Thomas Bigelow,
Clerk of the Standing Committee on Environment and Sustainable Development
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Kebaowek and Wolf Lake First Nations' submission on the *Impact Assessment Act, Canadian Energy Regulator, and Navigable Waters Act* (Bill C-69) to the House of Commons Standing Committee on Environment and Sustainable Development

This submission is on behalf of the Algonquin First Nations of Kebaowek and Wolf Lake to the House of Commons Standing Committee for its study of Bill C-69, as it relates to the *Impact Assessment Act (IAA)*, *Canadian Energy Regulator Act (CERA)*, and the *Canadian Navigable Waters Act (NWA).* Thank you for this opportunity.

The Algonquin Nation is made up of eleven distinct communities in all. Nine are located in Quebec and two are in Ontario. The Algonquin Nation, which includes our two communities, has never given up aboriginal title to its traditional territory. This includes all the lands and waters within the Kitchisibi or Ottawa River watershed on both sides of the Ontario-Quebec border. Aboriginal title is held at the community level within the Algonquin Nation. Our two First Nations, along with Timiskaming First Nation, assert unextinguished aboriginal rights including title over our traditional territories, which straddle the Ottawa River basin on both sides of the Quebec-Ontario boundary. Our jurisdiction is trans-boundary. Our lands and waters are part of the *Anishinaabe Akiing* a vast territory surrounding the Great Lakes in North America. For centuries we have relied on our lands and waterways for our ability to exercise our rights under our own system of customary law and governance known to us as *Onakenagewin.* What we once knew and shared on our territories has been abused. Our ancestors never contemplated our territories to be industrial. Nor has government legislation ever adequately protected us from industrial development.

On January 23, 2013, our two First Nations, along with Timiskaming First Nation, jointly released a statement of asserted rights or SAR, which summarized the aboriginal and treaty rights that our three First Nations assert and provided detailed evidence to substantiate it. Copies of the SAR maps and background documentation were transmitted to the governments of Canada, Quebec, and Ontario in January 2013.

Today, the on-reserve population of Kebaowek is about 300, with approximately another 700 members living off reserve, more than half in Ontario. Wolf Lake members total 205. Wolf Lake does not have a reserve but has a recognized Indian settlement at Hunter's Point on Lake Kipawa. Most of the Wolf Lake members are dispersed among Kipawa, Témiscamingue, or North Bay, but remain connected to the territory as members of both our communities continue to occupy, manage, safeguard and intensively use OUR LANDS AND WATERWAYS as we carry out traditional and contemporary activities. All such initiatives are based on a model of

self-determination and a history of Algonquin traditional knowledge, eco-logical sustainability and land governance.

In response to your task gathering information for Bill C-69 that ensures that environmental assessment legislation is amended to enhance the consultation, engagement and participatory capacity of Indigenous groups in reviewing and monitoring major resource development projects, one of our guiding recommendations is for your committee to look beyond the Act itself and take into account other pieces of policy that further weaken Aboriginal peoples' capacity to participate in the resource development review process, including federal Comprehensive Claims Policy and the *Indian Act*. These pieces of legislation combine as an assault on Indigenous sovereignty and the protection of land, air and water. The cumulative policy effect has intentionally silenced Aboriginal communities across this country as resource development proceeds as planned.

Not only are these federal policies inconsistent with the pre- existing sovereignty and constitutional protection of Aboriginal and Treaty Rights, which Canadian First Nations have fought and struggled for over the centuries, but Aboriginal leaders and legal experts observe that these federal policies are in breach of internationally recognized human rights of Indigenous Peoples. Therefore, our Nations seek a different but joint approach with governments that provides a strong foundation for the "recognition, protection and reconciliation" of Aboriginal and Treaty rights instead of extinguishment of Aboriginal Title and Rights. Non-extinguishment is consistent with the Articles of the United Nations Declaration on the Rights of Indigenous Peoples (UN 2008).

