



STONEY TRIBAL ADMINISTRATION

March 31, 2021

Springbank Off-Stream Reservoir Project
Impact Assessment Agency of Canada
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Dear Jennifer:

Re: Review of the Springbank Off-Stream Reservoir Project Draft Environmental Assessment Report and Potential Conditions under the *Canadian Environmental Assessment Act, 2012*

The Stoney Tribal Administration represents the three distinct Stoney Nakoda Nations (“SNN”): Wesley First Nation, Bears paw First Nation and Chiniki First Nation. The Chiefs and Councils of the SNN have the authority to protect the collective rights and interests of the SNN as recognized by Treaty 7 and the Natural Resources Transfer Act, 1930 (“NRTA”) and protected by Section 35 of the Constitution Act, 1982 (collectively known as “Section 35 Rights”). SNN’s Section 35 Rights include hunting as laid out in Treaty 7, and the right to hunt, trap and fish as detailed in the NRTA. As well as rights not including land, water and resource rights, the right to self-govern, the right to practice SNN culture, the right to speak SNN language, and any right flowing from these aspects (e.g., passing on knowledge to the next generation).

This document includes a review of the draft Environmental Assessment (“EA”) report which presents the Impact Assessment Agency of Canada’s (“IAAC”) conclusions on whether the Springbank Off-Stream Reservoir Project (the “Project”) is likely to cause significant adverse environmental effects after taking into account the proposed key mitigation measures. It is our understanding from this report that comments received from Indigenous nations will be provided to the Minister of Environment and Climate Change (the “Minister”) for consideration. As part of the review of the EA report, a targeted review of the EIS was completed and is noted throughout. This document further comments on the potential conditions under the *Canadian Environmental Assessment Act, 2012* (“CEAA, 2012”) which are contemplated in relation to the Project.

As these conditions will become legally binding should the designated Project be allowed to proceed, it is critical that our comments on both the EA report and the potential conditions be considered and provided to the Minister for review.

Key Themes

The key themes of this review are highlighted within the executive summary of the EA report. Page iv of the executive summary indicates that “This report provides an assessment of impacts of the Project on Aboriginal or Treaty rights, as recognised and affirmed by section 35 of the *Constitution Act, 1982*, held by

First Nations and Métis peoples, including hunting, trapping, fishing, plant harvesting, and the use of sites and areas of cultural importance for the exercise of rights.”

This legislative view, based on CEAA, 2012, of SNN Section 35 Rights is narrow and does not allow for full consideration of rights as they are connected to SNN way of life. Section 35 Rights are connected to SNN cultural, social and ceremonial practices through more than just subsistence. For example, the SNN Section 35 Right to hunt includes much more than just the activity of hunting. Nation members indicate that hunting is a central part of SNN culture¹; it is grounded in respect for the land and animals and it is essential to be out on the land to access traditional sites for both the exercise of the right to hunt as well as passing down this knowledge to the younger generation². In order to accurately assess impacts of the project on Aboriginal and Treaty rights³, as stated, there must be both a consideration of the exercise of the right (e.g., hunting, trapping, fishing, gathering) as well as consideration of impacts to the cultural, social and ceremonial components of those rights.

Also, within the EA Report, the mitigation measures outline many opportunities for Indigenous involvement (e.g., participation in the development and execution of a fish rescue plan), however, a condition of approval must be applied that requires appropriate funding for these additional opportunities or it is rendered meaningless as SNN does not have internal capacity to support this level of post-approval involvement. An example of why SNN involvement is critical would be the fish food web sampling. SNN involvement would ensure that fish of importance to SNN are considered; as, for culturally critical species, proxies are not appropriate.

Another theme is the understanding of significance. Residual environmental effects from the Project in relation to Section 5 of CEAA, 2012 to current use of lands and resources for traditional purposes by Indigenous people (including from loss or alteration of access for Indigenous use; effects on the health of Indigenous peoples due to exposure to air and water contaminants, noise, and country foods and reduced ability to harvest subsistence and economic resources; and, effects to sites or things of historical, archaeological, or paleontological significance to Indigenous people) were categorized as part of the assessment process. However, the Agency concludes that, taking into account the implementation of the key mitigation and follow-up program measures, the Project is not likely to cause significant adverse environmental effects as defined under CEAA, 2012.

The process of identifying significance should be iterative and include input from SNN. As SNN was not involved in the assessment of potential impacts to SNN Section 35 Rights, nor in the development of mitigation, the process for determination of significance currently includes substantial data gaps. The below aspects of SNN Section 35 Rights should have been considered as part of the assessment and link back to criteria which can help define the severity of impact, including:

¹ MNP, Stoney Nakoda Nations – Bearspaw First Nation, Chiniki First Nation and Wesley First Nation, Section 35 Rights Assessment Report for the 2021 NGTL System Expansion Project, 2019 Bearspaw Report, Filing A98976: <https://apps.cer-rec.gc.ca/REGDOCS/Item/View/3768830>; NGTL 2021 Chiniki Report, Filing A98968: <https://apps.cer-rec.gc.ca/REGDOCS/Item/View/3768542>; NGTL 2021 Wesley Report, Filing A98962: <https://apps.cer-rec.gc.ca/REGDOCS/Item/View/3768725>.

² Ibid.

³ Terminology used within EA report

- Discussion of how the Project may impact SNN's ability to continue customs, traditions and practices that are integral to SNN's distinct culture;
- Discussion of how existing exercise of Section 35 Rights may be more vulnerable to the effects of the Project when the effects are added to, and interacting with, the baseline conditions; and
- Discussion of how the Project may impact SNN's systems for self-governance and self-determination with respect to the management of traditional lands and resources, taking into consideration SNN laws, customs and structures of the community⁴.

Based on our review of the EA report and the potential conditions, without application of our specific comments and suggestions (condition amendments and additions), and without additional consultation with SNN, and based on the criteria listed above which can be used to characterize the severity of impact, SNN deems the residual effects to SNN Section 35 Rights to be significant.

Sincerely,

<Original signed by>

Dean Cherkas
Director, Consultation
Stoney Tribal Administration

⁴ Impact Assessment Agency of Canada, Practitioner's Guide to the Impact Assessment Act, Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples

Appendix A: Draft Environmental Assessment Report Review

As noted above, the draft EA report summarizes the assessment that has been conducted by the Agency, based on the conclusions within the Environmental Impact Statement (“EIS”). It describes the effects (residual or otherwise), explains the mitigation proposed, details any feedback received from Indigenous nations and makes a significance determination based upon that information. Please see below for SNN key comments on the EA report, based on sections from the EA report, for your consideration.

