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To : "Chippett, Jamie"

Subject : BN/2017/0070 : Information Note - IEAC progress update May 19 2017

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BN/2017

**Information Note
Department of Municipal Affairs and Environment**

Title: Independent Expert Advisory Committee (IEAC) status update.

Issue: This note was prepared to provide a progress update respecting the current status of the Independent Expert Advisory Committee (IEAC). This briefing note was prepared at the initiative of the Department.

Background and Current Status:

- On March 13, 2017 there was a teleconference with the province and the three Indigenous groups; Nunatsiavut Government, Innu Nation and NunatuKavut Community Council to try to come to a resolution on the outstanding issues with the terms of reference (TOR) for the IEAC. On March 24 there was a further teleconference and final positions were agreed to by the officials on the call. The key issue that was resolved was a provision to adequately compensate the scientist/experts who would be chosen for the independent expert's sub-committee. The total budget for the IEAC is \$698,500 per year. See TOR attached.
- By May 4, the three indigenous groups had all indicated their acceptance of the TOR for the IEAC and have indicated who their representatives would be for the Oversight Committee.
- Initially it was envisaged that the IEAC would be comprised of the three Indigenous groups and several federal and provincial members representing DFO, HC, ECCC and NRCAN federally, and ECC (now MAE), HCS, and NR provincially. Invitations to the departments were sent out in November 2016. Since then it was decided that there would be only one federal and one provincial representative on the IEAC. The municipalities and Nalcor are also represented. Following discussions with the federal department by officials, Ministers Trimper and Joyce wrote to the four federal departments on May 4 to confirm the final TOR and to seek confirmation that Natural Resources Canada (NRCAN) would provide the federal representative.
- On May 11 the Province received feedback from officials of the federal government, (NRCAN) about their nominee, advising that they had no comments on the TOR, that they agreed with the non-voting status of their representative and that their Minister's response would be forthcoming.
- The composition of the IEAC is as follows:
 - Nunatsiavut Government – Carl McLean, (Rodd Laing, alternate)
 - Innu Nation – Greg Nuna, (Peter Penashue, alternate; Donna Paddon and Cathy Guirguis backup supports)
 - NunatuKavut Community Council – George Russell, (Tammy Lambourne, alternate; Brigid Rowan backup support)
 - Lower Churchill Project – Peter Madden, (David Haley, alternate)
 - Province – Martin Goebel, (Haseen Khan, alternate)
 - Federal Government (NRCAN) – Abla Hanna
 - Municipalities – Mayor Jamie Snook, Town of HVGB, (Wyman Jacque, Town Manager and Randy Dillon, Engineer as alternates)

- On Tuesday May 16 there was a first meeting of the IEAC. This took place as a teleconference. The agenda as proposed by the province was as follows:
 - To discuss and perhaps select a chair for the IEAC. The TOR state that the three Indigenous groups and the province will recommend a maximum of two potential candidates each.
 - A discussion of who might be selected for the Independent Experts Committee, ie the scientists. This group will include three Indigenous traditional knowledge experts.
 - A discussion about the name of the oversight committee to ensure it is not confused with the Nalcor Oversight Committee.
 - An up-date on a possible office arrangement in HVGB.
- Major discussion centered on the nominations for Chair of the committee and nominations for the expert scientists committee. It was agreed that potential names for chair would be put forward by the individual groups by May 18 and that names for the scientists groups would also be submitted.
- There was discussion about the current monitoring for methylmercury in surface water and a suggestion to suspend some of the sampling when the reservoir was lowered because based on the current results there was really very little to show in terms of MeHg. This was not supported by the groups who instead suggested that it should be looked at by the scientists of the IEAC but monitoring continue in the meantime.
- The issue of water levels post winter ice cover requirements was raised. Nalcor noted a need to maintain water levels to install the ice boom for next year and the indigenous groups called for clarification relative to commitments made last fall to allow the water levels in the spring to return to natural flow levels.