To date, the evolution of various federal policies regarding consultation with Aboriginal peoples in the course of environmental reviews and industrial developments on our territories either forces extinguishment policy or fragments our capacity to assert our rights and title now guaranteed under the Canadian constitution amongst many unsupportive actors and unreasonable timelines.

As such, we view the work of this standing committee as both urgent and critical to our First Nations and all First Nations in Canada in making clear legislative amendments that do not further disparage or trivialize our assertion of territory, governance, environmental knowledge, constitutional rights and implementation of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This Bill must set the stage on how all Canadian law is going to have to live within the framework of UNDRIP. To date this legislation does not consider UNDRIP.

For your reference, Kebaowek and Wolf Lake First Nations did raise the above issues in comments on the Minister's *Discussion Paper on Federal environmental and regulatory processes* as well as input into the *Canadian Environmental Assessment Act, 2012*, the *National Energy Board Act,* the *Fisheries Act,* and the *Navigation Protection Act* and Canadian Environmental Protection Act reviews. In the fall 2016, our communities participated in two expert panel sessions- the Environmental Assessment Review expert panel in November 2016 and the NEB

modernization expert panel in March 2017.

Regardless, the Bill appears to have resorted to a matter of 'tweaking' CEAA 2012 over 'modernization'. Modernization of the Act will require reconciling the wrongs of previous legislations and policies that have worked against Indigenous peoples in Canada. As part of true 'modernization' of the Act we ask you to revisit the Act's original sources, tracing its' evolution from 1959 to its recent mandate in 2012 to assume environmental assessments under the C-38 omnibus budget bill. The resulting constitutional free zone is an overarching issue that leaves little incentive for our First Nation and others to participate. The consequences of the Act's evolution over the past several decades has materialized against us. Today, we are requesting 'stronger' language in amendments pertaining to ecological and First Nation rights protection. Otherwise we appeal to this committee that this bill is a failed attempt at 'modernized' legislation as set out by this government.

An aspect of the bill that is of interest to our Algonquin communities, but still remains vague in the proposed language of bill, is the new definition of "Indigenous jurisdiction" at sub-paragraph (g) of s. 2's definition of "jurisdiction." As we understand it, s. 114(1)(e) would appear to empower the Minister– through yet undefined regulation – to enter into an agreement with an Indigenous governing body to exercise impact assessment jurisdiction over their claimed traditional territory and resources, in the absence of a treaty or self-government agreement. In the language of s. 114(1)(e), such an agreement would:

> (i) provide that the Indigenous governing body is considered to be a jurisdiction for the application of this Act on the lands specified in the agreement or arrangement, and
>
> (ii) authorize the Indigenous governing body, with respect to those lands, to exercise powers or perform duties or functions in relation to impact assessments under this Act — except for those set out in section 16 — that are specified in the agreement or arrangement;

It is unclear to us whether the Minister will develop comprehensive regulation that will allow such a power to be exercised meaningfully and to the full extent of the IA powers in the Act with those Algonquin First Nations who otherwise reject the extinguishment policy of modern treaty-making and are weary of the impoverishment model of Aboriginal rights litigation. A true commitment to Indigenous assessment jurisdiction must include the capacity funding and revenue-generating mechanisms to build sustainable Algonquin impact assessment bodies.

We reject, however, the notion that independent Indigenous jurisdiction can only be exercised under the proposed Act after the new Impact Assessment Agency has decided whether to submit a designated project to impact assessment. If a designated project is happening on territory over which an Indigenous governing body seeks IA jurisdiction, the proposed Indigenous governing body should decide whether or not to submit the designated project to an assessment. Section 16 functions and duties as related to impact assessment should not be excluded from Indigenous impact assessment authority.

Our Algonquin communities expect to be meaningfully consulted and accommodated with respect to proposed regulations conceived pursuant to s. 114(1)(e).

