Hydro to meet customer requirements with imported electricity.

The purpose as framed in the Draft EIS Guidelines casts different hydroelectric schemes on the Peace River as “alternative means” rather than “alternatives to” the proposed Project. As with alternatives to the Project, the alternative means are limited to those that “maximize the hydroelectric potential of the Peace River between BC Hydro’s Peace Canyon generating station and the site of the proposed Site C dam and generating station”. Such an approach would mean that smaller-scale hydroelectric developments on the Peace River would not even be considered since they would not meet the “maximization” criterion. We view this as further rationale for changing the stated purpose of the Project in the Draft EIS Guidelines.

### **Valued Components**

The BC EAO and CEAA policy documents take somewhat different approaches to dealing with valued components. However, neither the BC EAO nor CEAA policy documents require the identification or finalization of valued components within EIS Guidelines.

The BC EAO Template for the preparation of Draft Application Information Requirements indicates that:

- *A preliminary list [of VCs] must be provided in the AIR [i.e. Final EIS Guidelines] for purposes of discussion with EAO, CEAA and the Working Group.*<sup>9</sup>

*The Proponent must commit to provide the following in the Application:*

- *Describe the rationale for choosing and assessing the specific VEC;*

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<sup>9</sup> BC EAO. October 4, 2010. Application Information Requirements Template: With Respect to an Application for an Environmental Assessment Certificate pursuant to the *Environmental Assessment Act*, S.B.C. 2002, C.43, at p.11.

- *Provide detailed baseline information on the VEC and the source of the information;*
- *Identify past, present or future projects/activities that may impact the VEC; and,*
- *Describe traditional ecological or community knowledge, where available.<sup>10</sup> (our underlining)*

The CEAA Guidance Document indicates the following:

*The EIS Guidelines outline the minimum information requirements while providing the proponent with flexibility in selecting methods to compile data for the EIS.<sup>11</sup>*

*The EIS must explain and justify methods used to predict the effects of the project on each VEC, which includes biophysical and socio-economic components, the interactions among these components and on the relations of these components within the environment.<sup>12</sup> (our underlining)*

The approach to valued components (VCs) outlined in the Draft EIS Guidelines appears to confuse what is required in the EIS Guidelines versus what is required in the EIS.

We are concerned by this approach, since it is our understanding that the Final EIS Guidelines will be “deemed to be incorporated into the JRP Agreement” upon their approval in late May. The JRP Agreement can only be changed by the Director of the EAO and the Minister, meaning that VCs would be locked-in for the duration of the environmental assessment, as changes are rarely made to a JRP Agreement.

Finalizing the valued components within the EIS Guidelines has the effect of determining the most important effects of the proposed Project before the effects assessment has even started.

This would have several negative consequences:

- **Incomplete project and baseline information:** VCs would be determined prior to public or Aboriginal consultation on details of the project components and activities as well as completed baseline information, since this information has not yet even been made completely available, so finalization of the VCs would thus occur in the absence of this important knowledge;
- **No impact pathway analysis:** VCs are normally determined following an impact pathway analysis or similar exercise designed to identify pathways or interactions between project components and activities and environmental components, such an exercise is not planned in relation to First Nation issues and concerns until later this summer, after finalization of the EIS Guidelines;
- **Make everything a VEC or just guess:** Lacking an impact pathway analysis, the VCs must be either extremely generalized ( e.g. “wildlife resources”, “fish and fish habitat”, etc.) as is

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<sup>10</sup> *Ibid*, at p. 15.

<sup>11</sup> CEAA. 2011. Guidelines for the Preparation of an Environmental Impact Statement for the Comprehensive Study Process Pursuant to the *Canadian Environmental Assessment Act*, at p.1.

<sup>12</sup> CEAA. 2011. Guidelines for the Preparation of an Environmental Impact Statement for the Comprehensive Study Process Pursuant to the *Canadian Environmental Assessment Act*, at p.12.

the case in the Draft EIS Guidelines or would need to be “best guesses” recognizing that they could not later be changed due to the “deemed incorporation” approach;

- **Unreasonable expectations**: In the absence of a completed baseline, detailed information on project interactions and an impact pathway analysis, it is not reasonable or appropriate to expect that Aboriginal groups or any other members of the Working Group could comment on the finalization of the proposed VCs for inclusion in the Final EIS Guidelines;
- **Meaningless consultation**: Once the VCs are finalized in the EIS Guidelines, It would be meaningless for Aboriginal groups or the public to participate in consultations concerning the effects assessment since the valued components and key indicators would already be finalized and unable to be changed;
- **Crown commitments not met**: Including final VCs in the EIS Guidelines would undermine regulatory commitments to timely and meaningful public participation and Aboriginal consultation throughout the environmental assessment process,<sup>13</sup> since it would deprive the public and Aboriginal groups of the ability to provide informed comments, and would therefore also deprive the Panel and decision-makers of the benefit of the best available information.