Analysis:

- Time is of essence in getting the IEAC running and functional. The window of opportunity to take action with respect to any possible further vegetation removal and to investigate the scientific questions surrounding soil removal is short.
- There is an expectation of water levels in the reservoir being lowered so that the river will flow at its “natural level”, but Nalcor has indicated it may need to maintain some impoundment.
- Once the chair has been selected, there will be a need to set up the office and to hire the research director and senior administrative support.
- The two nominations for the chair so far are Herbert M. Clarke (nominated by Innu Nation) and James Igloliorte (nominated by Nunatsiavut Government). The province had two candidates in mind but both have declined leaving no nomination specifically from the province. It should be noted that both Clarke and Igloliorte were on the LCP Environmental Assessment Panel.
- The province will nominate Mr. James McCarthy, an independent consultant with AMEC to be on the Independent Experts Committee.

Action Being Taken:

- MAE is investigating possible existing office space in Happy Valley-Goose Bay that can be used by the IEAC. The Indigenous groups stressed the need for such space to be seen as independent from Government. Discussions have been held with the Deputy Minister of TW on this matter and space will be made available.
- The next teleconference call is scheduled for 2:30 May 19, 2017

Prepared/Approved by: M. Goebel
Ministerial Approval:

May 19, 2017

**Independent Expert Advisory Committee
Draft Terms of Reference
Version Date: March 24, 2017**

Mission:

To oversee and provide independent assessment of the adequacy of mitigation, monitoring and management measures, and provide recommendations to the Responsible Ministers with respect to those and addition of any further such measures for the protection of the health of the Indigenous and local population impacted by the Lower Churchill Project, and in particular increases of methylmercury in country foods in the Churchill River near Muskrat Falls and downstream, all along the river and including Lake Melville.

Mandate:

The protection of the health of the Indigenous and local populations will guide the work of the IEAC. With this in mind the IEAC mandate is:

- to use the best available peer reviewed science and Indigenous knowledge, and may consider other relevant research only in addition to and not instead of the above-mentioned peer reviewed science, to assess and recommend options for mitigation of methylmercury impacts, including but not limited to discussing the feasibility, necessity and potential impacts of further clearing of the Muskrat Reservoir;
- to review the plans for monitoring, monitoring results and key findings arising from research and monitoring, about or relevant for mitigation of methylmercury impacts; and
- to direct the research activities and recommend the design of new monitoring and mitigation measures for the protection of the health of Indigenous and local populations.

Objectives:

1. To review existing and direct new scientific research and Indigenous knowledge research, as necessary, so as to develop evidence-based recommendations on the protection of health of the Indigenous and local populations who harvest and consume country foods in the Churchill River near Muskrat Falls and downstream, all along the river and including Lake Melville.

2. To review existing plans for monitoring impacts on human health, and recommend, as necessary, the design of additional plans and protocols necessary for a robust, integrated monitoring plan to protect human health, associated with methylmercury in the environment and its effects on human health.

3. To review the results from any monitoring plans, measures, and programs, and to review key findings arising from those results, and from any relevant research, studies and assessments that relate to or are relevant to the protection of human health.

4. To make recommendations to the Responsible Ministers and regulators, namely the provincial Ministers of Municipal Affairs and Environment and Service NL, and the federal Minister of Fisheries and Oceans, and any other appropriate Responsible Ministers of both the provincial [and federal] governments, to be identified by the Oversight Committee, using the

best available peer reviewed science, Indigenous knowledge, and may consider other relevant research only in addition to and not instead of the above-mentioned peer reviewed science, on mitigation, monitoring and management measures to protect human health and the environment, that are aimed at protecting the health of the Indigenous and local population who harvest and consume country foods in the Churchill River and Lake Melville.

Structure:

Independent Chair

Selection & Criteria:

The Independent Chair will be selected, using a consensus based approach, by the Province Innu Nation, Nunatsiavut Government, and NunatuKavut Community Council. Each will recommend a maximum of two potential candidates for consideration and discussion.

