BY REGULAR MAIL AND EMAIL

September 17, 2018

The Honourable George J. Furey Q.C.,
Senator
Speaker of the Senate
The Senate
Ottawa, ON K1A 0A4
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The Honourable Nicole Eaton, Senator
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The Honourable Lillian Eva Dyck, Senator
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The Honourable Rosa Galvez, Senator
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the Environment and Natural Resources
The Senate
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rosa.galvez@sen.parl.gc.ca

Re: Bill C-69 (2018), An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts (“Bill C-69”)

Dear Senators:

In relation to the review by the Senate of Bill C-69, this is to request that it be amended in order to ensure its consistency with the James Bay and Northern Québec Agreement treaty of 1975 (“JBNQA”) and the 2010 decision of the Supreme Court of Canada in Québec (Attorney General) v. Moses, [2010] 1 SCR 557 (“Moses”). Among other things, the Bill must make mandatory Cree participation rights in the assessment process, which can be achieved through the JBNQA Review Panel (known as COFEX). Other amendments outlined in the enclosed correspondence are also required.
We understand that the Senate has already proceeded with a first reading of Bill C-69 and that the next steps include a second reading and the likely referral for further review to Senate Committees, such as the Standing Senate Committee on Energy, the Environment and Natural Resources and the Standing Senate Committee on Aboriginal Peoples.

The Grand Council of the Crees (Eeyou Istchee) / Cree Nation Government has been in discussions with Canada regarding the adjustments required to federal environmental assessment legislation ever since the 2010 Moses decision, as evidenced by the correspondence annexed to this letter as Annexes 1 to 3. These discussions have not resolved the issue, largely due to the apparent lack of an appropriate mandate for the federal representatives.

The Grand Council of the Crees (Eeyou Istchee) / Cree Nation Government also formally notified the Government of Canada of a Dispute in 2013 in respect of Bills C-38 and C-45 of 2012, the federal legislation related to the environment, pursuant to the 2008 Agreement Concerning a New Relationship Between the Government of Canada and the Cree of Eeyou Istchee.

Recently, by letter sent to various federal Ministers on March 2, 2018,1 we reiterated the need for Canada to confirm the appropriate mandates to develop, in collaboration with our representatives, the required legal instruments to resolve the Dispute.

Further to a letter dated April 6, 2018,2 the Grand Council of the Crees (Eeyou Istchee) / Cree Nation Government also appeared on April 18, 2018 before the House of Commons Standing Committee on Environment and Sustainable Development to present a brief on Bill C-69, and subsequently submitted on May 4, 2018 specific legislative amendments.3

The proposed amendments have not been included in Bill C-69. No substantive response has been provided by Canada to our proposals and to the correspondence outlined herein.

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1 Please refer to letter dated March 2, 2018 from Grand Chief Dr. Abel Bosum to the Honourable Catherine McKenna, the Honourable Dominic LeBlanc, the Honourable Marc Garneau and the Honourable Carolyn Bennett, appended hereto as Annex 1.

2 Please refer to letter dated April 6, 2018 from Bill Namagoose to the Chair of the House of Commons Standing Committee on Environment and Sustainable Development, Annex 2.

3 Please refer to letter dated May 4, 2018 from Bill Namagoose to the Honourable Catherine McKenna, the Honourable Marc Garneau, the Honourable Jim Carr and Ms. Deborah Schulte, Annex 3.
It is urgent that Bill C-69 be revised so as to be made compatible with our treaty, the JBNQA. This approach seeks to prevent further disputes from arising, rather than having to take curative measures after the fact. This path fosters negotiation over litigation so as to give effect to the honour of the Crown and the overarching objective of reconciliation between Indigenous peoples and Government.

We now ask that the Senate make the amendments to Bill C-69 appended to the May 4, 2018 letter (Annex 3) in order to ensure that this Bill respect the JBNQA, the Moses decision and Canada’s constitutional obligations.

We also request the opportunity to appear before the Senate or its Committees in person to present on Bill C-69. We invite you to contact the undersigned to ensure that arrangements in this regard can be made in a timely manner.

