

LAA 2007 -

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TITLE: Consultation with the Labrador Metis Nation and the Quebec Innu on the Environmental Assessment of the Lower Churchill Hydroelectric Generation Project

ISSUE:

To seek Cabinet direction on the level of consultation with the Labrador Metis Nation and the Quebec Innu on the Environmental Assessment of the Lower Churchill Hydroelectric Generation Project.

RECOMMENDATIONS:

It is recommended that:

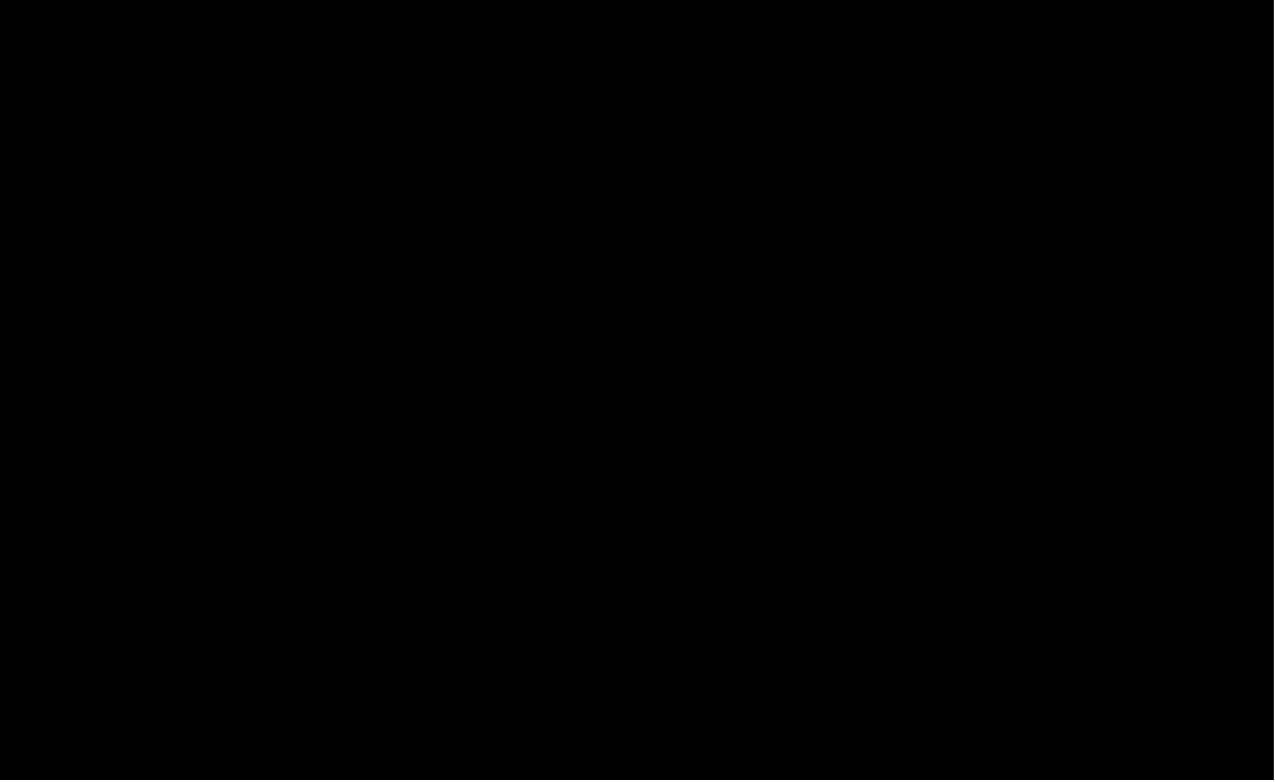
1. NL enter a joint panel review process on the Environmental Assessment (EA) of the Lower Churchill Hydroelectric Generation Project (the Project). The Parties would include NL, Canada, the Innu Nation and the Labrador Metis Nation.
2. The Departments of Environment and Conservation and Labrador and Aboriginal Affairs be authorized to negotiate a Memorandum of Understanding on the Project EA with the federal government, Innu Nation and Labrador Metis Nation.
2. The Nunatsiavut Government be consulted on the EA in accordance with the provisions of the Labrador Inuit Land Claims Agreement.
3. The Departments of Environment and Conservation and Labrador and Aboriginal Affairs be authorized to negotiate the level of consultation to be afforded to the Quebec Innu in accordance with the strength of their asserted claim.

BACKGROUND:

Lower Churchill Project – EA Information, ENVC

Aboriginal Consultation

The Province has had a longstanding policy of consulting only with aboriginal groups that have land claims that have been accepted for negotiation (namely, the Labrador Innu and Inuit). Requests from other aboriginal groups for similar consultation have traditionally been rejected, in order to avoid providing an inappropriate level of recognition to these groups and their asserted claims.

**Quebec Innu**

As a result of recent Supreme Court decisions, the Province may see increased demands for consultation from QC aboriginal groups with asserted land claims in Labrador, both in general and more particularly in the context of the Lower Churchill project.