Nominations for the Independent Chair should meet the following minimum requirements:

- experience or familiarity with Indigenous issues and with affected groups, including having confidence of the Indigenous groups and communities;
- knowledge of Labrador and regional issues;
- some expertise in or knowledge of relevant science and research;
- neutral with respect to the Lower Churchill Project/Muskrat Falls; and
- competency and experience in chairing these sorts of boards.

Responsibilities:

The Independent Chair will be responsible for:

- organizing and presiding over meetings of the Oversight Committee and the Independent Experts Committee;
- compiling a list of experts that may sit as members, or may be needed to contribute research on an as needed basis from time to time, to the Independent Experts Committee;
- reviewing existing research, directing any new research to be completed and recommending to the Responsible Ministers any monitoring and mitigation measures deemed necessary as a result of that research.
- coordinating between the two Committees, Oversight and the Independent Experts, to finalize recommendations from the IEAC, and reporting IEAC recommendations directly to the Responsible Ministers or Regulators;
- coordinating regular reporting and communication to the Indigenous groups and affected communities, e.g. regular updates via a web site created for the public to report on progress, newsletters, public sessions;
- the Independent Chair may delegate any of the above-listed duties, as may be appropriate, to the Research Director and any additional support staff, and will be responsible for supervising said staff in carrying out these and other tasks as may be assigned.

Oversight Committee

The Oversight Committee (the “OC”) will be comprised of the Independent Chair, and seven (7) other members (the “OC Members”), including a representative appointed by each of the following:

- Nunatsiavut Government (1)
- Innu Nation (1)
- NunatuKavut (1)

Affected Municipalities (1)
Provincial government (1, non-voting)
Nalcor (1, non-voting)
Federal government (1, non-voting)

Representatives appointed by each party as an OC Member should have the authority, delegated or otherwise, to provide opinion/perspective or to vote on behalf of the party being represented to ensure that the OC can act in an efficient manner to meet its Mandate and achieve the Objectives.

Each party may appoint an alternate or additional representative, but that shall not vary or amend the voting structure. Any additional representative appointed by a party shall be considered an ex-officio member.

Quorum:

Three (3) of the voting OC Members, and the Independent Chair shall constitute quorum.

Term:

Each OC Member shall serve a term of two (2) years and may be reappointed at the discretion of their representative organization.

Subcommittee:

The OC will also include a subcommittee for the representatives of NunatuKavut, Innu Nation and Nunatsiavut, that can meet from time to time as may be necessary.

Recommendation Making of the OC:

The OC shall operate by consensus of all members, including non-voting members, as may be possible. Where no consensus can be reached, dissenting opinions of all members, including the non-voting members, shall be attached to the majority vote. The Chair shall vote only in order to break a tie.

Frequency of Meetings:

The OC will meet at least on a quarterly basis. The Independent Chair may convene additional meetings on an as needed basis, upon providing reasonable notice to all OC Members.

Vacancies:

Any vacancy of the IEC shall be filled in the same manner as the original appointment.

Independent Experts Committee

Structure and Appointment of Members:

The Independent Experts Committee (“IEC”) will be made up of nine (9) members (the “IEC Members”), as follows:

Six (6) Scientific Experts

- After the establishment of the Oversight Committee, the OC Members shall consider individuals nominated by the Members and the Independent Chair for appointment to the IEC that have relevant scientific expertise, including in methylmercury;
- Scientific Experts will be selected by the OC, based on their consensus model, and based on consideration of the scientific expertise, experience and qualifications of those

nominated, and with due consideration to the presence of any conflicts of interest;

- Should the OC fail to reach consensus, then each member of the OC except NALCOR will choose one member each;
- Individuals who have been or are directly employed by Nalcor shall not be eligible for appointment as one of the six (6) Scientific Experts. For clarity, “directly employed” does not include individuals associated with work (consulting services or general contracting), past or present, contracted out by Nalcor.
- The OC and/or the Independent Chair may direct that additional scientific experts (with expertise in different or additional subject matters than those that are appointed as IEC Members) are needed to contribute research to, work with and/or sit on the IEC on an ad hoc basis. For that purpose, previous engagement with Nalcor shall not be a disqualifying factor.