Sincerely,

Bill Namagoose
Executive Director
Grand Council of the Crees (Eeyou Istchee) /Cree Nation Government

c.c.: Joe Wild, Senior Assistant Deputy Minister, Treaties and Aboriginal Government, Department of Crown-Indigenous Relations and Northern Affairs; Mark Palmer, Clerk, Standing Senate Committee on Aboriginal Peoples Maxime Fortin, Clerk, Standing Senate Committee on Energy, the Environment and Natural Resources
March 2, 2018

Honourable Catherine McKenna (Catherine.McKenna@parl.gc.ca)
Minister of Environment and Climate Change
House of Commons
Ottawa, Ontario K1A 0A6

Honourable Dominic LeBlanc (dominic.leblanc@parl.gc.ca)
Minister of Fisheries, Oceans and the Canadian Coast Guard
House of Commons
Ottawa, Ontario K1A 0A6

Honourable Marc Garneau (marc.garneau@parl.gc.ca)
Minister of Transport
House of Commons
Ottawa, Ontario K1A 0A6

Honourable Carolyn Bennett (carolyn.bennett@parl.gc.ca)
Minister of Crown-Indigenous Relations and Northern Affairs
House of Commons
Ottawa, Ontario K1A 0A6

Dear Ministers:

This is in relation to the settlement of the dispute described in the Formal Notice of Dispute transmitted by the Crees to Canada on September 20, 2013 with respect to Bills C-38 and C-45 of 2012 ("Disputes") in light of the recent tabling of Bill C-68, amending the Fisheries Act, and Bill C-69, enacting the Impact Assessment Act and the Canadian Energy Regulator Act and amending the Navigation Protection Act.

By letter agreement of February 7, 2018, Canada agreed to extend by six months, i.e. until August 7, 2018, the period of informal discussions to resolve the Dispute. Certain actions should be carried out in order to resolve the Dispute within this period.
In this regard, Canada's officials should be provided with the appropriate mandate to develop, in collaboration with our representatives, the legal instruments required to resolve the Dispute. These instruments, including agreements and regulations, are already contemplated by the proposed Impact Assessment Act and by the proposed amendments to the Fisheries Act and the Navigation Protection Act. We suggest that the focus should first be on the proposed Impact Assessment Act. This Act and its implementation must, first and foremost, respect Cree rights, including those set out in our treaty, the James Bay and Northern Quebec Agreement ("JBNQA").

In this respect, the Crees and Canada should agree, as a matter of priority, on the mechanisms to achieve the objectives outlined in the various documents submitted by the Crees during the Dispute Resolution Process as well as during the recent federal review of environmental legislation.

The Cree position, consistent with the judgement of the Supreme Court of Canada in Moses\(^1\), is that impact assessments under federal legislation in the JBNQA Cree Territory should be conducted through the Environmental and Social Impact Review Panel ("COFEX") set out in Section 22 of the JBNQA.

In this regard, the proposed Impact Assessment Act contemplates the conclusion of agreements or arrangements with indigenous governing bodies, such as the Cree Nation Government, to authorize co-management bodies, such as the COFEX, to exercise powers and duties in relation to impact assessments. The proposed Act also empowers the Governor in Council to vary or exclude any requirement of the Act or regulations as it applies to projects carried out on the JBNQA Territory. It also sets out a delegation mechanism. These various mechanisms could all be explored in order to resolve the Dispute, in the context of paragraphs 22.7.5 and 22.7.10 of the JBNQA.

It should be noted, as well, that the powers contemplated by sections 4 and 110 of the proposed Impact Assessment Act may not be exercised to exclude the application of that Act on the JBNQA Cree Territory without the consent of the Cree Nation.

As for the Fisheries Act and the Navigation Protection Act, the proposed amendments and their implementation must also respect Cree rights, including those set out in the JBNQA treaty. More specifically, with regard to the proposed amendments of the Fisheries Act, we suggest that the Crees and Canada negotiate an agreement to further the purposes of the Act, including with respect to designated projects. This agreement should also address marine refuges and Indigenous representation on advisory panels.

With respect to the proposed amendments of the *Navigation Protection Act*, we suggest that the Cree and Canada should also negotiate an agreement to carry out the purposes of the Act, to enable the Cree Nation Government to exercise various powers and perform duties under the Act, as well as to establish the bodies of water of Eeyou Istchee to be added to the Schedule.

In order to advance the resolution of the Dispute, confirmation is requested that Canada will issue without delay the mandates required to carry out the actions contemplated by this letter.