Environmental Assessment Requirements (pp.12) (also related to Consultation Led by the Agency (pp. 37))

As per the EA report, the Impact Assessment Act (“IAA”) came into force August 2019 and CEAA, 2012 was repealed. In accordance with the transitional provisions of the IAA, the environmental assessment for the Project continued under CEAA, 2012.

While SNN understands the legislative framework under which this Project operates, the transitional provision cannot be licence to proceed in breach of common law principles of Indigenous consultation. These common law principles were highlighted in *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40, [2017] 1 S.C.R. 1069 which noted that “[t]he consultative inquiry is not properly into environmental effects per se. Rather, it inquires into the impact on the right itself.” A principle which is highlighted within the IAA through the direction provided within the Act itself, as well as through the practitioner’s guide, and must be applied in practice to CEAA, 2012 approvals to ensure the honour of the Crown is upheld and the duty to consult discharged.

This means looking at potential impacts to SNN rights which may not be only tied to biophysical components and instead exploring conditions necessary for the exercise of rights and the preferences of SNN members in the exercise of those rights. It also means interweaving information on SNN’s systems for self-governance and self-determination with respect to the management of those traditional lands and resources to ensure consideration of SNN law, customs and structures is appropriately contemplated.

Methods and Approach (pp. 13-14)

Within Section 1.2.3, Methods and Approach, it was identified that the Agency established a Technical Advisory Group (“TAG”) to provide the Agency with advice related to the environmental assessment of the Project. SNN was a member of this TAG. The Agency must identify, in a disaggregated manner, where any advice or expertise provided by SNN through the TAG was incorporated throughout the EA report to allow for full consideration of how this information was used in the significance determination as this differs from the SNN perception in relation to the severity of impact.

Also, within this section, it states that “[t]he Agency determines the significance of residual effects of project construction, dry operations, and flood and post-flood phases on areas of federal jurisdiction (Chapter 7) by taking into account mitigation and follow-up measures.” However, it is unclear how the proponent’s determination within the EIS has informed the Agency’s determination of significance; particularly as SNN has issues with the proponent’s determination, detailed below.

First, the rationale used to identify a lack of significance does not correlate to the exercise of rights specifically. The EIS determined that “the effects of the Project on TLRU will not result in the long-term loss

of availability of traditional use resources or access to lands currently relied on for traditional use practices or the permanent loss of traditional use sites and areas in the RAA”⁵. This ignores the importance of specific sites in the exercise of harvesting rights as well as the current levels of damage and development⁶ which exist within the regional assessment area. This assertion is made without a quantitative calculation of unoccupied Crown land or private land to which SNN has a right of access and instead relies on the assumption that because of the availability of traditional use resources within the regional assessment areas, this would not constitute a long-term loss; however availability of resources does not correlate with the ability to exercise a right as there are numerous other factors including:

- availability of land, and
- preference⁷ of land users which can inform potential avoidance behaviors.

Therefore, the significance determination must include consideration of how SNN Section 35 Rights may be more vulnerable to the effects of the Project when they are added to or interact with the existing displacement within baseline conditions.

Previous SNN experience, and previous work on projects north and south of the project development area, has shown that unoccupied Crown land and private land to which SNN has a right of access is limited; resulting in SNN harvesters and land users already being displaced. Even the minimal loss presented by the Project is a meaningful change which must be quantified, considered, mitigated and discussed as part of the EA report and potential conditions.

Additionally, the EIS determination of significance does not account for the location sensitivity of cultural activities. In previously completed work, it was noted by participants that ceremonial, cultural or sacred places are immovable⁸; once the site is disturbed or destroyed it is culturally lost⁹. This does not appear to have been considered for the significance determination by the Proponent and must be incorporated into the significance determination by the IAAC within the EA Report.

⁵ Springbank Off-Stream Reservoir Project, Environmental Impact Assessment, Volume 3A: Effects Assessment (Construction and Dry Operations), pp. 14.84

⁶ MNP, Stoney Nakoda Nations – Bearspaw First Nation, Chiniki First Nation and Wesley First Nation, Section 35 Rights Assessment Report for the NOVA Gas Transmission Ltd. Edson Mainline Expansion Project, 2020 (<https://apps.rec-cer.gc.ca/REGDOCS/Item/View/3896708>, <https://apps.rec-cer.gc.ca/REGDOCS/Item/View/3897010>, <https://apps.rec-cer.gc.ca/REGDOCS/Item/View/3897103>)

⁷ Preference is a parameter used to identify infringement of a right: (1) is the limitation unreasonable, (2) does the regulation impose undue hardship, (3) does the regulation deny to the holders of the right their preferred means of exercising that right, as per *R. v. Sparrow*, 1990 CanLII 104 (SCC), [1990] 1 SCR 1075

⁸ The PDA intersects ceremonial areas, camping areas, sacred sites, a family camp and burial ground (western tip of the bottom of the PDA). See Appendix C for maps illustrating this information.

⁹ MNP, Stoney Nakoda Nations – Bearspaw First Nation, Chiniki First Nation and Wesley First Nation, Section 35 Rights Assessment Report for the NOVA Gas Transmission Ltd. Edson Mainline Expansion Project, 2020

Project Location (pp. 15)

The exercise of SNN Section 35 Rights can be illustrated through previously collected traditional knowledge and land use data, including information collected specifically for this Project.

The previously collected land and resource use information identifies general hunting, fishing, and berry, plants and medicine gathering overlapping with the Project Development Area (“PDA”). In addition, the PDA intersects ceremonial areas, camping areas, sacred sites, a family camp and burial ground (western tip of the bottom of the PDA). Please see Appendix C for detailed maps of previously collected information.

Additionally, specific traditional knowledge collected for this Project identifies marked SNN place names; an ongoing spiritual and cultural connection with harvesting resources; vegetation and wildlife, water, fish and fish habitat; as well as 30 SNN specific use sites within the SR 1 Project Development Area.