Previous Lower Churchill development attempts included the direct participation of Hydro-Québec, as well as project activity in QC. In 1998-1999, then Premier Tobin took part in discussions with Innu on both sides of the border, which may have raised expectations regarding

QC Innu involvement in the Project. Under the 2002 scenario, Hydro-Québec took responsibility for consulting with QC aboriginal groups on the Project, although QC Innu groups were pursuing direct consultations from NL, as well.

In 2002, it was anticipated that the Lower Churchill project (including the generation facilities and transmission in both Labrador and QC) would be subject to a single environmental assessment (EA) process, under an agreement involving the Governments of NL, QC and Canada as well as Labrador and QC Innu groups. The inter-governmental and “cross-boundary” nature of the Project and its EA would have allowed for the involvement of QC Innu groups, without providing any recognition of their claim in Labrador. It was also anticipated that because the Project involved new infrastructure on both sides of the border, the Labrador and QC Innu groups would likely each pursue economic benefits in their respective provinces of residence.

Under a NL-led (and Labrador-specific) Lower Churchill project, however, any consultation obligations with the QC Innu would likely fall to NL Hydro and the Province.

Consulting with a QC aboriginal group due to their asserted land claim in Labrador would represent a significant policy shift for the Province. It will therefore be necessary to plan an approach that ensures that any legal obligations are met (and which thus minimizes any associated risk to the Lower Churchill), while at the same time guarding against excessive and undue expectations for consultation (and compensation) for the Project. From a larger policy perspective, the Province must also be careful of doing anything that would indicate recognition of the land claim, and which would open the door for similar demands related to other existing and proposed developments in Labrador.

QC Innu have had their land claim accepted by the federal government. Their claims in QC overlap areas of Labrador. To date the Province has not accepted their claims and stated that NL would settle claims from groups within the Province before reviewing those from outside. [REDACTED]

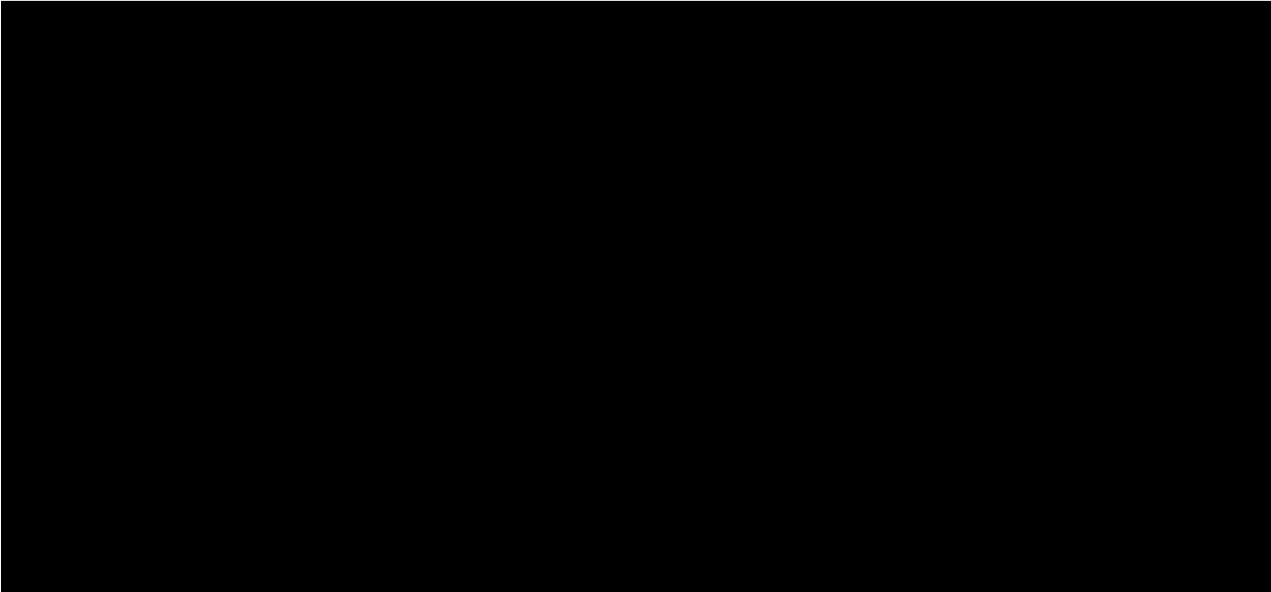
[REDACTED]



Labrador Metis Nation

The Labrador Métis Nation (LMN) claims Aboriginal rights and title to large areas of central and southern 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.

In July 2005, the LMN made application to the Trial Division seeking a declaration that Government has a duty to consult with the LMN and its members regarding the construction of Phase 3 of the Trans-Labrador Highway (TLH3). The matter was heard in November 2005.



