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TITLE: Aboriginal consultation on the Provincial Environmental Assessment of the Lower Churchill Hydroelectric Generation Project.

ISSUE: To seek Cabinet direction on how to consult Aboriginal organizations on the provincial environmental assessment of the Lower Churchill Hydroelectric Generation Project.

RECOMMENDATIONS:

It is recommended that:

1. The Departments of Environment and Conservation and Labrador and Aboriginal Affairs begin negotiating a Memorandum of Understanding with the Innu Nation regarding Innu Nation's consultation in the provincial environmental assessment of the Lower Churchill Hydroelectric Generation Project.
2. The Department of Environment and Conservation, in cooperation with the Department of Labrador and Aboriginal Affairs, inform the Nunatsiavut Government and Labrador Metis Nation of every opportunity for public input in the Environmental Assessment and respond positively to any requests for meetings on the project received from either organization.
3. If the Quebec Innu assert rights for consultation in the provincial environmental assessment, the Departments of Environment and Conservation and Labrador and Aboriginal Affairs report back with advice to Cabinet on how to appropriately consult the Quebec Innu.

BACKGROUND:

The proponent, Newfoundland and Labrador Hydro, submitted the Environmental Assessment (EA) of the Lower Churchill Project (Generation Phase only) (the Project) under both the *Environmental Protection Act* (EPA) of Newfoundland and Labrador and *Canadian Environmental Assessment Act* (CEAA) of the Government of Canada on December 1, 2006. The provincial Environmental Assessment (registration) went through a 45 day public review process and the Ministerial decision to require an Environmental Impact Statement (EIS) was issued on January 23, 2007. The required Environmental Assessment Committee was formed and is proceeding as per the requirements of the Act to prepare Guidelines for the Preparation of the EIS within 120 days of the Ministerial decision and issued to the proponent by May 23, 2007. An overview of opportunities for public involvement in the provincial EA process is included at Appendix A.

The Province anticipates that the provincial and federal governments will enter a joint environmental assessment process for the Project. On March 13, 2007, Minister Jackman wrote Minister Baird, Environment Canada, requesting a joint EA process. Until governments agree to a joint process, the provincial process continues on in accordance with the ^{EPA} *Environmental Protection Act*.

The Province has a legal duty to consult Aboriginal organizations whose rights may be affected by the Project. The Project is located within the Labrador Innu Land Claim Area. The Innu Nation land claim is under active negotiation at the Agreement-in-Principle stage. NL Hydro and Innu Nation have negotiated Process Agreements that establish and fund mechanisms for on-going consultation and cooperation related to the Project, including IBA negotiations, community consultation and on-going cooperation on the environmental work. In 2001, The Province and the Innu Nation negotiated an MOU for the Environmental Assessment of the Trans Labrador Highway.

Labrador Metis Nation

The Labrador Metis Nation (LMN) claims Aboriginal rights and title to large areas of central and southern Labrador. It has not been accepted for negotiation by Canada or Newfoundland and

Labrador. The Labrador Metis Nation is demanding direct consultation on, and involvement in, proposed resource development projects in Labrador. The LMN wants the Province to consult it in the same manner as the Innu Nation and the Nunatsiavut Government, whose land claims were accepted by the federal government and with which the Province and federal government are negotiating or have settled claims. An overview of the 2005 Fowler decision is included at Appendix B.

In October 2005, Mr. Chris Montague, LMN President, wrote the Premier seeking a Memorandum of Understanding on an interim consultation and accommodation process related to the Lower Churchill. In that letter, the LMN outlined an extensive 9-step process which included requirements for LMN consent at various stages. This would go far beyond the Province's existing consultation policy with the Labrador Innu and Inuit, and any legal precedents.

On January 15, 2007, Chris Montague wrote to Minister Jackman stating that the public information process afforded by the registration of the project for environmental assessment does not assist the Crown in meeting its duty to consult the LMN and accommodate its rights and interests, as required by law.

