

**COMMISSION OF INQUIRY RESPECTING
THE MUSKRAT FALLS PROJECT**

**WRITTEN CLOSING SUBMISSIONS
OF
NUNATSIAVUT GOVERNMENT**

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**Closing submissions of the Nunatsiavut Government to the
Commission of Inquiry Respecting the Muskrat Falls Project.**

1. As a result of an application by Nunatsiavut Government ("NG") for standing at this Inquiry, the Commissioner granted limited standing to NG with respect to the following matters:
 - the consultation that occurred between the established leadership of the Indigenous people and Nalcor and the Government of the Province;
 - the risk assessments and reports done as regards the concerns of the Indigenous people;
 - whether the assessments or reports were appropriately and reasonably considered by Nalcor and the Government of the Province; and
 - whether appropriate measures were taken to mitigate against reasonably potential adverse effects on settled or asserted rights of the Indigenous people at the time of and post-sanction.
2. In this submission, NG will summarize relevant evidence as to its involvement with the Muskrat Falls Project ("Project"), and will conclude by making brief remarks with respect to the four matters noted above.

A. Introduction

3. The NG was established in 2005 upon enactment of the *Labrador Inuit Land Claims Agreement (LILCA)*, a constitutionally protected modern treaty which concerns the lands and settlement areas known as Nunatsiavut. The Nunatsiavut Government is an Inuit regional government. Although Nunatsiavut remains part of Newfoundland and Labrador, the NG has the ability to exercise jurisdiction over many governance areas including health, education, culture, language, justice, and community matters. Nunatsiavut is the first Inuit region in Canada to achieve self-government.
4. A significant number of beneficiaries of the *LILCA* live in areas where Inuit have specified rights, including harvesting rights. This includes the Upper Lake Melville region, including the towns of Happy Valley-Goose Bay and North West River as well as the community of

Mud Lake. The Inuit Community of Rigolet is within the Labrador Inuit Settlement Area and lies at the opposite end of Lake Melville.

5. The generation infrastructure for the Project lies outside of the Labrador Inuit Land Claims Area. However, NG believes, based on peer-reviewed science, that the downstream effects of the Project will directly affect Labrador Inuit and their use of the Landor Inuit Settlement Area. Therefore, NG applied for standing at this Inquiry because it believes that its people will be negatively impacted by the Project. This being said, while NG's mandate is with regard to its own people, concerns about methylmercury contamination in the Lake Melville ecosystem is not solely an Inuit issue, it is a general human health issue.
6. NG submits that Labrador Inuit will face significant impacts from the Project, but will receive no benefits form the Project. None of the power generated from the Project will be available to the isolated communities in Nunatsiavut, all five of which currently rely on separate fossil-fuel burning generation plants. Further, it appears likely that taxpayers in this province will be dealing with the provincial debt exacerbated by the Project for many years to come; Labrador Inuit are taxpayers too.
7. NG appreciates that the Commission of Inquiry has no jurisdiction or role to play in determining land claims or treaty rights. NG's land claim within the Province of Newfoundland and Labrador is settled, and NG does not seek to make submissions or representations regarding claims by any other group.

B. Pre-sanction and the JRP process

8. The NG has been involved with the Project since the Project was sent to a five-member Joint Review Panel ("JRP") charged with conducting the environmental assessment of the Project. A five-member Joint Review Panel ("JRP") was established on January 9th, 2009 under the *Canadian Environmental Assessment Act*. The JRP's report was released on August 25th, 2011 and the Project was released from environmental assessment on March 15th, 2012.
9. During the environmental assessment process the Nunatsiavut Government made over 30 submissions to the JRP. The JRP's report was subsequently released in August of 2011.

Both the Federal and Provincial Governments responded to the JRP's report; however NG submits that many of the recommendations have not been acted on.