We also expect meaningful consultation and accommodation for any proposed regulations developed pursuant to s. 78 of the new *Canadian Energy Regulator Act*, which would regulate potential arrangements this new regulatory body could enter into with Indigenous governing bodies, as described at s. 77(1), for "carrying out the purposes of this Act and may authorize any Indigenous governing body with whom an arrangement is entered into to exercise the powers or perform the duties and functions under this Act that are specified in the arrangement."

We support you as a committee inspired to present a new legal order that supports involvement of indigenous communities and our knowledge holders in fair legislation so that we together may take new directions in the interests of economy and, most importantly, our planet and future generations. It is our view that the well-being of future generations will '...only [be] taken into account to the extent that it is valued by the present generation'.[1] With this responsibility in mind, this is the last chance to get this legislation right and if you ruin it then you are stuck with it. Kebaowek First Nation has responded to the invitation to address your committee as a witness and would appreciate this additional opportunity for feedback and continued dialogue concerning the bill. In the interim, please find attached our community's detailed rationale for amendments to Bill C-69 and our rationale for safeguarding our responsibilities under Algonquin customary law as "keepers of the land."

As background, Kebaowek First Nation seconded the AFN Chiefs in Assembly resolution #73/2017 to participate in this review, has participated in AFN technical meetings and supports the position of the Chiefs-in-Assembly with respect to the environmental and regulatory reviews:

a. Broadening the definition of "Environmental Effects."
b. Lengthening timelines for First Nations-specific consultation.
c. Increasing opportunities for First Nations consultation within environmental processes.
d. Engaging First Nations at the strategic policy level.
e. Ensure adequate funding for First Nation engagement and consultation in all federal and provincial/territorial environmental assessment review processes.
f. Ensure the inherent rights, Title and jurisdiction of First Nations as governing authorities are recognized, including their decision- making powers using a " one assessment" approach.

[1] Broome, John. "Discounting the future." *Philosophy & Public Affairs* 23.2 (1994): 128-156.

g. Respect the free, prior, and informed consent standard throughout a full and honourable joint process.
h. Rights-based collaboration and jurisdiction - based engagement with First Nations in decision- making.
i. Mandatory inclusion of traditional knowledge, when shared, and following the OCAP® (ownership, control, access and possession) principles.
j. Ensure adequate core capacity arrangements.
k. Recognize and support First Nation led assessments

Furthermore, our communities have participated in the technical process to develop the AFN submission to your committee and fully support all its content, including amendments to key provisions in the Acts and critical components of a well-functioning federal environmental legislative and regulatory regime: cumulative effects; regional and strategic impact assessments, access to dispute resolution, free, prior, and informed consent as presented in the AFN submission, which we fully endorse..

Our submission is focused specifically towards the future legislative operationalization of both our Nations' perspectives on reconciliation and implementation of the "nation-to-nation" relationship. Specifically, we are asking the Committee to make amendments to Bill C- 69 concerning the following themes:

1. **Reconciliation**
2. **Strengthening Protection Over Our Traditional Waterways**
3. **Implementing IA Institutions and the Nation to Nation relationship**
4. **Trouble Shooting Provincial EA/IA legislation before relying on it**
5. **Implementing Indigenous Knowledge in IA**

Theme 1: Reconciliation

Problem

Government is defining what reconciliation relations are as a *priori* to extinguishment of rights and title under a planned federal "legislative framework" to transition bands currently under the Indian Act into "self government" agreements, or Comprehensive Claims Agreements/"Modern Treaties", which the government regards as "self-determination".

Background

First Nations rights and title cannot be undermined by colonial interpretation of reconciliation.

