By Email to maxime.fortin@sen.parl.gc.ca

April 25, 2019

Chair of the Committee Senator Rosa Galvez
Standing Committee on Energy, the Environment, and Natural Resources
Ottawa, ON
K1A 0A4

Dear Chair Senator Rosa Galvez:

We write to provide you with our comments and recommendations with respect to Bill C-68 An Act to amend the Fisheries Act and other Acts in consequence and 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.

The Federation of Sovereign Indigenous Nations (FSIN) represents 74 First Nations in Saskatchewan and I am the portfolio holder for Lands and Resources. I report to the Lands and Resources Commission which is comprised of Chiefs that are committed to work collectively on lands and resources issues.

In 2016, the Lands and Resources Commission Chiefs directed FSIN to work with the federal government on the federal reviews of the following legislation and processes:

- The Fisheries Act
- The Navigation Protection Act
- The NEB Act; and
- Review of the environmental assessment processes

The Commission Chiefs understood that it was important for the First Nations in Saskatchewan to ensure that their views and concerns regarding the legislation and environmental assessment processes, were to be heard and any suggested changes implemented. Since the announcement of the legislative review, FSIN through our legal counsel
began meeting with Tribal Councils, First Nations and Elders in Saskatchewan at different meetings, conferences, and forums to gather feedback on their views on proposed legislation including Bills C-68 and 69.

We also recently co-hosted with government an engagement forum on Environmental and Regulatory Reviews. This forum focused on the Collaborative Development of Indigenous Knowledge Policies and Guidance and on Indigenous Participation and Collaboration in Impact Assessments. Through this engagement and the information we have gathered, we are able to prepare these submissions and recommendations to government on how to develop this legislation.

I will note that the Chiefs in Assembly have not taken a position on supporting Bills C-68 and C-69 but should the legislation move forward we are making the following recommendations:

On the Canadian Navigable Waters Act (CNWA) we maintain the CNWA does not sufficiently adopt a Nation to Nation approach and does not respect and make space for Inherent First Nation jurisdiction. Nonetheless, we are making the following recommendations:

1) First Nations in Saskatchewan must actively be involved in the regulatory drafting and program development process. Regulations must be drafted cooperatively with First Nations to ensure that they explicitly provide for transparency and for the protection of our Inherent rights;

2) Canada should include all waterways in the Schedule. The requirement of parties to apply to have waterways included in the Schedule be removed. It allows for the Schedule mechanism to remain in place and it places the burden on owners of works rather than First Nations;

3) On the tailored process for Indigenous Applications we submit this is a step in the right direction. This tailored process should include:
   a) funding and dedicated Transport Canada staff to support Indigenous groups who want to add navigable waters to the Schedule;
b) funding to establish an Indigenous resource person(s) to support Indigenous groups who want to add navigable waters to the Schedule; and
c) additional opportunities for information sharing between Transport Canada and Indigenous groups who want to add navigable waters to the Schedule. However, we further submit that First Nations must be actively involved in co-drafting these regulations;

4) On minor works, FSIN finds it problematic that non-First Nation owners have the authority under CNWA to decide whether their work situated on First Nations reserves or territory is properly considered minor work. First Nations should be responsible for assessing whether work will have a minor impact on their rights rather than proponents;

5) On minor and major works, all works by non-First Nation owners on navigable waters should require Ministerial approval and be subject to an established, transparent, and sufficiently robust approval process;

**United Nations Declaration on the Rights of Indigenous People**

6) The legislation must uphold the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and must therefore require free, prior, and informed consent to any major works on traditional territories or that could potentially affect First Nations Inherent rights;

**Duty to Consult and Accommodate**

7) The legislation must facilitate the fulfillment of the legal duty to consult and accommodate when the Crown has knowledge of a potential s.35 right that may be impacted. Meaningful consultation requires First Nations to be informed and have access to all relevant information pertaining to the major work. To uphold the Honour of the Crown and Canada’s constitutional obligations, regulations must explicitly require Canada to actively and personally notify any potentially affected First Nations of works in a timely manner and directly solicit their input;
8) The legislation should include a duty to consult process that is specific to First Nations to ensure First Nations are properly consulted;

9) First Nations must be provided with the capacity to assess the complex and often highly technical data associated with any project to insure meaningful consultation. A key recommendation of the FSIN was the establishment of a Compliance Office to assist First Nations by providing access to scientific and technical expertise;

**Protection of Indigenous Knowledge**

10) On approval of projects and environmental impacts, FSIN's position is that regulations must ensure that every application for major work undergoes an environmental assessment. Bill C-69 -the Impact Assessment Act includes the use of Indigenous Knowledge in the assessment process, but concerns have been raised for some time on the protection of Indigenous Knowledge.