Meegwetch,

[Signature]

Dr. Abel Bodum
Grand Chief/Chairperson

c.c.: Mr. Joe Wild, Senior Assistant Deputy Minister, Treaties and Aboriginal Government, Crown-Indigenous Relations and Northern Affairs Canada

Mr. Bill Namagoose, Executive Director, Grand Council of the Cree (Eeyou Istchee)/Cree Nation Government
April 6, 2018

MS. DEBORAH SCHULTZ
Chair of the Standing Committee on Environment and Sustainable Development
House of Commons
Ottawa (Ontario)
Canada K1A 0A6

Re: Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts

Dear Madam Chair,

This is the preliminary submission of the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government, in view of the current review of Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts ("Bill C-69"), conducted by the House of Commons Standing Committee on Environment and Sustainable Development.

We also refer you to the various briefs submitted by the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government during the legislative reviews carried out during 2016-2017. These briefs are listed in Annex A and are appended to this letter electronically. The Standing
Committee should ensure that Bill C-69 accommodates Cree rights and interests outlined in those briefs.

**INTRODUCTION**

As a preliminary observation, the Committee's invitation to submit a written brief on Bill C-69 was not sent directly to the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government. This is troubling, especially when one considers that we have been in discussions with Canada on these issues since at least 2010.

In addition, the invitation was only received by the James Bay Advisory Committee on the Environment at the end of day on March 29, 2018, immediately before the long Easter weekend. In the result, it was not brought to our attention until April 4, two days before the deadline of April 6 set for the submission of briefs by the public.

We take strong exception both to this time limit and to the process. The time limit is too short to permit meaningful consultations, and the invitation is addressed to the public, with no special provision for First Nations. This process is incompatible with the requirement for meaningful consultations with First Nations, as mandated by the courts and by the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"), endorsed without reservation by the Government of Canada. The process is also difficult to reconcile with a respectful Nation to Nation relationship with indigenous peoples to which the Government of Canada has stated that it is committed.

In the result, the comments submitted in this letter can only be preliminary. We reserve the right to submit additional comments in writing. We must also reserve all rights of the Crees of Eeyou Istchee with regard to this matter.

**CONTEXT**

This submission is based, in particular, on the Cree environmental and social protection regime set out in Section 22 of the James Bay and Northern Quebec Agreement treaty of 1975 ("JBNQA"), the Eeyou Marine Region Land Claims Agreement treaty of 2010 ("EMRLCA"), sections 35 and 52 of the Constitution Act, 1982, and the Moses decision of the Supreme Court of Canada. This submission also takes account of Canada's commitment to implement the UNDRIP.

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In *Moses*, the Supreme Court of Canada held, among other things, that the *Canadian Environmental Assessment Act* (CEAA) must "...accommodate the special context of a project proposal in the James Bay Treaty territory, including the participation of the Cree."\(^2\)

The *Moses* judgment distinguishes between the environmental review processes internal to the JBNQA treaty and the review processes external to the treaty. The Court held that the JBNQA treaty permits only one internal review process (either federal, provincial or combined). However, this requirement does not preclude the application of an external federal review process where mandated by a federal environmental law of general application.\(^3\)

Following the *Moses* decision, the Cree Nation Government and the federal government engaged in discussions in an attempt to meet the requirements set by the Supreme Court.

In 2012, during the course of these discussions, the Government of Canada tabled, and Parliament adopted, Bill C-38, the *Jobs, Growth and Long-term Prosperity Act*, and Bill C-45, the *Jobs and Growth Act*, two “omnibus” laws to implement federal budget measures. These new laws also amended or replaced certain federal environmental laws, including the *Canadian Environmental Assessment Act*, 1992, the *Fisheries Act*, the *Species at Risk Act* and the *Navigable Waters Protection Act*, significantly reducing the scope of environmental protection afforded to the Cree by these laws.

On September 30, 2013, given the adverse effects of Bills C-38 and C-45 on Cree treaty rights under the JBNQA, the Cree Nation Government filed a Formal Notice of Dispute with Canada under the terms of the 2012 *New Relationship Agreement* in an attempt to resolve the dispute without recourse to litigation. Although discussions continue, to date, the Dispute remains unresolved with the Cree maintaining their right to further legal action, if necessary.

It is in this context that these submissions are made.

**PROPOSED IMPACT ASSESSMENT ACT**

With regard to the proposed Impact Assessment Act ("IAA"), the Cree position, consistent with *Moses*, is that:

a) impact assessments under the proposed IAA in JBNQA Cree Territory should be conducted through the "federal" Environmental and Social Impact Review Panel ("COFEX") established under Section 22 of the JBNQA;

\(^2\) *Moses*, paragraph 48.