This exercise of Section 35 Rights takes place in and around the PDA. The PDA represents approximately 1,438 ha, of which, a portion of unoccupied Crown land and private land to which SNN has a right of access will be removed (either through legal mechanisms such as dispositions, through safety related restrictions or through preference-based avoidance behaviors). In order to understand this amount of land effectively lost to SNN, the Proponent, the Government of Alberta and IAAC must calculate the amount of land that will be inaccessible (either through legal mechanism, safety restrictions or preference-based avoidance behaviors) to SNN and does not intersect with the Land Use Area. This will allow SNN to quantify the portion of SNN’s traditional territory (fyârhe Nakoda Makochi¹⁰) which can no longer be accessed in the exercise of Section 35 Rights. Partial mitigation for this impact could take the form of a Crown Land Offset plan (detailed within Appendix B).

Project Flood Scenarios (pp.16)

The design flood of 2013, or the ‘flood of record’, as specified for the flood scenarios exceeded both the 1:10-year flood and the 1:100-year flood projections. However, as noted within the EIS, floods of a similar magnitude have occurred before (1879, 1884, 1897, 1902, 1909, 1923, 1929, and 1932) and that the floods in 1929 and 1932 were caused by rainstorms of similar magnitude to those that contributed to the 2013 flood¹¹.

SNN nation members have experienced and observed changes to environmental norms related to global climate change. In order to include sufficient measures of conservatism into the assessment, the flood scenarios should have been in exceedance of the ‘flood of record’ for the maximum scenario. This would ensure that any additional impacts could be considered should flood volumes exceeding the 2013 volumes be diverted. This reassessment could result in additional Crown lands or private lands to which SNN has a

¹⁰ Rev., Dr., Chief Snow described SNN fyârhe Nakoda Makochi as extending from beyond the Brazeau River area in the north, south into Montana, east beyond the Cypress Hills of Saskatchewan, and west well into the British Columbia Interior (2005)

¹¹ Springbank Off-Stream Reservoir Project, Environmental Impact Assessment, Volume 3D: Effects Assessment (Accidents and Malfunctions, Effects of the Environment on the Project, and Summary of Environmental Effects), Effects of the Environment on the Project, pp. 2.3

right of access to being permanently lost to SNN which would require quantification, consideration, mitigation and discussion as part of the potential conditions.

Valued Components (pp. 20-21)

In *Table 1 - Valued Components Analyzed by the Agency and their Local and Regional Assessment Areas*, the rationale for the valued components included in the IAAC's analysis for the change to the environment on Indigenous peoples – current use of land and resources for traditional purposes indicates “Project-related changes to the environment may affect the availability and quality of fish, plant, and wildlife species used by Indigenous peoples for hunting, trapping, fishing and gathering. Project-related activities will disturb or reduce access to lands and resources used by Indigenous peoples for traditional purposes.”

As in previous comments, this is a narrow view of SNN Section 35 Rights that focuses on the availability and quality of biophysical species (fish, plants and wildlife). This does not relate to other SNN rights such as the right to self-govern, the right to practice SNN culture, the right to speak SNN language, and any right flowing from these aspects (e.g., passing on knowledge to the next generation). The rationale also has no connection with how the Project may impact SNN's ability to continue customs, traditions and practices that are integral to SNN's distinctive culture; or how the Project may impact SNN's systems for self-governance and self-determination.

Diversion System (pp. 26)

Within this section, the EA report specifies that the diversion inlet, and service spillway will be a gated concrete structure. This is incongruent with the exercise of SNN Section 35 Rights. This was evidenced through previous data collection exercises for the NGTL 2021 System Expansion Project. As part of that data collection, SNN participants were asked whether they liked to gather in proximity to fences, gates and/or Texas gates; 64.5% of respondents to this question indicated that, 'no', they did not like to harvest in a location where fences, gates or Texas gates were present and 63.6% indicated that they would be bothered if a ceremonial site, cultural site or sacred site had fences, gates or Texas gates in proximity. This speaks to SNN preferences which could exacerbate potential project effects and was not considered within the EIS or the EA report.

This aversion to aspects of development which may be present in the construction and operation of the Project must also be considered when development the Land Use Area proposed to act as an 'offset' of sorts, for the exercise of Section 35 Rights.

SNN participants expressed aversion to a variety of conditions such as development (in general), other hunters, recreational users, industrial/construction workers, vehicles, all-terrain vehicles, signs (e.g., no trespassing, no hunting), dust, industrial development smells, industrial development noise, industrial development visual intrusions, recent spraying or herbicide application, and evidence of contamination.

Oil and Gas Pipelines (pp. 27)

The EA report specifies that oil and gas pipelines operated by four companies (TransCanada Pipelines Ltd., Pengrowth Energy Corp., Veresen Inc. and Plains Midstream Canada) are located in the proposed diversion channel, dam and reservoir areas. Portions of the pipelines would be retrofitted or relocated/realigned depending on their location in relation to the project components.

The relocation/realignment of these projects was not fully assessed within the EIS in relation to potential impacts to SNN Section 35 Rights¹² and will likely result in additional unoccupied Crown lands or private land to which SNN has a right of access being impacted. This was not discussed in the cumulative effects volume of the EIS despite Table 1–12 noting that there was an interaction between changes in access to traditional resources or areas for current use due to future physical activities, including, realignment of existing pipelines and utilities. Instead of categorizing the changes in access to traditional areas via calculation of lost (through legal mechanism, safety restrictions or preference-based avoidance behaviors) access to Crown land and private land where SNN has a right of access, instead, the assessment focused on provided traditional land use data related to trails and travel routes.

SNN has rights within the PDA, local assessment area, and regional assessment area. These rights exist with or without provided traditional land use data related to access points. This should have been considered in the EIS and should now be considered within the EA Report as it is a clear pathway to a potential cumulative effect which would require redress through application of potential conditions.

Reclamation of Temporary Features (pp. 28)

Similar to the above noted considerations for the relocation and realignment of projects, the interim dispositions and impermanent loss of land related to temporary features must be considered as a potential impact to SNN Section 35 Rights. The EA report indicates “[t]he Project is proposed to include features that would be required during site preparation and infrastructure construction, but not during Project operations and would be reclaimed when no longer needed. These temporary features would include access roads, laydown areas, borrow sources, soil stockpiles, replaced portion of Highway 22, bridge across diversion channel, Elbow River diversion channel and floodplain berm.”