Three (3) Indigenous Knowledge Experts

- Each of Innu Nation, Nunatsiavut and NunatuKavut shall appoint an individual as Indigenous Knowledge Expert to serve as an IEC Member.
- Other individuals with expertise in Indigenous Knowledge in different or additional subject matters or areas than those that are appointed as IEC Members, e.g. additional Elders, may be engaged by the IEC from time to time.

Recommendation Making of the IEC:

The members of the IEC will discuss matters and provide recommendations to the Oversight Committee by consensus. Where no consensus can be reached, dissenting opinions shall be attached to the recommendations made by a majority vote.

Frequency of Meetings:

The IEC will meet on an as needed basis, to be determined by the OC and/or the Independent Chair.

Vacancies:

Any vacancy of the IEC shall be filled in the same manner as the original appointment.

Support Staff and Office Location

Support staff shall be hired/appointed to provide assistance and administrative support to the Independent Chair and each Committee, e.g. recording and distribution of minutes, providing administrative assistance and support for the Members and the Committees. Paid staff must include:

- Independent Chair
- Research Director
- Senior administrative support (e.g. with accounting experience, ability to coordinate with groups)

An office shall be established at 15 Cherrywood Drive, Happy Valley-Goose Bay, in the building where the Department of Fisheries and Land Resources currently have Wildlife Staff, and vacant office space. Distinct and separate space, with appropriate signage to identify it as an

independent office, will be provided.

Budget

With the exception of travel costs for the provincial and federal government representative, which shall be the responsibility of their respective departments, funding of the activities of the IEAC will be provided by Nalcor, in accordance with the following annual budget outlined below.

Travel costs and related expenses for staff of the IEAC and the remaining members of the Oversight Committee, and Independent Experts Committee shall be reimbursed in accordance with provincial government rates, as established by Treasury Board.

Salaries – Support Staff		
Independent Chair*	\$125,000	
Research Director	\$100,000	
Senior Admin support	\$50,000	
Travel	\$120,000	<p><u>Support Staff</u> Chair all meetings of OC and IEC 8 meetings in HV-GB = \$41,000</p> <p><u>Oversight Committee (OC)</u> OC will meet on a quarterly basis in HV-GB. 9 members meeting 4 times/year for 2 days /meeting. 2 provincial reps – airfare, accommodations and meals = \$3500/ meeting x 4 meetings = \$14,000 3 Indigenous reps and municipal member – meals = \$1,600.</p> <p><u>Independent Expert Committee (IEC)</u> IEC will meet on as needed basis however expect 3 meetings prior to July 2017 and as needed thereafter. Meetings to be held in HV-GB. 9 members in total – 6 members travelling to HV-BG. 4 meetings = \$41,000 3 Indigenous members – meals for 4 meetings = \$1,200. <u>Additional meetings \$21,200</u></p>
Supplies	\$30,000	Office supplies to establish office in HV-GB for Support staff including office supplies, computers, printers, copiers, stationary supplies.
Payment for IEC members	\$50,000	Scientific experts will be paid for attending meetings and preparation time according to professional service rates to be determined by the Oversight Committee.
Professional Services**	\$200,000	Funds to conduct research or engage in contractual work recommended by the IEC and as authorized by the OC. Professional services may also include the providing of scientific advice based on any research by members of the IEC.
Property Furnishings and Equipment	\$20,000	Computer desks and chairs, bookshelves, boardroom table and chairs, phones, etc.
Miscellaneous	\$3,500	
Total	\$698,500	

*To ensure optimal conditions exist for the selection of an Independent Chair, flexibility in terms of having the ability to have such a position either on salary and located in HVGB or contracted via a professional services contract and working remotely from elsewhere, is important. While in either case the costs would be budgeted at \$125,000 the funding may need to be placed in the professional services line, vs salaries line, based on the chosen Independent Chair’s preference.

** Any amount in excess of the budget deemed necessary for the conduct of further research or contractual work will require a recommendation to, and decision by, the Responsible Minister[s] or Regulator[s]