\(^3\) *Moses*, paragraph 10.
b) the powers set out in sections 4 and 110 of the IAA may not be exercised to exclude the application of that Act on the JBNQA Cree Territory without the consent of the Cree Nation;

c) there can be no substitution of the federal environmental assessment process under the proposed IAA either by the general Quebec environmental impact assessment and review process (including the BAPE process) under the Environment Quality Act\(^4\) or by the COMEX/Provincial Administrator process under Section 22 of the JBNQA; and

d) tripartite agreements between the Crees, Québec and Canada could permit the harmonized assessment of a project by the COMEX and/or the COFEX under the JBNQA treaty ("internal process") as well as by the COFEX under the IAA ("external process").

**AMENDMENTS REQUIRED TO THE IMPACT ASSESSMENT ACT**

A specific section in the proposed Impact Assessment Act applicable to the JBNQA Territory would include the following:

- A provision making mandatory that the environmental impact assessment of projects under the Impact Assessment Act take place in accordance with the applicable federal COFEX process under the JBNQA treaty. In keeping with the treaty, such a provision would also provide for automatic and systematic Cree participation and involvement in the federal decision-making process, while ensuring that the proposed Impact Assessment Agency of Canada, Fisheries and Oceans Canada, the Ministry of the Environment and Climate Change Canada, Transport Canada, the proposed Canadian Energy Regulator and the Canadian Nuclear Safety Commission all contribute to the process, when required, through the JBNQA structures.

- A provision to ensure that the provisions of the Impact Assessment Act regarding the publication of documents apply to assessments conducted under this Act in JBNQA Territory while providing adequate protection measures with respect to Cree traditional knowledge.

\(^{4}\) CQLR, c. Q-2.
• When a project has impacts within areas of federal jurisdiction, a provision requiring that an environmental assessment under the Impact Assessment Act is carried out every time an internal assessment is carried out by COMEX under the JBNQA treaty.

• The requirement for an assessment under the IAA when:
  - an authorization is required under the Fisheries Act,
  - a permit is required under the Navigable Waters Protection Act for, at the very least, projects located partly or completely in the JBNQA Territory,
  - projects could alter or harm species at risk under the Species at Risk Act or migratory birds under the Migratory Birds Convention Act, 1994, or their habitats, and
  - projects to be subject to assessment are included in a modified project list jointly determined by the Crees and Canada.

**Amendments to the JBNQA and to the Proposed Impact Assessment Act**

It would be appropriate for Canada and the Crees to amend paragraph 22.7.5 of the JBNQA in order to provide that the external federal process (IAA) will be carried out on the basis of the elements outlined in Section 22 of the JBNQA and in this letter. This would give effect to the *Moses* decision and would be consistent with paragraph 22.7.10 of the JBNQA. This would also be consistent with UNDRIP and would enhance certainty and predictability.

**Agreements and Regulations Contemplated by the Impact Assessment Act and Navigation Protection Act**

In respect of the JBNQA Territory, Canada is required to develop, in close collaboration with our representatives, the required agreements and regulations contemplated by the proposed Impact Assessment Act and the Navigation Protection Act. Our Grand Chief has recently written to the concerned Ministers with respect to this matter.

The proposed Impact Assessment Act contemplates the conclusion of agreements or arrangements with Indigenous governing bodies, such as the Cree Nation Government, to authorize co-management bodies, such as the COFEX, to exercise powers and duties in relation to impact assessments. The proposed Act also empowers the Governor in Council to vary or exclude any requirement of the Act or regulations as it applies to projects carried out on the JBNQA Territory. It also sets out a delegation mechanism. These various mechanisms should be deployed now, in close consultation with the Cree Nation Government, in order to resolve the Dispute.
As for the Navigation Protection Act, the proposed amendments and their implementation must also respect Cree rights, including those set out in the JBNQA treaty. Canada should now negotiate an agreement with the Crees in order to carry out the purposes of the Act, to enable the Cree Nation Government to exercise various powers and perform duties under the Act, as well as to establish the bodies of water of Eeyou Istchee to be added to the Schedule.

**AMENDMENTS REQUIRED TO THE PROPOSED CANADIAN ENERGY REGULATOR ACT**

Certain amendments should be made to subsection 317(3) of this Act in order to comply with the Agreement on Cree Nation Governance between the Crees of Eeyou Istchee and the Government of Canada signed on July 18, 2017 (“Governance Agreement”), which has been approved, given effect and declared valid by the Cree Nation of Eeyou Istchee Governance Agreement Act (S.C. 2018, c. 4).