There must be a consideration of the land and access to land lost (through legal mechanism, safety restrictions or preference-based avoidance behaviors) due to these temporary features. This is particularly important in relation to SNN Section 35 Rights as a temporary interruption can result in a permanent displacement of the land user/harvester from that locale. For example, a perceived temporary displacement will require the harvester/land use ‘go elsewhere’ in the exercise of their Section 35 Rights. Once established at this new locale, assuming a new locale is available, there may be reluctance to re-establish at the original place. This would result in a permanent loss. It would also result in increased costs to frequent a different area (e.g., fuel) which could prohibit some from the exercise of SNN Section 35 Rights. Additionally, the perception of the original locale as ‘disturbed’ or ‘damaged’ may contribute to ongoing avoidance of that area for the exercise of Section 35 Rights. The area may vary as it establishes, supporting different species as the area matures which may not hold equal value to SNN.

Human Environment (pp. 44-45)

¹² SNN participated in the regulatory process for the NGTL West Path Delivery Project (GH-002-2018) and raised issue (through Information Requests) about the interactions between the Springbank Project and the West Path Delivery Project. In this Information Request, SNN asked for a description of how cumulative effects to the exercise of SNN Section 35 Rights in the region were considered by Alberta Transportation under the EIA, as well as how Alberta Transportation and NGTL plan to identify mitigations for potential impacts including cumulative impacts to SNN Section 35 Rights.

This section of the EA report indicates “[c]urrent land use by Indigenous peoples continues in the area on unoccupied Crown lands, such as the riparian zone along the banks of the Elbow River, and other private lands, which Indigenous nations have been granted permission to access by private landowners.”

This is consistent with previously collected data for the NGTL 2021 Expansion Project which illustrated land use on both Crown and private land. This, again, reiterates the importance of a calculation of Crown lands impacted (through legal mechanism, safety restrictions or preference-based avoidance behaviors) by the Project and the application of an appropriate condition of approval to offset the loss of Crown land (see Appendix B - suggested condition 8.8.5).

Atmospheric Environment (pp. 46 – 51)

This section of the EA report indicates that the Project could cause residual effects on the atmospheric environment through vehicle exhaust, fugitive emissions and noise. Residual effects from vehicle exhaust, fugitive emissions, and noise can be linked to impacts on SNN Section 35 Rights through changes to perception, which can result in increased avoidance behaviors. Perceptive effects from noise and dust extend beyond the identified extent of the direct effect and increase the avoidance of SNN harvesters from Project proximity. Additionally, the effects duration for perception may vary from those identified for the direct effect as perceptions may persist beyond the construction activities. These were not considered within the EA report or the EIS.

Further, within this section certain mitigation measures are proposed to address the potential impacts to atmospheric conditions. One such mitigation identified is the re-establishment of the vegetation cover on the deposited sediment post construction. This mitigation is an example of how a mitigation which may address potential impacts to atmospheric conditions, could have unintended consequences and result in impacts to SNN Section 35 rights. For example, the interruption time between existing vegetation and re-establishment should be considered in terms of interruption in the exercise of rights. This interruption could result in displacement of SNN harvesters and land users from this locale, which they may or may not return to, as discussed above within the *Reclamation of Temporary Features*.

Another mitigation proposed which may have unintended impacts on SNN Section 35 Rights is the usage of chemical dust suppressants which would be applied to haul roads as an alternative option to watering and applied on an as-needed basis during high wind conditions. This can result in a negative perception of SNN harvesters and land users which can result in perception-based avoidance of the area.

Additionally, some mitigation proposed within this section requires involvement from SNN in order to ensure it is representative of SNN interests. For example, the proposed follow-up monitoring must include consultation with SNN to identify transient monitoring locations representative of SNN harvesters and land users similar to the cultural monitoring program implemented for grizzly bear (see Appendix D). Further, SNN requires ongoing communication from proponent in relation to construction activities and post-flood event revegetation in plain language format for dissemination to SNN nation members to alleviate perceptive effects related to these mitigations.

Hydrology and Surface Water Quality (pp. 56 – 66)

This section of the EA report indicates that the Project could cause residual effects on hydrology and surface water quality through changes to the hydrology of the Elbow River, tributaries and wetland in the PDA as well as changes to surface water quality in the Elbow River. These potential effects are linked to impacts

on SNN Section 35 Rights through changes to SNN water rights, and alteration of harvesting behaviors. These potential impacts tie directly with SNN's systems for self-governance and self-determination as governance of water resources within the SNN traditional territory. Impacts to governance rights, while not considered within the EIS or EA report, are critical to SNN as a governing, cohesive nation and must be addressed through enhanced consultation; as implied in Article 3 and Article 4 as described within the United Nations Declaration on the Rights of Indigenous Peoples (2007) which specifically relate to self-governance and self-determination.

Terrestrial Landscape (pp. 66 – 71)

This section of the EA report indicates that the Project could cause residual effects on the terrestrial landscape, including vegetation, wetlands and wildlife habitat through alteration or loss of terrestrial habitat including terrain stability, change in soil quality and quantity, and loss of native upland, wetland plant communities or wetland functions. The alteration or loss of terrestrial habitat can be linked to impacts on Indigenous rights through changes in harvesting behaviors, including changes to harvesting locales of importance which can, in turn, affect teaching/transmittal of knowledge to the next generation, as discussed above within the *Reclamation of Temporary Features*. These were not considered within the EA report or the EIS. The permanent loss of habitat, coupled with the above noted avoidance/loss of access to Crown lands (i.e., riparian zones along the Elbow river discussed within *Project Location* above), requires offsetting to ensure there is, at minimum, no net loss, or net gain of land available for the exercise of SNN rights.

Further, within this section certain mitigation measures are proposed to address the potential impacts to vegetation. One such mitigation identified is the revegetation of traditional and medicinal plants. This mitigation is untested and, while consultation is noted as a requirement, requires more discussion about feasibility without readily available seed mixes to replace species of importance as, culturally for SNN, once a traditional plant is gone, it cannot be replanted as it disrupts the design¹³. Additionally, a further mitigation of herbicide/weed control being used to promote successful revegetation of traditional plants is incongruent with SNN Section 35 Rights. Perception of contamination will render the successfully revegetated traditional plants unusable for traditional purposes as contaminated or re-planted species (real or perceived) cannot be used¹⁴.

Of note is the burden the mitigation involvement may place on SNN. Currently, the mitigation measures outline many opportunities for Indigenous involvement; however, a condition of approval must be applied that requires funding for these additional opportunities or it is rendered meaningless as SNN does not have internal capacity to support this level of post-approval involvement. Please see Appendix B for additional details on the proposed potential condition.