Under the 2018 budget themes for reconciliation [2] the government states "

"Canada has advanced a number of modern treaties and agreements since the 1970s, but in many cases, the pace of progress has been slow. Negotiations can take a decade or more, and Indigenous communities are forced to take on debt in order to participate. Through Budget 2018, the Government is taking new steps to increase the number of modern treaties and self-determination agreements, in a manner that reflects a recognition of rights approach. As part of this new approach, the Government will replace the use of loans with non-repayable contributions to fund Indigenous participation in the negotiation of modern treaties. Furthermore, the Government will engage with affected Indigenous groups on how best to address past and present negotiation loans, including forgiveness of loans."

Reconciliation is not about government continuing to push a colonial agenda. Reconciliation is dealing with what is unreconciialable and that is colonialism completes itself and extinguishes title to all Indigenous lands. in Canada.

Recommendation

Reconciliation should be a stated purpose of the law, which should further Canada's commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Suggested Amendments

Preamble

Whereas the Government of Canada has "adopted, without qualification" the United Nations Declaration on the Rights of Indigenous People;

Preamble

Whereas the Government of Canada is committed to achieving reconciliation with Indigenous Peoples through a legislative framework that recognizes their societies, and legal traditions, consistent with universal declarations of human rights and the core international human rights instruments adopted by Canada (for example, the UN Declaration on the Rights of Indigenous Peoples - UN Declaration)

Add a section on *Duty of Minister to IAAC and CERA*, stating:

1. When making a decision under this Act, the Minister shall do so in a manner consistent with the protection of Aboriginal rights and title recognized and affirmed by section 35 of the *Constitution Act, 1982*.
2. The Minister shall ensure that the Act is applied consistently with the United Nations Declaration on the Rights of Indigenous Peoples and the goal of Canada's positive role towards reconciliation.including recognition of Indian Act bands and their title lands.

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[2] https://www.budget.gc.ca/2018/docs/themes/reconciliation-reconciliation-en.html?utm_source=CanCa&utm_medium=%20Activities_e&utm_content=Reconciliation&utm_campaign=CAbdgt18

Theme 2: Strengthening Protection over our Traditional Waterways

Problem

The 2012 amendments to the *Navigable Waters Protection Act* (NWPA) affected First Nations from coast to coast to coast. For First Nations, the free and unencumbered use of the waterways in their territories is critical to their cultures and ability to exercise a range of s. 35 rights, and for other important purposes.

The 2012 amendments gutted the NWPA and mean that today the vast majority of waterways relied on by First Nations are not protected from interference with navigation, or the consequential environmental impacts of that interference. While the proposed amendments to the renamed *Canadian Navigable Waters Act* (CNWA) are an improvement over the current *Act*, 99% of waterways are left without protection and there are still a number of significant gaps. Therefore. KFN recommends the following amendments as provided within the AFN submission:

- Reduce excessive and unguided discretion
- Return to impact assessment trigger for some works
- Expand the public registry to properly track cumulative effects
- Strengthen weak protections for section 35 rights and Indigenous knowledge
- Legislate scheduled waterway status to all requests by First Nations

Background

Since time immemorial, the Algonquin or Anishnabeg people have occupied a territory whose heartland is Kitchisibi or Ottawa River watershed. Traditionally, our social, political and economic organization was based on watersheds, which served as transportation corridors for our family land management units. We continue to regard ourselves as 'keepers of the waterways.' while continuing to promote 'seven generations' worth of responsibilities regarding livelihood security, sacred sites, cultural identity, territorial integrity and biodiversity protection. We have accumulated local, historic and current traditional knowledge and values, customary laws and wisdom that relate to the sustainable environmental management of the lands and waterways we occupy.

Today you can no longer take a drink out of the Ottawa River. Agricultural farms using fertilizers and pulp and paper mills and the Chalk River nuclear facility dump toxic compounds without oversight as pollution by dilution into the waterway.. After many years of the community not being able to affect the environmental impacts of non-Algonquin waterway management and suffering the consequences, our communities are proposing a governance model in response to private member's motion M-104 that mandated the Ministry of Environment and Climate Change to undertake a detailed study with regard to the creation of an Ottawa River Watershed Council.

