

Meeting Note
Environment and Climate Change/Labrador and Aboriginal Affairs

Premier Ball Meeting with the Nunatsiavut Government
Monday, September 26, 2016
7 pm [to be confirmed]

Attendees:

- Hon. Dwight Ball, Premier
- Hon. Perry Trimper, Minister of Environment and Climate Change
- President Johannes Lampe, Nunatsiavut Government
- **Officials: TBD**

Purpose of Meeting:

- President Lampe wrote the Premier on September 20, 2016 requesting a meeting to discuss mitigating the impact of methylmercury on Lake Melville before flooding of the Muskrat Falls reservoir begins.
- In the context of that discussion, they may raise the issue of Minister Trimper's decision to accept the Health Human Risk Assessment Plan (HHRAP).

Agenda item #1: Methylmercury Mitigation pre-flooding

Background

- On March 15, 2012, Nalcor Lower Churchill generation project was released from environmental assessment (EA) after a comprehensive independent federal-provincial Joint Review Panel (JRP) Process. There were numerous conditions associated with this release, including several environmental effects monitoring plans related to methylmercury.
- Methylmercury accumulation in the reservoir and the possibility of bioaccumulation in country foods (fish and seal) was a known aspect of the Muskrat Falls project and was examined by the JRP prior to the release of the project in 2012.
- Methylmercury is created in reservoirs when inorganic mercury (relatively non-toxic form) is converted to methylmercury (toxic form) by bacteria that feed on flooded vegetation and organic matter in the soil. Methylmercury is taken up by fish and other aquatic species and not excreted but instead builds up in concentration up the food chain. Consumption beyond levels recommended by Health Canada (HCan) has the potential to cause adverse human health effects (largely related to impacts on the central and peripheral nervous system; impacts on children and pregnant women can occur at lower levels of exposure than other adults).
- Consumption advisories, which indicate acceptable consumption limits for various country foods based on results from Nalcor's monitoring programs, may need to be established in order to protect human health.
- The potential for health effects and the desire for project changes (i.e., full vegetation clearing as well as removal of soil from the reservoir) has been at the centre of the *Make Muskrat Right* campaign launched by the NG in the fall of 2015.

- On June 14, 2016, the Minister of ECC responded to the NGs call for full clearing of the reservoir, inclusive of soil removal, indicating that the partial clearing scenario (approximately 75 per cent of accessible vegetation, no soil removal) agreed to by the Government in 2012 continued to be the most appropriate option.
- Numerous protests followed, including a rally held in HVGB on June 27, 2016, while the Premier was in town for Expo, organized by the NG and attended by the three Labrador aboriginal groups, with several hundred protestors present. Subsequent to the rally, Government wrote the three Aboriginal leaders, seeking their participation in a second expert workshop to discuss methylmercury.
- On August 4, 2016, the second workshop was held in HVGB, which was facilitated by Mr. Wayne Thistle, of the Centre for Innovative Dispute Resolution. All three Aboriginal groups were present at the workshop, which was well attended by provincial and federal departments as well as Nalcor.
- A draft workshop summary report, prepared by the facilitator, was sent to workshop participants for comment, with a deadline of September 16, 2016. On September 16 the NG, copying all participants, wrote the facilitator indicating that the summary was an 'inaccurate summary of the discussion', refusing to comment on it, providing their own transcript of the workshop as well as an audio recording of the entire workshop. The fact that the NG was recording the workshop was not disclosed to the participants or the facilitator, previously.

Analysis:

- ECC's perspective is that the workshop did not produce any new science or arguments that had not already been presented and considered.
- Discussion with federal departments since the workshop indicate the following: While Environment and Climate Change Canada (ECCC) acknowledges the conclusions of the Schartup et al (2005) study, they did not feel this was enough to recommend any changes to the proposed reservoir clearing plan; Health Canada did not feel qualified to discuss methylmercury formation in reservoirs, instead they will concern themselves with the health question pertaining to methylmercury consumption by humans; and Fisheries and Oceans Canada (DFO) have acknowledged the potential for a greater downstream impact of methylmercury and accordingly have recommended additional monitoring.
- Minister Trimper wrote the federal ministers of ECCC, HCan, and DFO for their perspectives on the workshop discussions. While a reply was requested by September 20, responses remain outstanding.
- At the workshop, discussions regarding soil removal confirmed this as a measure not previously taken and that a feasibility study would be needed. Such an activity was described as likely the most significant civil works project in the country, and no published literature could be presented to indicate its impact on methylmercury or its broader environmental impacts. This aligns with the findings of the JRP in 2012, who made the following recommendation:

The Panel recommends that Natural Resources Canada, in consultation with Nalcor

and, if possible, other hydroelectricity developers in Canada, carry out a pilot study to determine a) the technical, economic and environmental feasibility of mitigating the production of methylmercury in reservoirs by removing vegetation and soils in the drawdown zone, and b) the effectiveness of this mitigation measure. The pilot study should take place in a location where the relevant parameters can be effectively controlled (i.e. not in the Lower Churchill watershed) and every effort should be made to complete the pilot before sanction decisions are made for Gull Island. If the results of the pilot study are positive, Nalcor should undertake to employ this mitigation measure in Gull Island to the extent possible and monitor the results.

- The NG did not propose soil removal in their presentation to the JRP nor did they address this in their comments on the draft JRP report. The EA process considered the NG's perspective and government's duty to consult was fulfilled at that time. Further consultation, including two workshops, has occurred even though the government is not obligated.
- In 2014, the NG brought a Court action to quash the provincial Minister's decision to grant Nalcor a permit to alter a body of water. The issue of clearing the reservoir was raised in the proceedings, including the issue of soil removal. The Court determined that the appropriate time for the NG to challenge the Province's decision regarding clearing was when the Province issued its responses to the JRP recommendations. The Court found that "*despite the fact that the Province elected the partial clearing option in March 2012, the Applicant did not subsequently raise the issue of reservoir clearing as a mitigation measure until July 2, 2013.*" Further noting "*This was also when the issue of soil removal was raised by the Applicant for the first time*". The Court also noted "*the province's response settled and decided the matter. Nothing further was required.*" and that the law does not contemplate "*that decisions may effectively remain open for challenge long after they have been taken and the development has moved forward on the basis of such decisions*".
- As of October 1, 2016 Nalcor will be in a permitted position to begin flooding, and must raise the levels of water in the reservoir to a specified point prior to the setting in of ice so as to protect downstream infrastructure. The NG are aware of this timeline and, as such, are expected to, and evidently are, increasing pressure on government for an answer to their continued call to fully clear and remove soil from the reservoir.
- Based on full consideration of the NG's position, the results of two experts workshops, review of JRP reports and information requests from the EA review, the conclusion of ECC is that the partial clearing scenario currently deployed remains the most appropriate option at this time, for Muskrat Falls.
- However, ECC also feels that the following measures should be undertaken, both of which will require support, funding, and participation of the federal government:
 - The Province would be willing to be involved in any future research the federal government may wish to pursue regarding the impact of soil clearing from a reservoir as a methylmercury mitigation, provided that such research (consistent with the JRP) also examines the broader environmental impacts of such a measure as well as the socio-economic implications and feasibility of same; and
 - An Expert Advisory Committee will be established, independently chaired (i.e., not by a provincial, federal, or Aboriginal Government or organization) with the structure, mission,

and objectives as attached in Annex A.

- It is unlikely that any decision short of soil clearing will be acceptable to the NG. The reaction of the Innu Nation and NunatuKavut Community Council may be less extreme but they are unlikely to publicly support the Province's position if the NG remains opposed.
- Given the approaching date for the start of flooding, the NG will likely press for a response on the full clearing issue at the meeting, as it did at the meeting in Happy-Valley Goose.
- It is speculated that the NG will publicly issue their summary of the workshop, and a new release in advance of the meeting with the Premier, noting their expectation that the Government will provide an answer to full-clearing issue at the meeting.

*Possible Speaking Points (**assuming no decision is to be conveyed at the meeting**):*

- Our Government, like yours, understands the importance of the protection of human health, and the importance of harvesting of safe country food.
- We also understand fully the concerns of the Nunatsiavut Government relating to Methylmercury. This has had our full attention for many months and significant effort has been placed on finding a way forward.
- The importance of this issue is why we reconvened the expert workshop on August 4th in Happy Valley-Goose Bay
- The Minister committed that the discussions from that workshop would inform next steps, and that he would await the report from the workshop's independent facilitator before moving forward. That report is being concluded and we expect it in the coming days.
- The department has worked closely with key federal and provincial agencies on this issue including Health Canada, Fisheries and Oceans Canada, Environment and Climate Change Canada, and the Department of Health and Community Services.
- Our government remains committed to following the science and to continuing to work with the Nunatsiavut Government on this important matter.