Also, within the portion of the EA report, SNN's concern was noted about habitat fragmentation, but no details are provided about the suggestion of an overpass to facilitate habitat connectivity. Concerns expressed does not equal concerns addressed. This is of particular concern as the EIS notes that "...deer

¹³ NOVA Gas Transmission Ltd. 2021 System Expansion Project, Hearing Transcript, SNN Intervenor Testimony, Filing A99488, <https://apps.cer-rec.gc.ca/REGDOCS/Item/View/3779119>

¹⁴ NOVA Gas Transmission Ltd. 2021 System Expansion Project, Hearing Transcript, SNN Intervenor Testimony, Filing A99488, <https://apps.cer-rec.gc.ca/REGDOCS/Item/View/3779119>

and elk tend to use wildlife overpasses more than wildlife underpasses...¹⁵ as is proposed as part of the Project design. This highlights the cursory nature of consideration of SNN information. It implies that the Project design is effectively set in stone and that input from SNN and, indeed, conclusions drawn in the EIS did not result in any meaningful change to Project design.

Finally, within this section of the EA report the document notes “[m]ultiple Indigenous nations were concerned about effects to vegetation species of cultural importance, including rare species. They stated that the Proponent’s initial assessment, including species selection, species presence, abundance and distribution may be inaccurate due to a lack of engagement of Indigenous peoples.” This must be carried forward for ongoing follow-up and monitoring work to ensure that the species selection, species presence, abundance and distribution are accurately captured to SNN’s satisfaction as part of this ongoing work (see Appendix D for information related to cultural monitoring as per SNN requirements). Additionally, this should be set out within conditions whereby reasonable capacity is provided to allow for SNN participation in this ongoing work. Please see Appendix B for specific commentary on potential conditions.

Fish and Fish Habitat (pp. 71 – 79)

This section of the EA report indicates that the Project could cause residual effects on fish and fish habitat through changes in fish mortality and health, and habitat loss and alteration. The alteration or loss of fish habitat can be linked to impacts on Indigenous rights through changes in harvesting behaviors, including changes to harvesting locales of importance and changes to species critical in the support of SNN Section 35 Rights which can, in turn, affect teaching/transmittal of knowledge to the next generation, as discussed above within the *Reclamation of Temporary Features*. These were not considered within the EA report or the EIS.

Offsetting measures for potential loss of fish and fish habitat must also consider the above noted impacts and ensure that both the EIS identified impacts as well as other impacts noted through consultation with SNN are appropriately addressed. This includes consultation on potential locations of future offsets.

Within this section, the mitigation measures outline many opportunities for Indigenous involvement (e.g., participation in the development and execution of a fish rescue plan), however, as noted above, a condition of approval must be applied that requires appropriate funding for these additional opportunities or it is rendered meaningless as SNN does not have internal capacity to support this level of post-approval involvement. An example of why SNN involvement is critical would be the fish food web sampling. SNN involvement would ensure that fish of importance to SNN are considered as, for culturally critical species, proxies are not appropriate.

Migratory Birds (pp. 79 - 87)

This section of the EA report indicates that the Project could cause residual effects on migratory birds through loss of habitat due to construction and flood operations as well as migratory bird mortality due to flooding of the reservoir area. Loss of migratory bird habitat or migratory bird mortality are linked to impacts on Indigenous rights through changes in harvesting behavior, changes to species of cultural importance

¹⁵ Springbank Off-Stream Reservoir Project, Environmental Impact Assessment, Volume 3A: Effects Assessment (Construction and Dry Operations), Assessment of Potential Effects on Wildlife and Biodiversity, pp. 11.59

and critical in the support of SNN rights, as well as secondary perceptive effects. These were not considered within the EA report or the EIS.

Further, within the EA report, mortality is anticipated for migratory birds, although not at a population level, therefore not significant. However, the interaction between this impact and SNN Section 35 Rights must be considered as migratory birds are an important cultural species. How will mortality affect localized bird harvesting and how will it change the exercise of SNN Section 35 Rights? The EA report further specifies that the impacts to migratory birds will be limited to the PDA; however, the PDA is extensive and the 'localized' impacts of migratory bird mortality will impact the SNN food web, which in turn can affect cultural, ceremonial and social aspects of SNN rights.

Indigenous Peoples – Current Use of Lands for Traditional Purposes; Physical and Cultural Heritage and Sites of Significance (pp. 96 – 106)

Overall, within this section of the EA report, stronger language is required. This report will be the document provided to the Minister. Instead of “[t]he Project *could* cause residual effects to Indigenous peoples' current use of lands and resources for traditional purposes, physical and cultural heritage resources, and any structure, site or thing that is of historical, archaeological, paleontological, or architectural significance.” It should state that the Project *will* cause residual effects to Indigenous peoples. SNN is of the view that not only will the Project result in residual impacts, that based on the criteria discussed about for severity, if the above components were / are properly and accurately assessed, the impacts to SNN will be significant.

Additionally, within this section of the EA report, the list of residual effects should be expanded to include a direct loss (through legal mechanism, safety restrictions or preference-based avoidance behaviors) of Crown land. Currently, no Project mitigations address this impact. Access restrictions and safety considerations mean the entire PDA may be avoided for the exercise of SNN Section 35 Rights; either through fear of regulatory penalty or fear for safety. While the Land Use Area may mitigate some effects, a comprehensive communication plan will be required to ensure Nation members understand the parameters of using this area and, even then, it will take time to normalize use of the area as there will be a significant interruption to access throughout construction.

The EA report specifies that “[t]he Agency is of the view that the Indigenous Nations Land Use Advisory Committee is critical to ensuring that cultural practices continue in the Land Use Area. The Committee would also serve an important role in post-flood recovery operations for mitigating and monitoring the Project's effects on access for current use and for implementing adaptive mitigation measures as required. The Agency understands that Indigenous nations will be provided with the necessary capacity, such as technical and financial support, to meaningfully participate in the Committee and to carry out monitoring activities.”

While capacity is crucial, it is just the first step in ensuring that the Land Use Area is accessed. Additional to this, is a key aspect of SNN culture, reciprocity. This means that where something is taken away, it must be replaced. This can be achieved by adding Crown land offsets as an additional measure in addition to the Land Use Area. Please see Appendix B for additional details on the suggested Crown land offset. Crown land offsets, in addition to the Land Use Area are important as the project will result in a loss of preferred areas due to development constraints. SNN harvesters and land users cannot be simply asked to go 'elsewhere', as the unique preferred conditions may not exist in other locales throughout the regional assessment area.