Recently in your preliminary standing committee hearings on Bill C-69, Kelly Block asked of the honourable Transport Minister Garneau to provide an example

post-2013 where navigation was negatively impacted due to NPA rules in place and referred to that not one witness throughout regulatory review hearings 2016-2017 being able to make a comment on how navigation was impeded under the new Act. What Ms. Block outlined was a failure of this consultation on the legislative process. Both Kebaowek and Wolf Lake First Nations described, in their comments on reforms to CEAA 2012, and the Navigation Protection Act how navigation was impeded on not one but two locations on our territory since 2013 and not on an unprotected waterway but on an actual scheduled waterway namely, the Ottawa River. The first instance is of a 3m chain link fence installation on the historic La Cave Portage by Ontario Power Generation for minor works at the Otto Holden installation followed by OPG's subsequent refusal to grant continued access to community members navigation without the presentation of third party insurance. There was no consultation here about installing a chain link fence just absolute impeded navigation.

The second incident was at the Public Works Temiscaming Dam infrastructure replacement project on the upper Ottawa River where WLFN operates a canoe outfitting business and, without consultation, all access to the lower river was impeded for portage for Algonquins and non- Algonquins alike. The great watershed of the Kichisibi (Ottawa River) is an ancient trade and travel route through the territory of the Algonquin Nation, as are the shores, islands and portages along the route. We ask this government why was our navigation impeded under the NPA on a scheduled waterway? What navigation protection assurances do we really have in the scheduling of waterways?

Furthermore, it is unclear whether the Working Group of Ministers will ensure the Crown is meeting its constitutional obligations with respect to Aboriginal and Treaty rights within this new legislation and ongoing regulation to provide innovative, effective, enforceable and specific Indigenous and environmental protections to the great watershed of the Kichizibi (Ottawa River) and other watersheds and sacred sites across Turtle Island. Akikodijiwan is a key sacred site to our peoples. Here in Ottawa, it is known as Chaudiere Falls. Akikodijiwan was and continues to be a site of prayer, offerings, ritual and the keeping of our laws. These activities are important work for us as custodians of our waterways and communities as they define the inter-relationship between our people and the river.

We have closely examined the threats to Akikodijiwan and the Ottawa watershed and have made recommendations to both the National Capitol Commission and Canadian heritage Minister Melanie Jolie that a much higher priority must be given to recognize and preserve Akikodijiwan as key healing point for Algonquin peoples and all cultures here in the National Capitol.

Therefore, as Algonquin leaders we are together exploring all possible options that can address the legislative shortcomings impacting the protection of our sacred waterways and jurisdiction including, but not limited to, the pursuit of separate legal rights for waterways. Wolf Lake and Kebaowek First Nation introduced resolution #93/2017 Legal Recognition for the Kitchisibi Watershed that explores the concept of legal identity for the watershed as a means of protection attached to this submission as Annex A.

Today we request your support in this new journey across cultures, religions, technical, governance and legal backgrounds to translate our vision of returning the status of a living being to the Kitchizibi to ensure its long term protection along with restoration of our key sacred site Akikidijiwan a place of peace and healing Nation to Nation.

Amendments in light of lost protections to Algonquin waterways

1. That the NWQ makes provision to schedule any waterway requested by First Nations by providing language in the legislation that any current unscheduled waterway will become scheduled as per First Nation request to the Minister.

2. Under Section 7 in the first part of Bill C-69 include NWA as a trigger to the IAA.

3. Legislate provisions for the protection of all Indigenous sacred sites on waterways

Theme 3: Implementing Algonquin Institutions and the Nation to Nation Relationship

Problem

Our Nations values interests and needs can be marginalized in participating on a regional environmental assessment (EA) table or board where our constitutional rights or interests are diluted and/or ignored by more dominant actors.