10. NG took a positive view of the report and recommendations of the JRP. In general, NG believes that the JRP had listened to NG's concerns on the potential for methylmercury effects downstream of the Project and NG was appreciative that the Panel put forward recommendations that would work toward addressing those concerns.
11. The JRP report indicated there would likely be adverse effects against Labrador Inuit, and affects to Inuit rights as a result of the Project. In addition, the report showed a lack of fulsome consideration by Nalcor on the fate of methylmercury downstream into Lake Melville and into the Labrador Inuit Settlement Area. NG had stressed that the geographic scope of the project which underwent environmental assessment was incomplete; the scope of the Project, from the outset, should have included the Lake Melville estuary as this is the area where Churchill River water flows and where it is used by many people. NG was of the position that there was a need for a comprehensive assessment in that regard.
12. When it became apparent to NG that a scientific assessment of the Lake Melville system with respect to methylmercury was necessary, it sought funding from Nalcor and the Provincial Government to facilitate independent research. With no funds coming from those sources, NG turned to attempt to secure funding through academic channels, leveraged with some of NG 's own internal funds and in-kind contributions. NG submits that while peer-reviewed, independent research on the effects of methylmercury in the Lake Melville environment was eventually undertaken by world-class researchers, it is unfortunate that the burden of undertaking to ensure that such work was completed was left to Labrador Inuit. This was work that ought to have been have been done by the proponent and/or the Provincial Government.

C. Make Muskrat Right campaign and pubic unrest

13. NG has never taken the position that the Project should not be developed. NG's concern is, and has always been, that without proper mitigation of the levels of methylmercury that will bioaccumulate and biomagnify in the Lake Melville ecosystem as a result of the Project there will be significant impacts to Labrador Inuit. NG's goal has been to make best efforts to make sure that Nalcor and the Provincial Government take whatever mitigation

measures are necessary to minimize impacts related to methylmercury. Such mitigation efforts must be made before the flooding of the reservoir.

14. NG submits that it has been consulted with regard to the project. However, it is the position of NG that the actions (and inactions) of Nalcor and the Provincial Government show that the concerns NG has raised with respect to methylmercury contamination have not been taken seriously. As NG was receiving results of independent study, it was sharing the same with the Provincial Government and Nalcor, but with little effect.
15. As a result of continued concerns that the real threat of methylmercury contamination of the lake Melville ecosystem was not being seriously addressed, NG launched the Make Muskrat Right campaign. This was an information campaign to inform the average person as to the potential effects of methylmercury. It also sought to dispel some myths about consumption. While one objective was certainly to increase public awareness and, by extension, public pressure in support of mitigation measures, the primary goal was to educate, in a way the average person could understand, what research was saying with respect to bioaccumulation and biomagnification of methylmercury in the environment and what that would mean with respect to individuals, their food supply and way of life.
16. The Make Muskrat Right campaign had 4 objectives:
 - fully clear the Muskrat Falls reservoir;
 - negotiate an impact management agreement with the NG prior to impoundment;
 - establish an Independent Expert Advisory Committee; and
 - grant Inuit joint decision-making over downstream environmental monitoring and management.
17. As a result of growing public unrest concerning the project, and an announcement from Nalcor that the reservoir had to be partially impounded before winter, a period of protest action occurred near the Muskrat Falls site in October, 2016. It must be stated that while the independent science that was being conducted likely had a role in leading some individuals to decide to protest, the protests were carried out by many different individuals with several interests and issues. Some protesters were Nunatsiavut Beneficiaries; many

were not. Some were concerned about methylmercury; some were concerned about the stability of the North Spur; some were concerned with the prospect of flooding in nearby communities; some were concerned, generally, with protection and preservation of the river itself. Ultimately, a group of individuals breached the gate at the Muskrat Falls site and occupied the site for a number of days. NG itself had no role in that action. Throughout the fall of 2016, NG made no representations supporting any unlawful activity by any group or person.

18. As a result of the occupation the camp and also that a number of individuals had undertaken hunger strikes, Premier Ball called a meeting of leaders of Labrador Indigenous groups. That meeting had two outcomes: First, agreement for the Provincial Government to direct Nalcor to increase the level of water in the reservoir only to a certain depth, regularly flooded by the spring freshet, with the understanding the level would be reduced in the spring; and second, the establishment of the Independent Expert Advisory Committee (IEAC), a multi-party body formed to review and provide recommendations on the methylmercury issue based on independent science and Indigenous knowledge.
19. Unfortunately, the passage of time would reveal that these two outcomes would prove fruitless. First, within months of the October 2016 leaders meeting it was revealed that the water level could not be lowered due to safety concerns. NG is not unreasonable, nor is it unappreciative of safety concerns; but it now remains a lingering question as to whether the promise to lower the water level was something that was actually feasible. Secondly, as will be discussed below, while the IEAC was formed and did important work, many of its recommendations have been left to languish without response by the Provincial Government or Nalcor.