Additionally, within this section of the EA report, it states that “[t]he Proponent will seek input from Indigenous nations on the seed mix composition used for reclamation and provide Indigenous nations with opportunities to conduct pre-construction field visits to harvest and relocate plants of cultural significance. Indigenous nations will be provided the opportunity to contribute to the development and implementation of a wildlife salvage program that would include culturally important species. Indigenous nations will also have the opportunity to participate in post-food wildlife habitat assessments that would be used to develop site-specific mitigation measures or species-specific surveys.” Mitigations such as this are problematic for addressing impacts to SNN Section 35 Rights. Harvesting species in culturally inappropriate ways such as the wrong time of year, or more than is needed, violates SNN rules of reciprocity and serves to add additional impacts. Should SNN agree to this potentially harmful mitigation, the additional contributions and involvement by SNN will require reasonable capacity in order to allow for full participation. Please see Appendix B for condition wording related to this suggested reasonable capacity. Additionally, in order to accurately conduct post-approval activities, an accurate pre-approval baseline must be categorized. In the case of culturally important species, particularly subsistence species, the baseline is insufficient as a SNN specific harvest study was not completed.

Also, within this section of the EA report, it is noted that “[q]uantitative assessments on noise, air quality, and country foods are described in Chapter 7.5 Health and Socio-economic Conditions of this report. Considering mitigations, residual effects to air quality and country foods in relation to human health were negligible for all project phases”. This does not account for the impact linkages to SNN Section 35 Rights via perception and subsequent avoidance of that country food, which is a critical consideration which was not explored in the EA report or EIS.

Indigenous Peoples – Health and Socio-Economic Conditions (pp. 106 – 115)

This section of the EA report included a cursory assessment of intangible aspects of Indigenous culture but tied them directly to biophysical components of the atmospheric environment, water quality, acoustic environment, and country foods. This approach does not align with the views expressed by SNN related to physical, mental and, most importantly, spiritual health of Indigenous nations. This section presented an opportunity to the proponent to discuss how the Project may impact SNN’s ability to continue customs, traditions and practices that are integral to SNN’s distinct culture. It further, provided an opportunity to discuss crucial intangible aspects of rights such as ‘sense of place’ and transmission of knowledge to the next generation; however, transmission of knowledge and ‘sense of place’ cannot be quantified through the above noted pathways. This assessment is missing from the EA report and EIS and should have been considered in order to fully understand the severity and significance of this potential impact.

Cumulative Effects (pp. 127 – 134)

This section of the EA report indicates that, within the regional assessment area, there is already significant development. The EA report specifies that “...existing anthropogenic land disturbance within the RAA (54 percent) has already contributed substantially to effects on traditional land and resource use by altering the distribution and abundance of traditionally harvested resources, reducing the extent of lands available for traditional activities, disturbing or restricting access to Indigenous use sites and areas, and changing conditions such as air quality, water quality, aesthetics and noise that may influence traditional land and resource.”

The EA report further notes that “[t]he Proponent indicated that the Project, in combination with additional or other identified projects or physical activities could affect the availability of traditional resources for

current use as a result of changes to habitat for traditionally used plant and animal species; blockage of fish passage during instream works, or the creation of physical barriers or sensory disturbance that might hinder wildlife movement in the RAA; change in mortality risk in wildlife from the physical destruction of wildlife habitat features (e.g., nests, dens, roosts); and increased animal-vehicle collisions.”

The overall reluctance of IAAC to conclude that a cumulative effect exists does not alleviate the lived experience of those effects on SNN. This is of particular note when exploring the severity of impact where a discussion of how the existing exercise of Section 35 Rights may be more vulnerable to the effects of *this* Project when the effects are added to, and interacting with, the baseline conditions of 54% already disturbed land (not accounting for access restrictions).

This is why, as a condition of approval, calculation of available crown lands within the RAA must be completed. This will illustrate past harms to SNN Section 35 rights which, with the additive impacts of the Project may incrementally increase; and because of the already disturbed state of the regional assessment area, even incremental impacts result in an unacceptable level of severity for SNN.

SNN understands the Supreme Court of Canada determined that the Duty to Consult is not triggered by historical impacts and that consultation on a specific project is not the vehicle to address historical grievances (*Clyde River (Hamlet) v. Petroleum Geo Services Inc.*, 2017 SCC 40, para. 41). However, the Supreme Court of Canada endorsed the conclusion in *West Moberly First Nations v. British Columbia (Chief Inspector of Mines)* 2011 BCCA 247 that cumulative effects of an ongoing project, and historical context, may *inform* the scope of the duty to consult (*Clyde River* 2017: para 42).

Further, *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, [2010] 2 S.C.R. 650 indicates that “[w]here the resources has long since been altered and the present government conduct or decisions does not have any further impact on the resources, the issue is not consultation, **but negotiation about compensation**” (Para. 5) [emphasis added].

The original disturbance of the regional assessment area is not open for new consultation. However, it did result in displacement of SNN members from areas disturbed or where access is restricted. SNN should not be penalized through current regulatory mechanisms for these past impacts; they should instead be used to contextualize the cumulative impacts of this Project. Further, the IAAC should acknowledge this displacement and begin quantifying the Crown lands within the regional assessment area to provide a starting point for negotiation related to compensation connected to the long-altered landscape and in the spirit of reconciliation.

Regulatory processes with Indigenous nations can sometimes adopt a quasi-transactional nature; whereby there are impacts to rights identified, and nations can negotiate compensation for those impacts. Where the rights have been displaced, as is the case of regional assessment area, there has been no opportunity for the exercise of those rights, thereby removing the opportunity for this negotiation. This has disadvantaged SNN and should be remedied by IAAC.

This concept is enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) which, at Article 28(1) indicates “Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”

The direction provided by UNDRIP, as well as existing Canadian case law, indicates redress or compensation for the historical displacement of SNN may be required.