Background

The sustainable use of environmental and land resources stems from a combination of two factors: (l) the possession of appropriate local ecological knowledge and suitable methods or technology to exploit resources and (2) a philosophy and environmental ethic to keep exploitive abilities in check and to provide ground rules by which the relation among humans and the environment are regulated .[3] In this context, we suggest an Algonquin indigenous institution could play a significant role in environmental management and assessment. In our presentation to the Expert Panel, we introduced the concept of an Algonquin institution to encourage Algonquin involvement in Canadian environmental assessments in order to pay more careful attention to matters of Algonquin concern. This is desirable not only to combat development biases of proponents and government agencies that we have experienced in the structure of regional forestry management tables in the Provinces of Quebec and Ontario as well as federally directed Environmental Effects Evaluations management under CEAA 2012, but to explore the greater role indigenous institutions can play in the economics of environmental impact assessment and eco-system service planning and evolving markets for monitoring and other in environmental services. This task largely depends on rekindling a Nation-to-Nation relationship grounded in the two row wampum belt and the ecological knowledge base and practices of sustainability that

[3] Sadler, B., and P. Boothroyd. "Traditional ecological knowledge and modern environmental assessment." *Vancouver: Centre for Human Settlements, University of British Columbia* (1994).

we have practiced for thousands of years on our territories. Indigenous institutions are essential for future prosperity and participation in evolving targets for sustainability, biodiversity and climate change under agreements to which Canada is signatory.

Recommendations

First Nation-based institutions must first interpret and describe their inherent rights, grounded in Indigenous law, Indigenous legal traditions, and customary law. These legal orders, which lay the foundation for First Nations' concepts of self-determination and sovereignty, are essential to starting true "Nation-to-Nation" dialogues and expressing the respect for our rights and title.

Nation-based EA institutions provide a path towards promoting partnerships that could lead to more self-reliant Indigenous communities consistent with the United Nations Declaration on the Rights of Indigenous Peoples and achieving other sustainability, biodiversity and climate change and biodiversity targets under international agreements to which Canada is signatory.

Amendments

Authorize Nation-based Indigenous institutions as governing body, with respect to those lands, to exercise powers or perform duties or functions in relation to impact assessments under this Act not excluding *Indian Act* bands with unsurrendered Title to their territories. Please see our comments above to the bill related to the new definition of "Indigenous jurisdiction" and the power of the Canadian Energy Regulator to enter into collaborative agreements with Indigenous governing bodies.

Theme 4: Trouble Shooting Federal Done Deals and Provincial EA/IA legislation before relying on it

Problem

The elimination of equivalency under IAA clearly retains federal decision making responsibility, but project decisions can in some cases be made based on information gathering and assessment carried out by another jurisdiction. It is important to note that the shift to broader sustainability and inclusion of indigenous traditional and current knowledge adds much more value judgement to the assessment process, raises questions and concerns about the appropriateness of federal decision-makers relying on provincial assessment and in our case , analysis by the Quebec government, rather than just on provincial information gathering.

Furthermore, Federal Agency's discretion at the planning stage of the process can also be used to avoid any federal assessment in situations where other jurisdictions are carrying out their own assessment. In such a case, there would not

be a federal assessment decision at all, similar to the effect of the equivalency provisions under CEAA 2012.[4]

Our communities have experienced the failure of federal environmental assessment the case with the Public Works Ontario Dam Replacement Project on the Ottawa River in 2013. The federal government budgeted for a major project development on federal lands under its own jurisdiction and proceeded to carry out an EA as if the project was a done deal without consideration of our Aboriginal rights and title.