One of the main objectives of the Governance Agreement is to provide for the modernization of the governance regime on Category IA land and to promote greater autonomy and greater responsibility on the part of the Crees for governance on Category IA lands. Consequently, in this context, it is appropriate for the consent of the Governor in Council referred to in subsection 317(3) to be replaced by the consent of the concerned Cree First Nation.

Similarly, this subsection should also indicate that any matters related to taking possession of, using or occupying Cree lands within the meaning of the EMRLCA shall be subject to the consent of the Cree Nation Government.

Subsection 317(4) of the Act should also require that, if Category IA land or Cree lands are taken possession of, used or occupied by a company or if they are injuredly affected by the construction of a pipeline, compensation shall be made according to the mechanisms set out in the JBNQA and the EMRLCA.

**AGREEMENTS AND REGULATIONS CONTEMPLATED BY THE CANADIAN ENERGY REGULATOR ACT**

In respect of the JBNQA, Canada is required to develop, in close collaboration with our representatives, the required agreements and regulations contemplated by the proposed Canadian Energy Regulator Act.

All impact assessments regarding energy imports and exports, energy supplies and markets, oil and gas projects, international or interprovincial pipelines and international or interprovincial power lines, whether carried out under the impact Assessment Act or the Canadian Energy Regulator Act, must be made with Cree participation and in accordance with the applicable
provisions and mechanisms set out in the JBNQA and the EMRLCA. These measures are essential to comply with the requirements of the UNDRIPs and the Supreme Court decision in Moses.

Similarly, the policy and regulatory functions under the Canadian Energy Regulator Act must involve Cree participation and be carried out in accordance with the applicable provisions and mechanisms set out in the JBNQA and the EMRLCA.

Accordingly, Canada must now negotiate with the Cree an agreement to carry out the purposes of the Act in order to authorize the Cree Nation Government to exercise various powers and perform duties and functions under this Act. We also suggest that the various mechanisms provided for by this Act to enhance the involvement of the Indigenous peoples of Canada and Indigenous organizations through committees and programs, to enhance public engagement of Indigenous peoples of Canada and to establish collaborative processes with Indigenous organizations be now explored in collaboration with our representatives.

**APPEARANCE BEFORE THE COMMITTEE**

We request the opportunity to appear before the Committee in person in order to make further submissions on Bill C-69. We invite you to contact the undersigned to ensure that arrangements in this regard can be made as soon as possible.

Thank for your attention to this matter.

Sincerely,

Bill Namagoose
Executive Director

c.c.: Mr. Thomas Bigelow, Clerk of the Standing Committee on Environment and Sustainable Development,
House of Commons
131 Queen St., 6th Floor
Ottawa, Ontario, K1A 0A6
E-mail: ENVI@parl.gc.ca

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See, for example, articles 8(2), 18, 19, 27, 37 and 38.
ANNEX A

List of Briefs and Reports submitted by the Grand Council of the Crees
(Eeyou Istchee)/Cree Nation Government

2016-2017


- Brief to the Standing Committee on Transport, Infrastructure and Communities on the CEAA 2012 and the Navigation Protection Act, 9 November 2016
  (http://www.ourcommons.ca/content/Committee/421/TRAN/Brief/BR8693713/brief-
  external/GrandCouncilOfTheCrees-EeyouIstchee-9483033-e.pdf);

  (http://eareview-examenee.ca/wp-
  content/uploads/uploaded_files/gceicngbriefFederalassessmentdec222016-2.pdf);

- Brief to the Expert Panel on the National Energy Board Modernization, March 31, 2017
  (https://s3.ca-central-1.amazonaws.com/ehq-production-
  canada/documents/attachments/a43e92c5db3b5e8572255f66a6a75691/285f8c4c70
  00/006/046/original/GCCFI-
  CNG on the Modernization of the National Energy Board -
  March 31.pdf?1491339558).