Proposed Actions:

To be assessed based on the meeting.

Agenda item #2 (possible): Acceptance of the Human Health Risk Assessment Plan (HHRAP)

Background:

- Nalcor's HHRAP is one of the final conditions of the 2012 environmental release of the Lower Churchill project. The purpose of the HHRAP is to outline key activities that will occur in conducting a baseline pre-flooding Human Health Risk Assessment (HHRA). It is essentially a framework or workplan, intended to describe a process to ensure that the HHRA is conducted pre-flooding in a manner that includes the steps and considerations of the HHRAP.
- On June 14, 2016, the Minister of ECC held a news conference announcing the acceptance

of the HHRAP with a condition that requires Nalcor to provide reasonable and appropriate compensation measures to address the impact of any consumption advisories that are identified from methylmercury monitoring. The addition of this condition aligned with the nature of a recommendation of the JRP regarding methylmercury effects. This was in addition to a decision by DFO that Nalcor must expand their sampling program further east in Lake Melville.

- The news conference was also used to respond to broader issues being raised by the NG since the launch of their “Make Muskrat Right” Campaign, the core aspect of which was a call for full clearing of the reservoir, inclusive of soil removal, to reduce the effects of methylmercury downstream.
- On August 12, 2016, the NG filed a formal appeal of the Minister’s decision to accept the HHRAP. This appeal was filed under section 107 of the *Environmental Protection Act*, which requires that the Minister reply within 30 days.
- An EA bulletin was issued on August 30, 2016 (EA bulletins are issued regularly to communicate new registrations, appeals, and EA decisions) indicating receipt of the appeal and that the Minister’s decision was due 30 days following receipt of the appeal, in accordance with the *Environmental Protection Act*.
- On September 11, 2016, Minister Trimper wrote the NG in response to the appeal (30 days after its receipt), advising that:
 - o the decision to accept the HHRAP was upheld;
 - o that the appeal document raised elements not pertinent to the HHRAP itself;
 - o that these broader issues and concerns raised in the appeal continue to be considered, per the commitment to discuss these concerns at the expert workshop held on August 4, and use the report from the workshop to guide next steps.

Analysis:

- The NG’s appeal did not include specific criticisms or comments related to the HHRAP itself, suggesting that either they do not understand the distinction between this one plan (one of numerous conditions imposed on Nalcor) and the broader EA release.
- In responding to the HHRAP the Minister attempted to dissect this plan’s approval from the broader issue and affirm the government’s commitment to further consider their broader concern (i.e., full clearing and soil removal as a mitigation pre-flooding), informed by the discussions at the August workshop.

Possible Speaking Points (assuming no decision on the broader issue is to be conveyed at the meeting):

- In reviewing the appeal, the department consulted with Health Canada, Fisheries and Oceans Canada, Environment and Climate Change Canada, and the Department of Health and Community Services.
- The Human Health Risk Assessment plan is a workplan to describe the undertaking of a Human Health Risk Assessment. The process and tasks outlined are intended to guide how effects on human health downstream can be monitored.

- While many of the concerns raised in the appeal are outside the scope of the HHRAP, these are the very concerns that we are now considering in follow-up to our recently held expert workshop.
- We remain committed to further considering these issues.

Proposed Actions:

None.

Agenda item 3 (possible): NG Accommodations Considerations

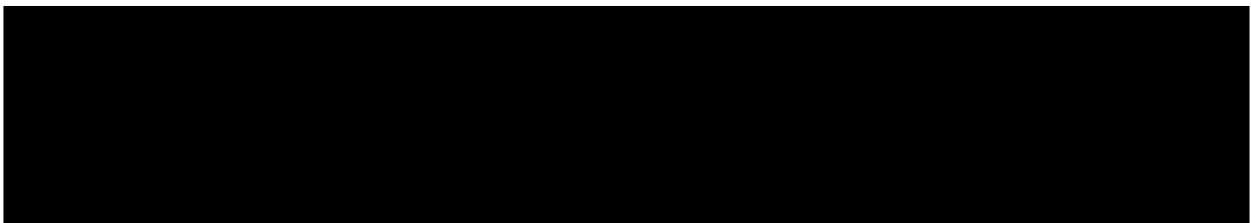
Background:

- The NG wrote the Prime Minister on August 24, 2016, with copies amongst others to the Premier and the Minister of EECC, requesting in part as follows, “The federal department of Fisheries and Oceans and the Canadian Coast Guard (DFO) is one of the regulators for this project, and has the ability to rescind its authorization for this project or amend the authorization to require changes to address the impacts to our people. More specifically, this authorization allows flooding to commence as of October 1, 2016. We ask that, at the very least, this authorization be amended to ensure no flooding takes place until the reservoir is fully cleared of all trees, vegetation and topsoil.”
- In the same letter, the NG also asked “that your government deny the request from the Government of Newfoundland and Labrador to increase the current loan guarantee or to issue new guarantees to cover increased costs of the project. Allowing this project to continue down its current path and increasing or issuing new loan guarantees would directly contradict your commitment to a renewed relationship with Indigenous peoples based on recognition of rights, respect and cooperation. It is time to Make Muskrat Right.”
- Subsequently NRCan made the following inquiry “The Nunatsiavut Government has been demanding that NL require Nalcor to fully clear the reservoir of timber, brush and topsoil to limit the production of methylmercury. I understand that undertaking such a reservoir-clearing regime would be costly and also would have further impacts on the project schedule. From Canada’s standpoint, this is a matter of provincial jurisdiction.

Analysis:

- Since Government has not communicated its final views to the NG on the last expert workshop, the NG may ask that flooding be held in abeyance until the NG receives that response and has time to consider it.
- Given the contents of this note, it appears that the Government can accede to the request that the NG will receive the final views of the Government on the last workshop before flooding occurs.
- Nalcor advises LAAO that it will be in a position to proceed with the flooding to raise the height of the Muskrat reservoir behind the dam to 25 metres above sea level around the middle of October 2016. Full impoundment will raise the reservoir an additional 14 metres to a total flooding/ impoundment elevation of 39 metres.

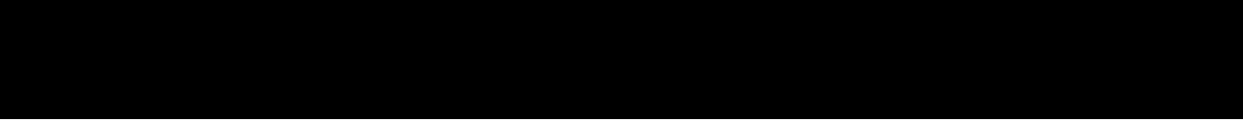

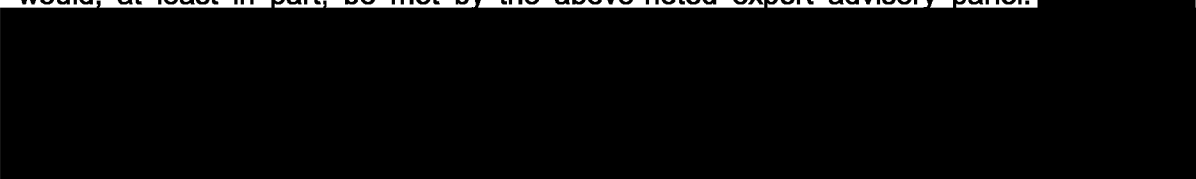
- Nalcor advises that it must proceed with the flooding around that time before freezing occurs in the Churchill River below and downstream of Muskrat Falls to prevent an ice dam from forming east of Muskrat. The formation of an ice dam would cause water to back up to Muskrat dam and flood critical work sites to the east of the dam such as the powerhouse site. Nalcor advises that such ice dam flooding would cause the cessation of essential construction during the winter resulting increased costs. While these increased costs have not been specifically calculated, it is roughly estimated they may be in the order of \$500 million.
- According to Nalcor, once the reservoir is raised 25 metres, lowering it to pre-flood levels would be problematic for at least two reasons. First, the dam will be experiencing the forces exerted on it by the increased 25 metre height of water above sea level. Consequently, lowering the reservoir height will affect the pressures exerted against the dam. Secondly, Nalcor would be concerned about the loss of fish and fish habitat as the water level declines exposing what was previously submerged reservoir shoreline.
- Nalcor advises that 75 per cent of the pre-flooding area of the reservoir will remain available for further clearing even after the reservoir is raised the noted 25 metres above sea level. However, this area would have had substantial tree clearing already, but, of course the soil is still unremoved. Soil between the 25 metre elevation and the full 39 metre elevation might still be of interest to the NG.
- The cost of full clearing of the entire reservoir as proposed by the NG, including removing soil to a depth of one metre, is estimated by Nalcor, to be another \$500 million, with project delays of perhaps two years to conduct federal and provincial environmental assessments on soil removal. This would be in addition to the already noted costs of lost construction due to ice dam effects. These costs would ultimately be assumed by ratepayer and/or taxpayers, less revenue from sales of surplus power. Furthermore, the outcome of the federal and provincial environmental assessment that would be required is unknown, and could possibly conclude that removal of the soil is not environmentally advisable.
- Therefore, given all the considerations set out in this note, it appears that the NG cannot be accommodated by acceding to the NG's concept of "full clearing." If this is indeed the case, it only remains to find an honourable means to communicate this to the NG, NunatuKavut and Innu Nation.