Nunatsiavut Government

The Lower Churchill Project as currently described may impact the rights of Inuit as provided in the Labrador Inuit Land Claims Agreement. The Environmental Assessment Chapter, particularly sections 11.2.8-9 and 11.5.11, describes the Nunatsiavut Government's treaty rights if a project undertaken outside of the Labrador Inuit Settlement Area may be expected to have adverse environmental effects in the Settlement Area or on Inuit rights under the agreement. The clauses are attached at Appendix C.

Separate arrangements must be made with Aboriginal organizations if the Province and the federal government agree to a joint EA process. Aboriginal consultation in such circumstances will be the subject of a separate submission.

Quebec Innu

The Province may have demands for consultation from QC aboriginal groups with asserted land claims in Labrador, both in general and more particularly in the context of the Project. An overview of the Quebec Innu with interests in Labrador is attached at Appendix D. Previous Lower Churchill development attempts included the direct participation of Hydro-Québec, as well as project activity in QC. Quebec Innu organizations have not contacted the Province seeking any involvement in this development. [REDACTED]

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ALTERNATIVES:

1. Develop an MOU between NL and the Innu Nation regarding Innu Nation involvement in the provincial Environmental Assessment. Inform the Nunatsiavut Government and the Labrador Metis Nation about opportunities for stakeholder consultation in the EA process. The Province would respond positively for meeting requests to discuss the Project. This is the recommended option.

Advantages:

- Establishes a formal and certain relationship with the Innu Nation.
- Ensures that other Aboriginal organizations in Labrador are informed about the Project and have the opportunity to participate to the extent they choose (within the spectrum of opportunities for public consultation).

Disadvantages:

- The LMN would not likely be satisfied with this level of consultation.
- The negotiation of the MOU will take time, which may delay portions of the EA process.

2. Develop MOUs with the Innu Nation and the Labrador Metis Nation regarding their involvement in the provincial Environmental Assessment. Inform the Nunatsiavut Government about opportunities for stakeholder consultation in the EA process. The Province would respond positively for meeting requests to discuss the Project. This not recommended.

Advantages:

- Establishes a formal and certain relationship with the Innu Nation and the Labrador Metis Nation.

- Ensures that the Nunatsiavut Government is informed about the Project and have the opportunity to participate to the extent it chooses (within the spectrum of opportunities for public consultation).

Disadvantages:

- May raise expectations by the LMN for an IBA.
- Aboriginal groups may be suspicious of what the others are negotiating.
- The negotiation of two MOUs would likely be time consuming and delay portions of the EA process.

3. Consult all Aboriginal organizations to the same extent as the general public. This is not recommended.

Advantages:

- The EA process would be more streamlined with fewer steps.

Disadvantages:

- Aboriginal organizations could vigorously oppose this action. It would likely conduct public protests and take court action against the EA potentially causing long time-delays and negative public attention to the project.
- The Province would be operating outside its long-standing policy on consultations with the Innu Nation.

LEGISLATIVE/ REGULATORY CONSIDERATIONS:

Environmental Assessments in Newfoundland and Labrador are conducted in accordance with the *EPA*.
Environmental Protection Act.

FINANCIAL CONSIDERATIONS:

Innu Nation may seek funding for their participation in the EA process.

RED TAPE REDUCTION IMPLICATIONS:

N/A

INTERDEPARTMENTAL CONSIDERATIONS:

The Departments of Environment and Conservation and Labrador and Aboriginal Affairs have worked cooperatively to prepare this submission.

EA Committee??

LABRADOR AND ABORIGINAL CONSIDERATIONS:

The Department of Labrador and Aboriginal Affairs is represented on the EA committee. DLAA will also be a partner in any negotiations between the Province and Aboriginal groups.