D. The IEAC and aftermath

20. Getting the IEAC actually running proved to be challenging and time consuming. the IEAC finally started work August 2017. Despite the delay in beginning its work, the IEAC was attempting to meet the work schedule that Nalcor had in place for the Project to ensure that there was time to undertake mitigation, if needed, before the final flooding of the reservoir, without delaying the Project.

21. The IEAC ultimately made two sets of recommendations. The first set of recommendations was released in September, 2017:

Recommendation #1: that a feasibility study be undertaken by December 20, 2017, for the removal of soil and vegetation from the future reservoir area.

- This work was completed and provided to the IEAC. It led to the details around Recommendation #4 for the targeted removal of trees and soil during fall (when the ground is partially frozen), to reduce the potential of disturbing the soil and producing additional methylmercury.

Recommendation #2: that Nalcor implement the changes described in the independent expert's report titled "Recommendations on changes to the scope and quality of the Muskrat Falls Aquatic Monitoring Program".

- This work was completed. It resulted in a reduction in frequency of sampling in some locations and the addition of sampling sites in other locations.

Recommendation #3: that Nalcor expedite the finalization of its model to provide to the IEAC.

- This recommendation was never fulfilled, despite assurances from Nalcor that it would be. The purpose of this recommendation was to allow the experts to make suggested adjustments to the model based on available science and knowledge of the ecosystem. This happened with the Calder model, and it led to improvements in that model. Instead of fulfilling this, Nalcor subsequently released additional methylmercury reports that were never reviewed by the IEAC nor went through peer review.

22. The IEAC released its second set of recommendations in April of 2018. Unfortunately, no formal response has ever come from the Provincial Government these recommendations:

Recommendation #4: partial soil removal and wetland capping.

- No formal response has been provided by Government. The only revelations made as to the position of Government or Nalcor on this recommendation has

been revealed through this Inquiry. No information has been provided directly to the NG.

Recommendation #5: the Development and implementation of an independent monitoring program which involves liaising with indigenous groups regarding appropriate responses to results of the monitoring program.

- No formal response has been provided by the Provincial Government; however, the proposed establishment of a Monitoring and Health Management Oversight Committee (MHMOC) may be an attempt at fulfilling part of this recommendation. The terms of reference for that body is still being discussed; to date it remains unclear if this will be an independent body. There has been no movement on the other aspects of this recommendation.

Recommendation #6: that Nalcor develop and implement an impact security fund in case there are health-related consequences of dietary restrictions to local country foods resulting from methylmercury contamination.

- NG has received no response regarding this recommendation.

Recommendation #7: the development of communication, education and response plans with respect to increase in methylmercury in local food sources.

- No response had been forthcoming on this recommendation and it appears to NG that nothing has been done to address this issue. The discussion at the IEAC regarding this was that it must happen immediately upon release of the recommendations, due to the amount of incorrect information in the public regarding methylmercury in the water and local food sources. All members of the IEAC agreed to this but it has never happened.

23. As a participant in the IEAC process, NG believed that the recommendations put forth were developed in spirit of good faith. Despite the second set of recommendations being released in April of 2018, over a year before supposed impoundment of the reservoir was scheduled to take place, recommendations #4-#7 have not been formally responded to by the Provincial Government. NG has written letters to the Provincial Government requesting written responses to each recommendation and the rationales behind those responses. Save

for some discussion on the MHMOC, which may address a portion of recommendation #5, NG has been met with silence.