Background

The Government of Québec recently carried out the reform of its *Environment Quality Act* by way of the adoption of Bill 102 on March 23, 2017. We were disturbed that, for a bill having potentially such an important impact on our Aboriginal title and Aboriginal rights, First Nations in Québec were not consulted in 2016 on Bill 102. Furthermore, we note that the new consolidated version of the EQA makes no reference whatsoever to the rights of First Nations in Québec. It is shocking to us that 35 years after the recognition of our rights in the Constitution of Canada and 32 years after the recognition of these rights by the Québec National Assembly, and years of jurisprudence, no reference is made to our rights, nor to the need to consult and accommodate and in some cases obtain our free and prior informed consent, despite the fact that we are often the main communities impacted by damages to the environment. We have Aboriginal rights applicable in Québec that need to be reflected in legislation and the directive in order for our meaningful participation in Environmental Impact Assessment and Review Processes in Quebec.

We appreciate legislative plans for early and regular engagement and participation based on recognition of Indigenous rights and interests from the outset, with the objective of seeking to achieve free, prior and informed consent through processes based on mutual respect and dialogue between all jurisdictions.

Recommendations

That the federal government not rely on provincial assessment and or analysis by the Province of Quebec until the latter's EQA legislation is in compliance with Section 35 rights..

That Algonquin peoples take on our own role in Environmental Assessment and Review Process that recognizes their specific rights and attachment to our territory and resources involved in the proposed development. Recognized as partners to Environmental Assessment and Review Process, not simply "stakeholders"

That legislation is responsive to Indigenous rights, jurisdiction and

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[4] **Doelle, M., "Bill C-69: The Proposed New Federal Impact Assessment Act (IAA)" February 9, 2018.; https://blogs.dal.ca/melaw/2018/02/09/bill-c-69-the-proposed-new-federal-impact-assessment-act/**

decision making with space created to enable increased Indigenous involvement, including Indigenous-led assessments

Federal Crown representatives must engage directly with Indigenous peoples to discuss and understand potential project impacts to facilitate early planning and issue identification before considering any delegation to the Province.

Timeline and funding variations should be legislated according to project scale and complexity.

Amendments

Timelines and resources for assessment processes must be determined according to project scale and complexity. Clear language at section 75 of the new Act should legislate an obligation to fund Indigenous peoples' participation in the impact assessment process in a manner reflective of the real cost of examining the effects to their claimed Aboriginal rights of a given project.

In conclusion, we advocate legislating clear and mandatory protection and enhancement of Section 35 rights in both federal and delegated review processes.

Theme 5: Implementing Indigenous Knowledge in IA

Problem

We support the opportunity that the *IA Act* is to "take into account" Indigenous knowledge (along with scientific information and community knowledge). However only "traditional" knowledge is a required factor to be considered in IA and the Act does not go so far as to require that assessments and decisions be *based on* that knowledge and science.

Background

Sustainability science has been disengaged from questions of Indigenous knowledge and indigenous rights. We look forward in framing a welcoming and receptive engagement between sustainability science and Indigenous knowledge within future IA regulations. The introduction of Indigenous knowledge systems in IA planning is a cultural shift in current EA planning in Canada that will include and expand linkages between indigenous knowledge and traditional science based studies in environmental and impact assessment. This is both inspirational and directional as it provides on the ground strategic planning scenarios that links Indigenous system knowledge with evolving environmental, economic, climate and social objectives of the Acts. However, opening such an opportunity will require acknowledgement of the powerful place of science in contemporary environmental assessment and society. Indigenous knowledge is often viewed as inferior and out of place and out of time and there is a legitimate fear in Indigenous communities that if and when integration occurs, it could work to their disadvantage due to power dynamics.

Recommendations

Incorporating Indigenous knowledge systems in IA practices will require a new *social contract,* one that creates market and cultural space for Indigenous ways of 'knowing' while increasing sustainability as a means of co-existing. This could be a true point of government 'reconciliation' for our communities.

Ammendments

The term Indigenous knowledge systems (IKS) should be the term used and defined within the Acts. IKS better captures the nature of Indigenous Knowledge and makes clearer the distinction between "use" and "knowledge": The use of the term "traditional" raises the concern that the "knowledge" being considered will be frozen in time, and that it could exclude the evolution of Indigenous Knowledge that occurs over time in response to new circumstances and changes in the environment.[5]

Provisions are created as to the conduct of incorporating Indigenous knowledge systems in IA with participating First Nations including balancing power dynamics with existing industry and government science practices in IA.