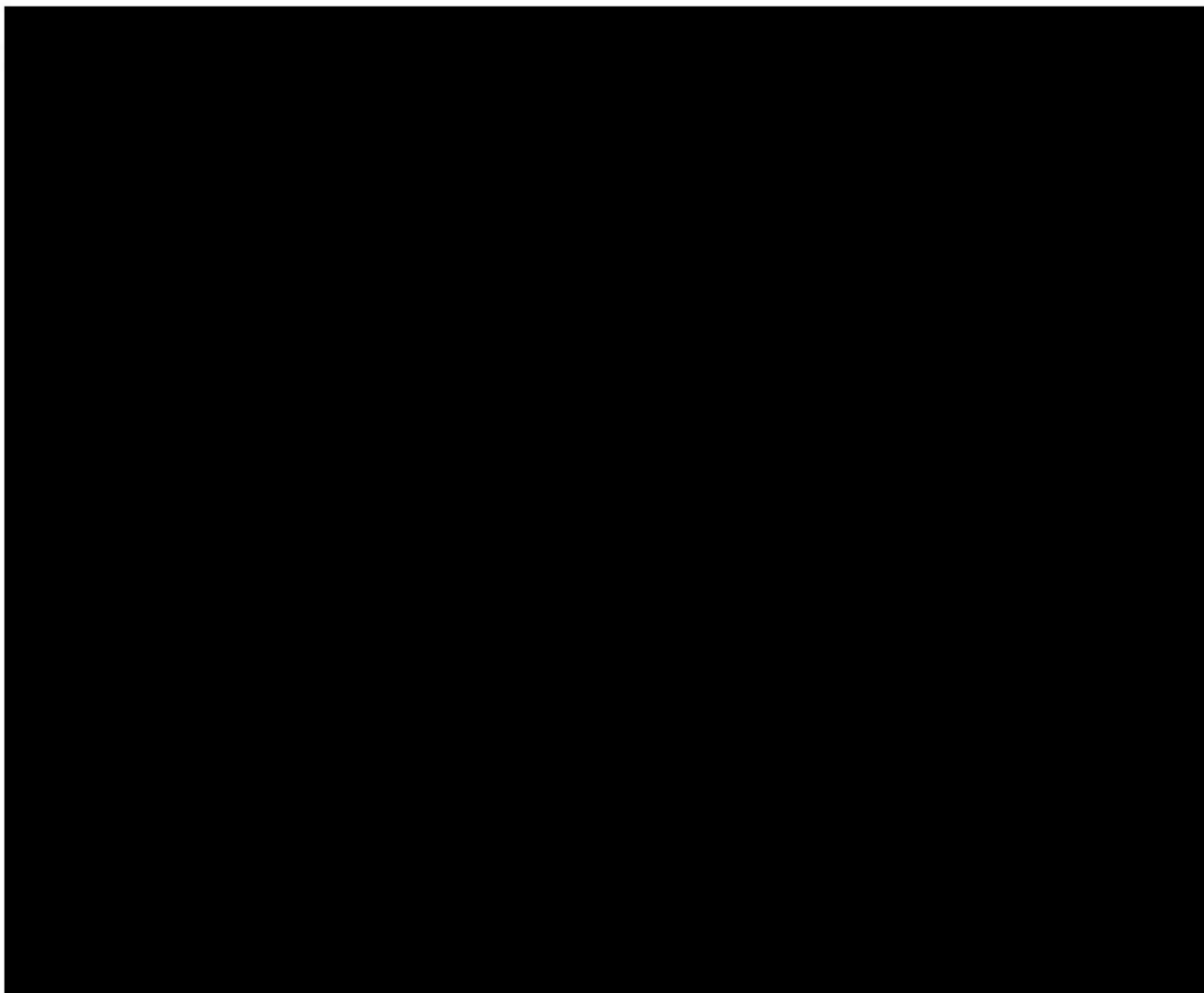
INTERGOVERNMENTAL CONSIDERATIONS:

N/A

CONSULTATIONS:**ENVIRONMENTAL CONSIDERATIONS:****COMMUNICATIONS AND CONSULTATIONS SYNOPSIS:**

Attached.