In summary, we view the proposed VCs and key indicators as preliminary, for illustrative purposes only, and open to further discussion and consultation throughout the environmental assessment. We have provided preliminary comments on that basis. We recognize and expect that the proponent will submit its understanding of the VCs and key indicators in the EIS.

We request that the VCs and the key indicators be either deleted from the Draft EIS Guidelines or included simply as a list of “suggested VCs” and “preliminary key indicators” with the caveat that “none of the suggested VC’s in this list have been reviewed against the criteria for establishing those that will be included in the final assessment,”<sup>14</sup> an approach taken by the EAO in relation to the assessment of the Northwest Transmission Line, a recent BC Hydro project.

### **Spatial Boundaries and Minimum Consideration of Downstream Effects**

As with the proposed VCs, the inclusion of spatial boundaries in the Final EIS Guidelines is premature, contrary to established EAO and CEAA policy, and would have similar consequences, including for public participation and Aboriginal consultation.

The EAO template for the preparation of Draft Application Information Requirements indicates that:

*The Proponent must commit to provide the following in the Application:*

- *Describe the local and regional spatial extent of the EA relative to the VCs; and,*

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<sup>13</sup> CEAA, s 4(1)(d).

<sup>14</sup> BC EAO. December 7, 2009. Northwest Transmission Line Proposed Project Application Information Requirements for an Application for an Environmental Assessment Certificate, at p.5-4.

- *Provide maps outlining the spatial extent of the regional and local study areas of the EA. (our underlining)*

The CEAA Guidance Document indicates the following:

*Clearly indicate the spatial boundaries to be used in assessing the potential adverse and beneficial environmental effects of the proposed project. The EIS must contain a justification and rationale for all boundaries chosen. It is important to note that the special boundaries for each VEC may not be the same.*<sup>15</sup> (our underlining)

We view any spatial or temporal boundaries provided in the Draft EIS Guidelines as preliminary, for illustrative purposes only, and open to further discussion and consultation throughout the environmental assessment. We have provided preliminary comments on the spatial and temporal boundaries on that basis.

With respect to spatial boundaries related to water quality, fish habitat and other potential VCs, we are concerned by the very limited and inconsistent scoping of these spatial boundaries. Since “fish and fish habitat” is a proposed VC, there is no basis to having different study areas for different aspects of fish habitat. Our preference is to have any specific spatial boundaries be deleted from the Draft EIS Guidelines. However, if “suggested” or preliminary spatial boundaries for downstream effects are retained, they need to extend to the Peace Athabasca Delta. The onus would then be on the proponent to assess in the EIS the extent to which there would or would not be direct or cumulative effects downstream.

## **Cumulative Effects**

### ***Previous Projects and Activities***

In order to assess the cumulative environmental effects of the proposed Project and the cumulative implications for Section 35(1) rights, the initial case for consideration or the “baseline case” must include the historical circumstances, since these circumstances are essential to the understanding of the seriousness of the potential impacts on established Treaty rights, and which circumstances would include the WAC Bennett Dam, Peace Canyon Dam and the Peace Project Water Use Plan.<sup>16</sup>

We note, for example, the conclusions of the recent Joint Review Panel Report for the proposed Lower Churchill Hydroelectric Generation Project:

*Nevertheless, the Panel recognized the importance, common to all Aboriginal persons, of practicing traditional activities within the entire extent of their traditional territory and the fact that for many groups, any effect from the Project on their practice of traditional activities would act cumulatively with impacts caused by the development of the earlier Churchill Falls project. (our emphasis)*

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<sup>15</sup> CEAA. 2011. Guidelines for the Preparation of an Environmental Impact Statement for the Comprehensive Study Process Pursuant to the *Canadian Environmental Assessment Act*, at p.12.

<sup>16</sup> *West Moberly First Nations v. British Columbia (Chief Inspector of Mines)*, 2011 BCCA 247, at s.117.