Impacts on Aboriginal and Treaty Rights (pp. 134 – 145)

SNN's Section 35 Rights include hunting as laid out in Treaty No. 7, and the right to hunt, trap and fish as detailed in the *Natural Resources Transfer Agreement*, 1930 ("NRTA"). As well as rights not explicitly referenced in the Treaty or NRTA, including land, water and resource rights, the right to self-govern, the right to practice SNN culture, the right to speak SNN language, and any right flowing from these aspects (e.g., passing on knowledge to the next generation). This section of the EA report specifies that "[t]he Agency sought information from all potentially affected Indigenous nations about the nature of their Aboriginal and Treaty rights protected under section 35 of the Constitution Act, 1982 (section 35 rights) and how the Project may affect the exercise of their rights."

The Section 35 Rights expressed by SNN above were not fully considered by the IAAC as they were not assessed independently of the *exercise* of the rights. The current definition of existing Aboriginal and treaty rights is narrow and only focuses on the exercise of land and resource rights. However, as a sovereign nation, SNN has many rights outside of the narrow view of the exercise of land and water rights including the right to control SNN membership, SNN self-government and self-determination, the SNN right to language, SNN rights to laws and justice, SNN rights to control wealth distribution, SNN rights to healthcare, and SNN rights to education.

Further, the EIS and EA report include a narrow interpretation of water and the rights that SNN holds in relation to water. There are spiritual and cultural values of water – and the EIS and EA report do not account for the water rights held by SNN which allow for ongoing navigation and management of this resource.

Governance rights are also narrowed in the EA report and EIS to governance over resources only; this right is expressed as a right to self-determination and self-governance. This should be highlighted through conditions of approval which allow SNN a meaningful voice in the construction and operation of the Project.

Appendix B - Potential Conditions Comments

Please see below for SNN key comments on the existing potential conditions, including suggested additional conditions and amended language of existing conditions. Please note, this review does not include suggestions for additional conditions related to, as yet unassessed impacts related to perception and avoidance discussed in Appendix A. Any additional impacts identified will require specific conditions related to their ongoing monitoring and follow-up and must developed in partnership between SNN, the IAAC and the proponent to ensure cultural monitoring as per SNN requirements is implemented (see Appendix D).

Consultation (pp. 4)

A condition should be added that provides for reasonable capacity to support SNN participation in consultation activities related to conditions of approval and follow-up activities. There is precedent for this type of condition. In the National Energy Board (now the CER) Crown Consultation and Accommodation Report for the Nova Gas Transmission Ltd. 2021 System Expansion Project (GH-003-2018), Condition 14 was amended to include the following provision:

“Should Indigenous groups express a requirement for funding to review NGTL’s filings related to conditions, NGTL must offer Indigenous groups a reasonable amount of capacity funding to support their review.”

This condition can be applied in this case and expanded to cover off all activities contemplated within the Condition document. Without fair capacity provision, the conditions are empty as SNN does not have existing capacity to allocated to ongoing consultation. Instead, a fund should be identified for ongoing participation of SNN and other Indigenous nations.

Suggested Condition Wording:

- 2.4.5 The Proponent must offer Indigenous groups a reasonable amount of capacity funding to support consultation activities where they are a requirement of a condition set out in this document.

Follow-up and adaptive management (pp. 5 – 6)

As above, a condition should be added that provides for reasonable capacity support to SNN for participation in follow-up and adaptive management. Particularly as the frequency, timing and duration of SNN participation in these monitoring activities will be largely contingent on the amount of capacity provided.

Suggested Condition Wording:

- 2.10.1 Where participation of Indigenous groups is an option of a follow-up program, the Proponent shall offer Indigenous groups a reasonable amount of capacity funding to support their involvement.

Information Sharing (pp. 6 – 7)

As above, a condition should be added that provides for reasonable capacity support for SNN to review annual reports and executive summaries referred to in Condition 2.11 and 2.12, “...the final offsetting

plan(s) referred to in condition 3.9, the protocol to rescue fish referred to in condition 3.16, the migratory bird protocol referred to in condition 4.8, the protocol to prevent the mortality of amphibians referred to in condition 5.5, the communication plan referred to in condition 7.4, the archaeological and heritage management plan referred to in condition 9.3, the accident and malfunction response plan referred to in condition 10.3, the reports related to accidents and malfunctions referred to in conditions 10.5.3 and 10.5.4, the accident and malfunction communication plan referred to in condition 10.5, the schedules referred to in conditions 11.1 and 11.2, and any update or revision to the above documents, upon submission of these documents to the parties referenced in the respective conditions.”

Without regular capacity provision, in stable and set amounts, SNN will not have the resourcing available to review the annual reports and this condition of approval cannot be satisfied.

Suggested Condition Wording:

- 2.13.1 The Proponent must offer Indigenous groups a reasonable amount of capacity funding¹⁶ to support their review of the annual reports.

Fish and Fish Habitat (pp. 7 – 11)

As above, a condition should be added that provides for reasonable capacity support for SNN to review and comment on any/all offsetting plans “...related to any harmful alteration, disruption or destruction of fish habitat, and death of fish associated with the carrying out of the Designated Project.” Without this capacity provision, the offsetting plans cannot be developed to the satisfaction of Indigenous groups such as SNN.

Suggested Condition Wording:

- 3.9.1 The Proponent must offer Indigenous groups a reasonable amount of capacity funding to support consultation on offsetting plans. This will allow the offsetting plans to be developed to the satisfaction of Indigenous groups.

The current approach to offsetting as proposed (see comments from PGL) has the potential to result in adverse environmental effects not considered in the environmental assessment (e.g., offsetting within a different watershed must be assessed). Therefore, all offsetting measures proposed in any offsetting plan(s) referred to in condition 3.9 requires consultation with SNN, including the development of mitigation measures for any identified effects. The proponent must provide reasonable capacity for SNN to participate in the identification of adverse environmental effects not considered in the environmental assessment, as well as associated mitigation measures.

Suggested Condition Wording:

¹⁶ IAAC should engage SNN and other Indigenous nations in understanding what is a reasonable amount of capacity funding. Capacity should reflect SNN’s need to support the activities and continued engagement of the consultation staff of the three Stoney Nakoda Nations, engagement of elders and community members, relevant field and community costs, and third-party experts and legal review.

- 3.10.1 The proponent must offer reasonable capacity funding to Indigenous groups to support the identification of adverse environmental effects not considered in the environmental assessment. Further, the Proponent must ensure the capacity provided is sufficient for the development of mitigation measures where required.

As above, a condition should be added that provides for reasonable capacity support to allow SNN to participate in the development of mitigation measures to protect fish during sensitive life stages if in-water projects cannot be conducted outside of the Government of Alberta restricted activity periods.