In October 2005, Mr. Chris Montague wrote to 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. He stated that LMN members are an Aboriginal people of Canada and therefore, have Aboriginal rights affirmed and protected by Sec. 35 of the Constitution Act, 1982.

Innu Nation

The Innu Nation has a land claim that is under active negotiation at the Agreement-in-Principle stage. The Innu Nation would very likely be a partner in any joint panel review as was the case at Vosiey's Bay where the parties were the federal government, the Province, Innu Nation and the Labrador Inuit Association. The Innu Nation will not likely settle for less than that level of consultation in this process.

The Labrador Innu appear to be sensitive about other aboriginal groups being involved in the Project, [REDACTED]
[REDACTED]

Nunatsiavut Government Consultation

The Lower Churchill Project as currently described may impact the rights of Inuit as provided in the Labrador Inuit Land Claims Agreement. Part 5.5 of the Agreement, Administration of Water Uses in the Labrador Inuit Settlement Area Outside Labrador Inuit Lands, describes how water use permits are to be issued in the settlement area outside Labrador Inuit Lands or a permit

outside the area that may affect water or water use in the settlement area. In proceeding the Province will abide by its treaty obligations.

Impact and Benefits Agreements

Impact and Benefits Agreements (IBAs) are not a right of Aboriginal people and are not required by law. IBAs are negotiated in the context of resource development in Canada. They may be developed between a company, the provincial or territorial government and affected Aboriginal organizations. The agreements establish the terms under which affected Aboriginal people will benefit from development projects. IBAs are different from other aspects of the regulatory and benefits package (set out in socio-economic and environmental agreements) in that they are private contracts between non-governmental parties and are subject to confidentiality provisions. In the context of unsettled land claims, IBAs permit benefits to flow to Aboriginal groups whose traditional lands include the area where mining or development is located.

IBAs deal with a range of issues including employment and training of Aboriginal people, profit-sharing, compensation and environmental regulation. Specific provisions requiring the negotiation of IBAs are found in certain land claims agreements, and some legislation regulating gas and oil development. They have also been used in the context of diamond mining operations where no legislative or claims-based requirements exist. The use of IBAs reflects the principle that Aboriginal people should share the benefits of resource development, and permits the shaping of those benefits to the requirements of individual communities and Aboriginal groups.

Involving the LMN in the Environmental Assessment of the Lower Churchill Project may raise expectations that the proponent is willing to negotiate an IBA. The proponent will want to ensure that any consultation processes afforded to the LMN do not inadvertently and inappropriately increase expectations for (and the likelihood of any requirement for) compensation from the Project.

ALTERNATIVES:

1. Develop a joint review process. Parties would include the Province, the federal government, the Innu Nation, Labrador Metis Nation and the Quebec Innu. The

Nunatsiavut Government would be consulted as required by section 5.5.4. This is the recommended option.

Advantages:

- This is an inclusive approach and least likely to raise concerns or invite court proceedings.
- Each Aboriginal group will be fully informed about the involvement of the others.

Disadvantages:

- May raise expectations by the LMN for an IBA.
- The Innu Nation may raise concerns about LMN project involvement being as extensive as theirs.
- [REDACTED]
- There may be resistance from the federal government to include an Aboriginal group without an accepted or settled land claim in a joint review process.

2. Develop a joint review process between Canada and the Province. Negotiate separate agreements regarding Aboriginal involvement in the EA. This is not recommended.

Advantages:

- [REDACTED]

Disadvantages:

- May raise expectations by the LMN for an IBA.
- Innu Nation had a joint review process at Voisey's Bay and would likely be extremely displeased not to participate in one for this project.
- Aboriginal groups may be suspicious of what the others are negotiating.
- Separate agreements would likely make project coordination more difficult and time consuming.

3. Consult the LMN to sufficiently meet the Province's legal obligations. The Departments of Labrador and Aboriginal Affairs and Environment and Conservation will negotiate an agreement with the LMN giving the LMN a higher level of consultation than other stakeholders, but less than that of the Innu Nation, who would be a partner in the joint review. This is not recommended.

Advantages:

- [REDACTED]

- Innu Nation will react more favourably if LMN participation is limited.
- Expectation of an IBA for the LMN will still exist, but expectations may be less than equality with the Innu.

Disadvantages:

- The LMN will not be satisfied with a level of involvement subordinate to the Innu Nation and may conduct public protests or seek an injunction of the EA potentially causing long time-delays and negative public attention to the project.

4. Consult the LMN to the same extent as other stakeholders in Labrador. This is not recommended.

Advantages:
[REDACTED]Disadvantages:

- The LMN would 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.
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- [REDACTED]

LEGISLATIVE/ REGULATORY CONSIDERATIONS:FINANCIAL CONSIDERATIONS:RED TAPE REDUCTION IMPLICATIONS:INTERDEPARTMENTAL CONSIDERATIONS: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:CONSULTATIONS:ENVIRONMENTAL CONSIDERATIONS:

COMMUNICATIONS AND CONSULTATIONS SYNOPSIS:

Attached.