The approach to the baseline case proposed by BC Hydro is identical to that proposed by Nalcor for the Lower Churchill Hydroelectric Generation Project. Here is what the Lower Churchill JRP had to say about the outcomes of the approach:

*The Panel concluded that Nalcor’s approach to cumulative effects assessment was less than comprehensive and that participants had raised valid concerns that contributed to a broader understanding of the potential cumulative effects of the Project. The Panel recognized the challenges involved, including limited information about past projects such as the Churchill Falls project, and the built-in disincentive for proponents to identify adverse cumulative effects when they are perceived as a potential threat to project approval.*

For the proposed Site C Project, the appropriate approach is to gather the available historical information pertaining to the WAC Bennett Dam and Peace Canyon Dam in order to create a pre-industrial (i.e. ~1950s) baseline, and to identify the limitations in this information. Such historical information could then be used to recreate, using modern mapping and related techniques and professional expertise and judgment, a picture of the ecosystem prior to construction of the WAC Bennett Dam and Peace Canyon Dam, and then determine the cumulative effects of the multiple projects and activities on the environment and on Section 35(1) rights. The information used to create the pre-industrial baseline would have been collected by BC Hydro in order to construct the WAC Bennett Dam or could be readily extrapolated from existing sources, and includes:

- historical air photos;
- geomorphological data;
- hydrological data;
- vegetation mapping;
- topographical maps;
- Aboriginal traditional knowledge;
- local knowledge; and
- historical documentation.

### ***Complete Description of the Project for Assessment***

We are concerned that the Project as proposed in the Project Description Report is not the entirety of “the scope of the project in relation to which an environmental assessment is to be conducted”, as per Section 15 of the CEAA.

Specifically, the Proponent has omitted from the Project Description Report aspects of the “project in relation to which an environmental assessment is to be conducted”, including:

- the flood reserve established in 1957 in the Peace River valley between Hudson’s Hope and Taylor that is essential to the Project, and serves no purpose other than in relation to the development of the Project; and
- the transmission right of way on the south side of the Peace River through the Peace-Moberly tract established prior to 1980 for the purposes of developing the Project.

The project in relation to which an environmental assessment is to be conducted” must include the above aspects *at the time they were put into place*. This position is consistent with that put forward in BC Hydro’s own documentation:

*A primary mechanism for the Project’s impact on land and resource use activities is its (actual or potential) displacement of these activities on the land base. For this reason the baseline focuses on the status of (actual or potential) land and resource use activities in the Project footprint. The Project footprint for the purposes of this baseline*

*is the proposed flood line, dam site area and transmission line ROW as presented in the initial application of 1980.*<sup>17</sup> (our underlining)

We support the identification of the Future Case without the Project, provided that the Project is properly described, and particularly so that it includes removal of the flood reserve and transmission right of way describe above.

### ***Future Projects and Activities***

We are aware, based on materials filed in relation to the Integrated Resources Planning process and public statements by Premier Christy Clark, that the proposed Site C project is “needed” only in relation to the Province’s proposed natural gas strategy. As such, eventual transmission infrastructure to natural gas load sources in the Horn River Basin and/or along the BC Coast are for all intents and purposes part of the “project in relation to which an environmental assessment is to be conducted”.

We note that the Project Inclusion List is not consistent with CEAA policy, which states:

*Cumulative effects are defined as changes to the environment due to the Project where those overlap, combine or interact with the environmental effects of other past, existing or reasonably foreseeable projects or activities.*<sup>18</sup> (our underlining).

The Future Case without the Project and the Project Case need to include past and existing projects or activities as well as reasonably foreseeable projects, which would include not only those that are registered for environmental assessment but also those facilitated by the development of the proposed Project, or which are necessary for the development to fulfill its need.

### **Current Use of Lands and Resources by Aboriginal Persons**

The CEAA defines “environmental effect” as including “any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the Species at Risk Act” (2(a)) and “any effect of any [such] change on the current use of lands and resources for traditional purposes by aboriginal persons” (2(b)(iii)).

As such, wherever the CEAA requires evaluation of environmental effects, this will include analysis of the proposed Project’s impact on “current use” of resources by aboriginal people for traditional purposes.

What is less clear in the CEAA is the intended meaning of the term “current use”, or for that matter how information respecting “current use” should be documented. The CEAA Guidance Document also provides no direction on this issue.

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<sup>17</sup> Lions Gate Consulting Inc. December 2009. Volume B – Land and Resource Uses: Preliminary Socio-Economic Baseline and Effects Assessment Methodology. Site C Hydro Project. Prepared on behalf of BC Hydro.

<sup>18</sup> Government of Canada and Government of Newfoundland and Labrador. July 2008. Environmental Impact Statement Guidelines: Lower Churchill Hydroelectric Generation Project Newfoundland and Labrador Hydro, at p.35.