Appendix A – An Overview of Opportunities for Public Consultation in Provincial EA Process



Appendix C: Labrador Inuit Land Claims Agreement**Applicable Definitions:**

"Consult" means to provide:

- (a) to the Person being consulted, notice of a matter to be decided in sufficient form and detail to allow that Person to prepare its views on the matter;
- (b) a reasonable period of time in which the Person being consulted may prepare its views on the matter, and an opportunity to present its views to the Person obliged to consult; and
- (c) full and fair consideration by the Person obliged to consult of any views presented;

"Environmental Effect" means, in respect of a proposed undertaking, project, work or activity:

- (a) any change that the proposed undertaking, project, work or activity may cause in the Environment, including any change to health and socioeconomic conditions, to physical and cultural heritage, to the current use of lands and resources for traditional purposes by aboriginal individuals, or to any structure, site or thing that is of historical, archaeological, palaeontological or architectural significance; and
- (b) any change to the proposed undertaking, project, work or activity that may be caused by the Environment,

whether the change occurs within or outside Canada;

"Undertaking" means any undertaking, project, work or activity proposed to be located or carried out outside the Labrador Inuit Settlement Area that requires an Environmental Assessment under the Canadian Environmental Assessment Act or the Environmental Protection Act;

11.2.8

When an Authority receives a registration document or an application for an Undertaking or an application for a permit, licence or authorization in relation to an Undertaking and the Undertaking, in the opinion of the Authority, may reasonably be expected to have adverse Environmental Effects in the Labrador Inuit Settlement Area, the Authority shall give timely written notice of the Undertaking and shall provide relevant available information on the Undertaking and the potential adverse Environmental Effects to the Nunatsiavut Government.

11.2.9

After giving or receiving a notice and information required under section 11.2.6, 11.2.7 or 11.2.8, the Nunatsiavut Government and the relevant Authority shall, before making any further determination or taking any further action in relation to the Project or Undertaking, Consult each other about:

- (a) how their respective Environmental Assessment processes are to be applied; and
- (b) whether any harmonization is to be pursued in relation to the Environmental Assessment of the Project or Undertaking.

11.5.11

If, in the opinion of the Provincial Authority, an Undertaking that is subject to the Environmental Protection Act may reasonably be expected to have adverse Environmental Effects in the Labrador Inuit Settlement Area or adverse effects on Inuit rights under the Agreement, the Provincial Authority shall, in addition to providing the notice and information required under section 11.2.8:

- (a) Consult the Nunatsiavut Government about the Environmental Assessment applicable to the Undertaking;
- (b) Consult the Nunatsiavut Government about the possible participation of Inuit and the Nunatsiavut Government in that Environmental Assessment;
and
- (c) in any event, Consult the Nunatsiavut Government before making any decision or taking any action to allow the Undertaking to proceed.

Appendix D: Quebec Innu

- In 1979, the federal government accepted the land claim of the Québec Innu for negotiation (which covered 700,000 km² in Québec and Labrador). The Québec Innu were formerly represented by le *Conseil des Atikamekw et des Montagnais* (CAM). When that organization disbanded in the early 1990s, the Governments of Canada and Québec began negotiating the Québec portions of the claim with three separate groups (each representing several communities): 1) *Mamuitun Tribal Council* (Baie Comeau-Saguenay region); 2) the *Atikamekw Nation* (Trois-Rivieres area), and 3) *Mamit Inuit* (Lower North Shore region). These land claims are presently at varying stages of negotiation, but none have yet reached a Final Agreement. A number of communities (Schefferville and Sept-Iles) have not been participating in land claim negotiations.
- The land claim areas of six Québec Innu Bands extend into Labrador, including each of the communities along the Lower North Shore (Natashquan, Mingan, La Romaine, Saint-Augustin, Sept-Iles), and the Innu of Schefferville. The Naskapi of Kawawachikamach (near Schefferville) filed a claim with Canada for parts of Labrador in 1995, but the additional information requested to substantiate it was never received and the claim has never been served on the Province.
- The land claims of Québec Innu groups in Labrador have not been accepted for negotiation by the Government of Newfoundland and Labrador. The Province has maintained that its priority is to negotiate accepted claims with Labrador-based groups, and that any claims by Québec groups may be considered only after these complex negotiations are complete. Moreover, one would expect that, practically speaking, settlement of the Québec Innu's core claim in Québec would be a prerequisite to any consideration by the Province of their much more peripheral claim in this province.