- Brief on the Federal Assessment of projects, Energy Regulation, Fish and Fish Habitat and Navigable Waters, August 28, 2017
May 4, 2018

THE HONOURABLE CATHERINE MCKENNA
Minister of Environment and Climate Change
House of Commons
Ottawa, Ontario K1A 0A6
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THE HONOURABLE JIM CARR
Minister of Natural Resources
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THE HONOURABLE MARC GARNEAU
Minister of Transport
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Ms. DEBORAH SCHULTE
Chair, Standing Committee on Environment and Sustainable Development
House of Commons
Ottawa, Ontario K1A 0A6
deb.schulte@parl.gc.ca

Re: Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts

Dear Ministers McKenna, Carr and Garneau:

Dear Ms. Schulte:

This is further to the April 6, 2018 submission of the Grand Council of the Crees (Eeyou Istchee) / Cree Nation Government with respect to Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts and to our appearance before the Standing Committee on the Environment and Sustainable Development on April 18, 2018 in this respect.

81 Metcalfe Street, Suite 900, Ottawa, Ontario K1P 6E7 | Tel: (613) 761-1655 | Fax: (613) 761-1388 | E-mail: gceec@cngov.ca | www.cngov.ca
Please find enclosed two (2) working documents outlining our requested amendments to the proposed Impact Assessment Act and the proposed Canadian Energy Regulator Act set out in Bill C-69 as well as the required follow-up actions with respect to regulations and agreements under this legislation and under the proposed amendments to the Navigation Protection Act.

These documents represent updates of the proposals of April 27, 2018 submitted to Romeo Saganash, Member of Parliament for Abitibi-Baie-James-Nunavik-Eeyou (Quebec) and to Linda Duncan, Vice-Chair of the Standing Committee on the Environment and Sustainable Development and Member of Parliament for Edmonton Strathcona (Alberta).

We are available to discuss.

Sincerely,

[Signature]

Bill Namagoose
Executive Director

c.c.: Romeo Saganash, Member of Parliament for Abitibi-Baie-James-Nunavik-Eeyou (Quebec);
Linda Duncan, Vice-Chair of the Standing Committee on the Environment and Sustainable Development and Member of Parliament for Edmonton Strathcona (Alberta);
Ron Hallman, President, Canadian Environmental Assessment Agency;
Joe Wild, Senior Assistant Deputy Minister, Treaties and Aboriginal Government, Department of Crown-Indigenous Relations and Northern Affairs.
WORKING DOCUMENT ON THE PROPOSED IMPACT ASSESSMENT ACT AND THE NAVIGATION PROTECTION ACT  
May 3, 2018

DOCUMENT DE TRAVAIL QUANT AU PROJET DE LOI SUR L’ÉVALUATION D’IMPACT ET LA LOI SUR LA PROTECTION DE LA NAVIGATION  
3 mai 2018

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<tr>
<th>PROPOSED AMENDMENTS TO THE PROPOSED IMPACT ASSESSMENT ACT (“Act”) UNDER BILL C-69¹</th>
<th>MODIFICATIONS PROPOSÉES À LA LOI SUR L’ÉVALUATION D’IMPACT (« Loi ») EN VERTU DU PROJET DE LOI C-69²</th>
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<td>May 3rd, 2018</td>
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1. The Act is amended by inserting the following sections after section 4:

4.1 The following physical activities that are located partly or completely in the territory subject to Section 22 of the James Bay and Northern Quebec Agreement and that have effects within federal jurisdiction, shall be deemed to be designated projects:

a) developments subject to the impact assessment and review procedures under the environmental and social protection regime applicable in the territory subject to Section 22 of the James Bay and Northern Quebec Agreement;

b) a physical activity requiring a certificate, permit or similar authorization under the Fisheries Act or the Canadian Navigable Waters Act; or

c) a physical activity that is likely to affect a listed wildlife species or its critical habitat under the Species at Risk Act or migratory birds under the Migratory Birds Convention Act, 1994, or their habitats.

1. La Loi est modifiée par l’insertion, après l’article 4, des articles suivants :

4.1 Les activités concrètes suivantes, situées partiellement ou complètement sur le territoire visé au chapitre 22 de la Convention de la Baie James et du Nord québécois, lorsqu’ayant des effets relevant d’un domaine de compétence fédérale, sont réputées des projets désignés :

a) les projets assujettis au processus d’évaluation et d’examen des répercussions du régime de protection de l’environnement et du milieu social applicable dans le territoire visé au chapitre 22 de la Convention de la Baie James et du Nord Québécois ;

b) toute activité concrète requérant un certificat, permis ou autorisation similaire en vertu de la Loi sur les pêches ou la Loi sur les eaux navigables canadiennes;

c) toute activité concrète susceptible de toucher une espèce inscrite ou son habitat essentiel en vertu de la Loi sur les espèces en péril ou les oiseaux migrateurs en vertu de la Loi de 1994 sur la convention concernant les oiseaux migrateurs, ou leur habitat.