In terms of the BC environmental assessment requirements, the EAO template for the preparation of Draft Application Information Requirements provides clearer direction and indicates that:

*The Proponent must commit to provide the following in the Application:*

- *Identify past, present and anticipated future uses of the proposed project area by aboriginal groups*

As discussed above, in order for the assessment to provide valuable information for the assessment of the cumulative effects of the Project on asserted Aboriginal rights and existing Treaty Rights, the EIS Guidelines must conform to the requirements of the BC EAO template. Specifically, prior information must be gathered back to the late 1950s, and future uses must extend forward at least 20 years, a time period within which future uses can be reasonably predicted.

Based on the above information, we request that the “current use of lands and resources by Aboriginal persons for traditional purposes” be clarified to also include past and future uses. This interpretation could be included as a definition at the outset of the Draft EIS Guidelines, or noted in the context of each time this term is used. In our specific comments, we have suggested the latter approach, but a proper definition could also be appropriate.

### **Aboriginal Rights**

The CEAA Guidance Document provides direction to proponents in preparing the EIS and conducting the environmental assessment, including the following:

*To assist the federal Crown in its consultation process, the proponent is required to describe in the EIS how the concerns respecting Aboriginal people will be addressed. That description should include a summary of discussions, the issues or concerns raised, and should consider and describe any asserted or established Aboriginal rights, Aboriginal title and Treaty rights. The EIS must document the potential impact of the project on asserted or established Aboriginal rights, Aboriginal title and Treaty rights, and the measures to prevent, mitigate, compensate or accommodate those potential effects.<sup>19</sup>*

*The proponent will include a consideration of... Measures that are technically and economically feasible and that would accommodate any adverse impact of the project on potential or established Aboriginal and Treaty rights;<sup>20</sup>*

*VECs that fall outside the mandate of the EA may also be included in order to assess the potential adverse impact of the project on potential or established Aboriginal and Treaty rights.<sup>21</sup>*

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<sup>19</sup> CEAA. 2011. Guidelines for the Preparation of an Environmental Impact Statement for the Comprehensive Study Process Pursuant to the *Canadian Environmental Assessment Act*, at p.2-3.

<sup>20</sup> CEAA. 2011. Guidelines for the Preparation of an Environmental Impact Statement for the Comprehensive Study Process Pursuant to the *Canadian Environmental Assessment Act*, at p.11.

*The EIS should outline for each Aboriginal group identified by the Crown:*

- ...
- *Description of the traditional territory and potential or established Aboriginal and Treaty rights that are exercised in relation to the assessment area;*
- *Potential adverse impacts to the Aboriginal rights resulting from the project;*
- *Proposed accommodation measures to avoid or mitigate the impacts to Aboriginal rights;*

The EAO template for the preparation of Draft Application Information Requirements indicates that:

*The Proponent must commit to provide the following in the Application:*

- *Identify past, present and anticipated future uses of the proposed project area by aboriginal groups*
- *Identify any specific asserted aboriginal rights (including title) about which the Proponent receives information from First Nations or other sources;*
- *Identify potential impacts of the proposed project on the uses and asserted rights identified by way of the preceding two bullet points*
- *For proposed projects which are situated within or close to geographical areas encompassed by existing treaties, identify the Treaty rights which could be impacted by the proposed project; and*
- *Describe mitigation measures to avoid or reduce such impacts.*<sup>22</sup>

In addition to the above materials, we have used the following two documents submitted previously to the Agency and the EAO by Treaty 8 BC to prepare our comments on matters related to Aboriginal rights in the Draft EIS Guidelines, including in relation to Section 20:

- *Minimum Scope of Harvesting Rights Under Treaty No. 8, dated November 4, 2011*
- *Perspectives on Treaty 8 Land-based rights and duties: What Would Treaties Mean if We Took Indian Understandings Seriously? dated February 24, 2012*

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<sup>21</sup> CEAA. 2011. Guidelines for the Preparation of an Environmental Impact Statement for the Comprehensive Study Process Pursuant to the *Canadian Environmental Assessment Act*, at p.12.

<sup>22</sup> BC EAO. October 4, 2010. Application Information Requirements Template: With Respect to an Application for an Environmental Assessment Certificate pursuant to the *Environmental Assessment Act*, S.B.C. 2002, C.43, at p.24.

In closing, we are available to discuss these comments and are open to scheduling a meeting at your earliest convenience.

Sincerely,

[Original signed by]

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Chief Cheyenne Paulette  
Smith's Landing First Nation

cc. SLFN Council  
Cec Heron, SLFN Lands and Resource Manager