11) A significant concern is the appropriation of Indigenous Knowledge by other parties for their own gain. Further, the regulations must ensure that intellectual property rights relating to Indigenous Knowledge disclosed in the regulatory process are protected, that this knowledge only be used in relation to that regulatory process, and that strict confidentiality protections are included;

At the forum we recently co-hosted, many Elders and knowledge keepers shared their knowledge which includes:

a) Indigenous knowledge is wholistic and is a way of life;
b) There are some words in an Indigenous language that have no literal translation to English;
c) There are many sacred sites and plants that need to be protected;
d) Not all First Nations are the same, we have unique practices, protocols, localized and place-based knowledge that must be respected and adhered to;
e) No “pan-Indigenous” approach;
f) Indigenous Knowledge has spiritual and cultural components;
g) Indigenous knowledge cannot be allowed to be misused, appropriated, or exploited;
h) We can guide, but not teach Indigenous knowledge;
i) UNDRIP must be incorporated;
j) There must be ongoing support with monitoring impacts;
k) Government must provide ample time to understand each other and for communities to decide what they want to share;
l) There must be adequate resources and capacity to participate and protect the knowledge;
m) The storage of Indigenous Knowledge must be considered and a central database in each region - perhaps a Centre should be established;
n) OCAP Principles: Ownership, Control, Access, and Possession;
o) Engagement must be ongoing and meaningful;
p) There should be clear understanding of the knowledge and not paraphrasing to ensure the meaning is not lost;
q) Be mindful of expert advisors and ensure they are not only there because they self-declare, but are accepted as advisors by the community;
r) Cree term Papiyatak means to be careful, caution when dealing with government and careful in that the knowledge is not used against the Indigenous group;
s) There must be confidentiality agreements;
t) There must be a recognition of the importance of the Treaty relationship;
u) The Treaty relationship is with the Crown and the Crown has a fiduciary duty to First Nations.

The forum provided insight on what is important to the Elders and knowledge keepers and this should be considered in developing the legislation.

Establishment of Reconciliation and Stewardship Office
12) In addition, the FSIN Lands and Resources Secretariat was directed by the Commission to apply for funding and participate in the Federal Reviews. One key recommendation was the establishment of a Constitutional Compliance Office.

On May 17, 2017 the Chiefs in Assembly passed a motion to support the establishment of the Constitutional Compliance Office, now referred to as the Reconciliation and Stewardship Office (RSO). The goal of the RSO would be to ensure compliance with Inherent and Treaty Rights under s.35 of the Constitution Act, and to operate in line with international norms of requiring free, prior and informed consent. The work would include both strategic planning and project-specific compliance well before the project planning begins, as well as through the decommissioning and reclamation processes.

The RSO could set up a responsible authority for the purpose of carrying out Indigenous-led Impact Assessments for projects within the traditional Territories of First Nations in Saskatchewan. Through the RSO, First Nations could also be involved in the assessment of projects that impacts fisheries and waters under the Fisheries Act and Navigation Protection Act. The RSO would bring technical and scientific expertise to support First Nations. The RSO would also bring together an Elder and Indigenous Knowledge Advisory Committee to assist in the decision making process and regulatory processes. With the establishment of the RSO it would build relationships between parties and would be a move towards reconciliation.

We submit these recommendations on behalf of the 74 First Nations FSIN represents. Thank you for the opportunity to provide written submissions and we hope we will be provided an opportunity to make oral submissions.

Regards,

[Signature]

Fourth Vice-Chief Heather Bear
FEDERATION OF SOVEREIGN INDIGENOUS NATIONS

cc. FSIN Executive
    FSIN Lands and Resources Commission
    Grand Chief Perry Bellegarde, AFN
    Dawn Walker, EOO FSIN
    Jayme Benson, Executive Director FSIN Lands and Resources