¹ Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts.

² Projet de loi C-69, Loi édictant la Loi sur l’évaluation d’impact et la Loi sur la Règle canadienne de l’énergie, modifiant la Loi sur la protection de la navigation et apportant des modifications corrélatives à d’autres lois.
4.2 (1) Notwithstanding any contrary provision, impact assessments of designated projects located partly or completely in the territory subject to Section 22 of the James Bay and Northern Quebec Agreement must be conducted by the federal Environmental and Social Impact Review Panel established under Section 22 of the James Bay and Northern Quebec Agreement, including the impact assessments of energy matters contemplated by the Canadian Energy Regulator Act.

(2) Every federal authority, including in all cases the Impact Assessment Agency of Canada, that is in possession of specialist or expert information or knowledge with respect to a designated project that is the subject of the preparations of the federal Environmental and Social Impact Review Panel established under Section 22 of the James Bay and Northern Quebec Agreement must, on the latter's request and within the period it specifies, make that information or knowledge available thereto.

NOTE: In addition, in respect of the JBNQA Territory, Canada is required to develop, in close collaboration with representatives of the Cree Nation Government, the required agreements and regulations contemplated by the proposed Impact Assessment Act (including under sections 109 and 114) and the Navigation Protection Act (including under section 27).

4.2 (1) Malgré toute disposition contraire, l'évaluation d'impact d'un projet désigné situé partiellement ou complètement sur le territoire visé au chapitre 22 de la Convention de la Baie James et du Nord québécois doit être menée par le comité fédéral d'examen des répercussions sur l'environnement et le milieu social institué en vertu du chapitre 22 de la Convention de la Baie James et du Nord Québécois, incluant l'évaluation d'impact des questions relatives à l'énergie visées par la Loi sur la Régie canadienne de l'énergie.

(2) Il incombe à toute autorité fédérale possédant l'expertise ou les connaissances voulues en ce qui touche un projet désigné faisant l'objet de travaux préparatoires, incluant dans tous les cas l'Agence canadienne d'évaluation d'impact, de fournir au comité fédéral d'examen des répercussions sur l'environnement et le milieu social institué en vertu du chapitre 22 de la Convention de la Baie James et du Nord Québécois, sur demande et dans le délai qu'elle précise, les renseignements utiles.

NOTE : De plus, en ce qui concerne le territoire de la CBINQ, le Canada se doit d'élaborer, en coopération étroite avec les représentants du Gouvernement de la nation crée, les ententes et règlements nécessaires envisagés par la Loi sur l'évaluation d'impact proposée (voir notamment les articles 109 et 114) et la Loi sur la protection de la navigation (voir notamment l'article 27).
1. Section 317 of the Act is modified as follows:

Consent of council of the band

317 (1) Despite section 35 of the Indian Act, a company must not, for the purpose of constructing a pipeline or engaging in the activities referred to in paragraph 313(a), take possession of, use or occupy lands in a reserve, within the meaning of subsection 2(1) of the Indian Act, without the consent of the council of the band, within the meaning of that subsection.

For greater certainty

(2) For greater certainty, nothing in subsection (1) is to be construed as modifying the application of the other provisions of this Act.

Consent of Governor in Council

(3) A company must not take possession of, use or occupy the following lands without the consent of the Governor in Council:

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1 Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts.

2 Projet de loi C-69, Loi édictant la Loi sur l'évaluation d'impact et la Loi sur la Régie canadienne de l'énergie, modifiant la Loi sur la protection de la navigation et apportant des modifications corrélatives à d'autres lois.
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(a) Category IA or IA-N land, within the meaning of the Cree-Naskapi (of Quebec) Act, or:
Category IA-N land, as defined in subsection 2(1) of the Naskapi and the Cree-Naskapi Commission Act;

(b) Sechelt lands, within the meaning of the Sechelt Indian Band Self-Government Act.

Consent of the Cree First Nation

(3.1) A company must not take possession of, use or occupy, Category IA land, as defined in subsection 2(2) of the Cree Nation of Eeyou Istchee Governance Agreement Act, without the consent of the concerned Cree First Nation.

Consent of the Cree Nation Government

(3.2) For greater certainty, a company must not take possession of, use or occupy, Cree lands, within the meaning of the Agreement referred to in subsection 2(1) of the Eeyou Marine Region Land Claims Agreement Act, without the consent of the Cree Nation Government.