- Nalcor has indicated that it has considered the risk of civil disobedience. This could take one of two forms. Protests in the reservoir itself and/or the more typical access road blockade. Nalcor is taking steps to stockpile supplies for a road blockade. It views the

reservoir protests as manageable from a safety perspective, since the plan is to only raise the reservoir by about half a metre each day, and more slowly if need be. The rate of reservoir flooding can be controlled by raising and lowering the flood gates. Thus, there will be no rapid onset of a wall of water.

- As well, there is the need to consider that many workers that would be affected by such actions are Innu, Inuit, members of NunatuKavut or non-Aboriginal Labradorians. This may set up countervailing pressures in the communities, although this should not be relied on too heavily as a mechanism to resolve this matter.
- However, the enforcement of Nalcor-obtained injunctions in the current circumstances is likely to lead to calls on the Government for action to resolve the impasse between the protestors and the proponent.
- While Nalcor is not adverse to accommodations along the lines of the expert advisory panel and may be prepared to fund such accommodations, benefits of any consequence for the project will add to project costs.
- It is not anticipated that the offers noted above of an expert advisory panel and provincial involvement in federal soil studies will remove the NG's desire for full clearing.

- 
- 
- Demands from Innu Nation have focused on a desire for an environmental management agreement as contemplated by the land claim agreement-in-principle. This demand would, at least in part, be met by the above-noted expert advisory panel.
- 

- Given the federal government's new nation-to-nation relationship with Indigenous peoples, it is not expected that the federal government will publicly support Government on these matters.

Possible Speaking Points (assuming no decision is to be conveyed at the meeting):

- This project did not begin under this administration. Instead, it is something this Government has inherited.
- Since the decisions of the former provincial and federal administrations four and half years ago to release this project, time has marched on and an altered set of circumstances has come into existence. As is said "Time and tide wait for no man."

- I recall the words of Justice Murray Sinclair when, as chair, he released the Calls to Action of the Truth and Reconciliation Commission. He said ““Our leaders must not fear this onus of reconciliation, the burden is not theirs to bear alone. Rather, reconciliation is a process that involves all parties in this new relationship.” Therefore, we must seek to understand each other in moving forward on these fundamental concerns. We need to work together.
- The Government has heard your concerns concerning full clearing and fuller engagement.
- We are giving serious consideration to the recent workshop.
- We fully intend to address the broader issues raised at the workshop and communicate our views to you before any flooding occurs.

Proposed Actions:

- To be assessed based on the meeting.

Prepared/approved by: C. Janes and A. Gover
Reviewed by: D. Whelan/K. Quinlan, Cabinet Secretariat
Approved by: Received via email from the Honourable Perry Trimper

September 23, 2016

BN-2016-[REDACTED]

Cabinet Secretariat Comment:

- CPEB advises no concern with the Meeting Note. The Communications Branch has ongoing discussions with the relevant departments. This will continue as the departments develop key messages and any other communications materials.

Annex A – Independent Expert Advisory Committee

Mission: to oversee monitoring activities regarding the protection of the health of the aboriginal and local population who harvest and consume country foods in the Churchill River near Muskrat Falls and downstream into Lake Melville

Structure: Committee to have an independent Chair, scientific experts, representation from the three Aboriginal organizations, as well as key provincial and federal regulatory agencies including Environment and Climate Change, Environment and Climate Change Canada, DFO, Health Canada, and Health and Community Services

Objectives: Review the monitoring results arising from the terrestrial and aquatic effects monitoring programs as well as any outcomes and activities associated with or flowing from the final Human Health Risk Assessment, and provide advice to regulatory authorities in terms of actions needed to protect human health; review the work associated with the development of the study referenced above, and the results of the study as it is initiated and implemented, and provide input to the appropriate federal and/or provincial departments;