24. While it is correct that there was not complete consensus at the IEAC with regard to soil removal as a mitigation measure in the April 2018 recommendations, there was consensus that capping of wetland areas should be implemented as a mitigation measure, based upon the science reviewed by the IEAC. However, to date, wetland capping has not taken place. The evidence heard at this Inquiry has revealed that Nalcor designated funds for wetland capping and applied to the Provincial Government for the appropriate authorization to carry it out. However, The evidence also shows that the authorization was never, and has not to date, been granted. This, despite "frustration" and "disappointment" of the Premier himself that no authorization had been granted by January 2019, at which time he was informed that it was too late to carry out wetland capping. There is a striking lack of any explanation as to how an application for a provincial authorization was not addressed when it was, apparently, a priority for leadership. This lack of explanation is nonsensical.
25. Further, Mr. Stan Marshall for Nalcor and the Premier both gloss over this apparent failure of the provincial regulatory system by saying that wetland capping would make no difference to methylmercury levels based on other research (commissioned by Nalcor) since the IEAC. It is NG's position that comparing those reports with the science reviewed by the IEAC is essentially comparing apples and oranges: the Nalcor provided science is not peer-reviewed and was not subject to scrutiny by the IEAC as the previous science has been. NG submits that Nalcor and the Province are relying on evidence that has not met the same rigour of review as that which formed the basis of the IEAC recommendations.

E. Conclusion

26. Drawing from the above and the substantial amount of evidence heard at this Inquiry, NG makes the following final comments with respect to the four issues for which it was graded standing:

The consultation that occurred between the established leadership of the Indigenous people and Nalcor and the Government of the Province.

27. NG submits that it was consulted by both the Provincial Government and Nalcor. NG was involved in the JRP review process. NG stresses that the conduct of the Provincial Government and Nalcor show that they have never taken the issue of methylmercury contamination seriously. The issue of methylmercury production and whether it will be present in sufficient quantities to cause impacts was something that was a known issue before the Project was sanctioned.

The risk assessments and reports done as regards the concerns of the Indigenous people.

28. NG submits that the project area should have been identified correctly from the outset, which would have included all of Lake Melville. A comprehensive assessment of that downstream system should have been part of the original environmental assessment. NG submits that fulsome, independent research into the potential harm to users of the Lake Melville ecosystem from methylmercury contamination, a legitimate human health concern, was completed only by placing the burden of undertaking that work on Labrador Inuit. Further, public education about the issue has also largely fallen to the NG. The fact that such burdens have been put onto NG or any other group, Indigenous or not, is appalling. It is a failure of government to even consider the protection of its own citizens. It is a decision of the Provincial Government and Nalcor to not respond to, or address, these issues.

Whether the assessments or reports were appropriately and reasonably considered by Nalcor and the Government of the Province.

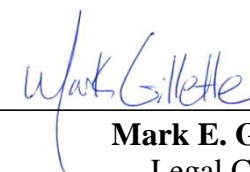
29. Many of the recommendations of the JRP were not implemented, which resulted in the necessity of NG seeking out the production of independent scientific work and, ultimately, the Lake Melville Report. These peer-reviewed papers and scientific publications further highlighted these same JRP recommendations, while showing that the Lake Melville ecosystem is incredibly efficient in producing methylmercury when supplied with organic carbon. Not only was it revealed that there would be impacts in Lake Melville, but those impacts would be greater and have further reach than first anticipated. Still, no substantive additional mitigation measures were taken. Later, the IEAC was established and produced recommendations. Still, mitigation measures recommended by that body have not been implemented. Not only did the Provincial Government and Nalcor not

respond to these reports and science, Nalcor has subsequently released other scientific reports, procured by Nalcor, that attempts to refute the peer-reviewed science. NG believes those reports have not been held to the same standard of peer-review and review through the IEAC. In fact, it flies in the face of the very premise of the establishment of the IEAC as an independent source of knowledge and forum of review.

Whether appropriate measures were taken to mitigate against reasonably potential adverse effects on settled or asserted rights of the Indigenous people at the time of and post-sanction.

30. Monitoring is not mitigation. Consumption advisories are not mitigation. Compensation is not mitigation. Removing or attempting to reduce the level of a toxin through evidence-based decisions is mitigation, and no such measures have occurred. Changes to, or enhancements in, monitoring have only been achieved as a result of the independent study that NG set out to find. Despite independent, peer-reviewed science showing the real risk of harm of methylmercury bioaccumulation and biomagnification in the Lake Melville ecosystem, no mitigation measures of any type have been performed as of the date of this submission, (other than some limited tree-clearing). Failure to enact any type of meaningful mitigation measure to correspond to recommendations made by independent expert advice due to missed timelines is a failure of both the Provincial Government and Nalcor.

RESPECTFULLY SUBMITTED this 30th day of July, 2019.



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