Once again, we thank you for this opportunity to make this submission on behalf of the Algonquin First Nations of Kebaowek and Wolf Lake to the House of Commons Standing Committee for its study of Bill C-69, as it relates to the *Impact Assessment Act (IAA)*, *Canadian Energy Regulator Act (CERA)*, and the *Canadian Navigable Waters Act (NWA).*

From the beginning of the review processes our leadership and communities have demonstrated deep committed to these important tasks and to now introducing amendments. We now leave our amendments in your hands to ensure the IA Act works for the true sustainability of our common lands and waterways for future generations.

[5] AFN Submission to ENVI on Bill C-69 April 2018

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SPECIAL CHIEFS ASSEMBLY
December 5, 6 & 7, 2017, Ottawa, ON

Resolution no. 93/2017

TITLE:	**Legal Recognition for Kichizibi (Ottawa River) Watershed**
SUBJECT:	Environment
MOVED BY:	Chief Harry St Denis, Wolf Lake First Nation, QC
SECONDED BY:	Chief Lance Haymond, Kebaowek First Nation, QC
DECISION:	Carried by Consensus

WHEREAS:

A. The United Nations Declaration on the Rights of Indigenous Peoples states:

i. Article 26 (1): Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

ii. Article 26 (2): Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

iii. Article 26 (3): States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

B. The Trudeau Government will leave 99% of waterways unprotected in Canada under current changes to the *Navigation Protection Act*. This move breaks the Liberal promise to restore lost protections when the *Navigable Waters Protection Act* was eliminated by the Harper government.

Certified copy of a resolution adopted on the 7th of December 2017 in Ottawa, ON

Perry Bellegarde

PERRY BELLEGARDE, NATIONAL CHIEF

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C. It is unclear whether the Working Group of Ministers will ensure the Crown is meeting its constitutional obligations with respect to Aboriginal and Treaty rights within ongoing environmental and regulatory reviews, including the *Fisheries Act*, *Navigation Protection Act*, *Canadian Environment Assessment Act*, and National Energy Board Modernization. Furthermore, it is unclear new legislation will provide innovative, effective, enforceable and specific Indigenous and environmental protections to the great watershed of the Kichizibi(Ottawa River) and other watersheds across Turtle Island.

D. In March 2017, New Zealand Parliament passed a historic bill to recognize the special relationship between the Whanganui River and Whanganui iwi. The law provides for the river's long-term protection and restoration by making it a person in the eyes of the law.

E. The great watershed of the Kichizibi (Ottawa River) is an ancient trade and travel route through the territory of the Algonquin Nation, as are the shores, islands and portages along the route.

F. The Trudeau Government in May 2017 passed private member's motion M-104 and mandated the Ministry of Environment and Climate Change to undertake a detailed study with regard to the creation of an Ottawa River Watershed Council. The Ministry is open to exploring different governance structures, mandates and watershed management activities.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Mandate the Assembly of First Nations (AFN) to explore what steps can be taken to address the legislative shortcomings of protecting our sacred waterways and jurisdiction including, but not limited to, the pursuit of separate legal rights for waterways.

2. Direct the AFN to support efforts by Wolf Lake First Nation and Kebaowek First Nation and their respective tribal councils to explore options for the legal recognition of the Kichizibi watershed.

3. Direct the AFN to share the results of the Ottawa River watershed legal designation case study with other First Nations through regional information sessions to assist other Nations seeking redress of legal rights related to traditional waterways.

Certified copy of a resolution adopted on the 7th of December 2017 in Ottawa, ON

Perry Bellegarde

PERRY BELLEGARDE, NATIONAL CHIEF