Compensation

(4) If the lands referred to in subsection (1), or, (3) or (3.2) are taken possession of, used or occupied by a company, or if they are injuriously affected by the construction of a pipeline, compensation must be made by that company.

Compensation

(5) If the lands referred to in subsection (3.1) are taken possession of, used or occupied by a company, or if they are injuriously affected by the construction of a pipeline, compensation must be made by that company in accordance with the mechanisms set out in the James Bay and Northern Québec Agreement and the Agreement

(a) les terres de catégories IA et IA-N, au sens de la Loi sur les Cris et les Naskapis du Québec;
les terres de catégorie IA-N, au sens du paragraphe 2(1) de la Loi sur les Naskapis et la Commission crie-naskapi;

(b) les terres séchelles, au sens de la Loi sur l'autonomie gouvernementale de la bande indienne séchelle.

Consentement de la Première nation crie

(3.1) La compagnie ne peut prendre possession des terres de catégorie 1A, au sens du paragraphe 2(2) de la Loi sur l’accord concernant la gouvernance de la nation crie d'Eeyou Istchee, ni les utiliser ou les occuper, sans le consentement de la Première nation crie concernée.

Consentement du Gouvernement de la nation crie

(3.2) Il est entendu que la compagnie ne peut prendre possession des terres des Cris, au sens de l’accord visé au paragraphe 2(1) de la Loi sur l’accord sur les revendications territoriales concernant la région marine d’Eeyou, ni les utiliser ou les occuper, sans le consentement du Gouvernement de la nation crie.

Indemnité

(4) La prise de possession, l'occupation ou l'utilisation par une compagnie des terrains visés aux paragraphes (1), ou (3) ou (3.2), ou les dommages que leur cause la construction du pipeline, donnent lieu au paiement d'une indemnité par cette compagnie.

Indemnité
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referred to in subsection 2(1) of the Cree Nation of Eeyou Istchee Governance Agreement Act.

NOTES:

- all impact assessments regarding energy imports and exports, energy supplies and markets, oil and gas projects, international or interprovincial pipelines and international or interprovincial power lines, whether carried out under the Impact Assessment Act or the Canadian Energy Regulator Act, must be made with Cree participation and in accordance with the applicable provisions and mechanisms set out in the JBNQA and the EMRLCA;

- Canada shall negotiate with the Cree Nation Government an agreement to carry out the purposes of the Act in order to authorize the Cree Nation Government to exercise various powers and perform duties and functions under this Act, before the Bill comes into force;

- the various mechanisms provided for by this Act to enhance the involvement of the indigenous peoples of Canada and indigenous organizations through committees and programs, to enhance public engagement of Indigenous peoples of Canada and to establish collaborative processes with Indigenous organizations shall now be the subject of agreements (and before the Bill comes into force) with the Cree Nation Government.

(5) La prise de possession, l'occupation ou l'utilisation par une compagnie des terrains visés au paragraphe (3.1) ou les dommages que leur cause la construction du pipeline, donnent lieu au paiement d'une indemnité par cette compagnie conformément aux mécanismes prévus à la Convention de la Baie James et au Nord québécois et à l'accord visé au paragraphe 2(1) de la Loi sur l'accord concernant la gouvernance de la nation crie d'Eeyou Istchee.

NOTES:

- toute évaluation des impacts concernant les exportations et importations d'énergie, les marchés et les approvisionnements d'énergie, les projets de pétrole et gaz, les pipelines interprovinciaux et internationaux, les lignes de transport d'électricité interprovinciales et internationales, qu'elle soit menée en vertu de la Loi sur l'évaluation d'impact ou la Loi sur la Règle canadienne de l'énergie, doit être menée avec la participation des Cris et en conformité avec les dispositions et mécanismes prévus à la CBINQ et à l'ARTRME;

- le Canada doit négocier avec le Gouvernement de la nation crie, avant que le projet de loi n'entre en vigueur, un accord concernant l'application de la loi et afin d'autoriser le Gouvernement de la nation crie à exercer les attributions sous le régime de cette loi;

- les mécanismes prévus par cette loi visant à favoriser la participation des peuples autochtones du Canada et des organisations autochtones, pour favoriser la participation du public et pour établir des processus collaboratifs avec des organisations autochtones doivent faire l'objet d'ententes maintenant (et avant que
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Le projet de loi n’entre en vigueur qu’avec le Gouvernement de la nation crée.