Suggested Condition Wording:

- 3.11.1 If in-water projects cannot be conducted outside of the Government of Alberta restricted activity periods, the Proponent must offer Indigenous groups a reasonable amount of capacity funding to support consultation related to the development of additional mitigation measures to protect fish during sensitive life cycles.

As above, a condition should be added to allow for sufficient capacity to participate in the development of a protocol to rescue fish during post-flood operation.

Suggested Condition Wording:

- 3.16.5 The Proponent must offer reasonable capacity funding to Indigenous groups to support development of a protocol to rescue fish during post-flood operation.

As above, a condition should be added to allow for sufficient capacity to participate in the development of a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of the mitigation measures as it pertains to:

- fish passage in the Elbow River;
- fish rescue;
- water quality; and
- channel morphology.

Suggested Condition(s) Wording:

- 3.17.4 The Proponent must offer reasonable capacity funding to Indigenous groups to participate in the development of a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of the mitigation measures as it pertains to fish passage in the Elbow River.

- 3.18.3 The Proponent must offer reasonable capacity funding to Indigenous groups to participate in the development of a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of the mitigation measures as it pertains to fish rescue.

- 3.19.7 The Proponent must offer reasonable capacity funding to Indigenous groups to participate in the development of a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of the mitigation measures as it pertains to water quality.

- 3.20.1 The Proponent must offer reasonable capacity funding to Indigenous groups to participate in the development of a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of the mitigation measures as it pertains to channel morphology.

Migratory Birds (pp. 11 – 12)

Indigenous knowledge from SNN harvesters and land users is invaluable in understanding the seasonality of breeding seasons for migratory birds as their observational experience can be complementary to that of the relevant authorities. To this point, additional language should be added to condition 4.4 as well as a condition directing capacity provision.

Suggested Condition Wording:

4.4 The Proponent shall identify, in consultation with relevant authorities **<<added text>>** and Indigenous groups **<<end of added text>>**, dates of breeding season for migratory birds and notify the Agency of these dates prior to construction.

- 4.4.1 The Proponent shall provide reasonable capacity to Indigenous groups to allow for provision of Indigenous knowledge related to the breeding seasons for migratory birds.

As above, a condition should be added to allow for sufficient capacity to participate in the development of a protocol to prevent harm to migratory birds, including migratory birds species at risk within the reservoir footprint.

Suggested Condition Wording:

4.8.3 The Proponent must offer reasonable capacity funding to Indigenous groups to support development of a protocol to prevent harm to migratory birds, including migratory birds at risk.

As above, a condition must be added to allow for sufficient capacity to participate in the development of a follow-up program to verify the accuracy of the environmental assessment and to determine the effectiveness of all mitigation measures to avoid harm to migratory birds, including migratory birds that are listed as species at risk, their eggs and nests. SNN must also be consulted on the development of performance indicators to be used by the Proponent in evaluating the effectiveness of mitigation measures.

Suggested Condition Wording:

4.10 The Proponent shall develop, prior to construction and in consultation with Indigenous groups and relevant authorities, a follow-up program to verify the accuracy of the environmental assessment and to determine the effectiveness of all mitigation measures to avoid harm to migratory birds, including migratory birds that are listed species at risk, their eggs and nests. The follow-up program shall include the mitigation measures used to comply with conditions 4.1 to 4.9. As part of the development of the follow-up program, the Proponent **<<added text>>**, in consultation with Indigenous groups **<<end of added text>>** shall identify performance indicators that shall be used by the Proponent to

evaluate the effectiveness of mitigation measures. The Proponent shall implement the follow-up program during all phases of the Designated Project.

- 4.10.1 The Proponent must offer reasonable capacity funding to Indigenous groups to allow participation in the development of a follow-up program to verify the accuracy of the environmental assessment and to determine the effectiveness of all mitigation measures to avoid harm to migratory birds, including migratory birds that are listed as species at risk, their eggs and nests.

Species at Risk

As above, a condition must be added to allow for sufficient capacity to participate in the establishment of buffer zones around little brown myotis (*myotis lucifungus*) active roosts identified during the pre-construction surveys or found by the Proponent or brought to the attention of the Proponent by an Indigenous group during any phase of the Project.

Suggested Condition Wording:

- 5.1.1 The Proponent must offer reasonable capacity funding to Indigenous groups for the preliminary identification of locations for establishment of buffer zones around little brown myotis active roosts.

As above, a condition must be added to allow for sufficient capacity to participate in breeding habitat surveys for the northern leopard frog (*Lithobates pipiens*), western toad (*Anaxyrus boreas*), and western tiger salamander (*Ambystoma mavoritium*) within the project development area.

Suggested Condition Wording:

- 5.2.1 The Proponent must offer reasonable capacity funding to Indigenous groups for their participation in any breeding habitat surveys of interest related to the above noted species.

As above, a condition must be added to allow for sufficient capacity for the development of measures to prevent northern leopard frog (*Lithobates pipiens*), western toad (*Anaxyrus boreas*), and western tiger salamander (*Ambystoma mavoritium*) from accessing the active construction areas.

Suggested Condition Wording:

- 5.3.3 The Proponent must offer reasonable capacity funding to Indigenous groups for their participation in developing measures to prevent northern leopard frog (*Lithobates pipiens*), western toad (*Anaxyrus boreas*), and western tiger salamander (*Ambystoma mavoritium*) from accessing the active construction areas.

As above, a condition must be added to allow for sufficient capacity for consultation related to implementation of species-specific mitigation measures.

Suggested Condition Wording:

- 5.4.1 The Proponent must offer reasonable capacity funding to Indigenous groups for consultation related to the implementation of species-specific mitigation measures.

As above, a condition must be added to allow for sufficient capacity for consultation related to a protocol to prevent the mortality of amphibians, including northern leopard frog (*Lithobates pipiens*), western toad (*Anaxyrus boreas*), and western tiger salamander (*Ambystoma mavoritium*) during flood operation within the reservoir footprint.

Suggested Condition Wording:

- 5.4.1 The Proponent must offer reasonable capacity funding to Indigenous groups for consultation related to development of a protocol to prevent the mortality of amphibians, including northern leopard frog (*Lithobates pipiens*), western toad (*Anaxyrus boreas*), and western tiger salamander (*Ambystoma mavoritium*) during flood operation within the reservoir footprint.

The level of requirement currently proposed under the conditions related to wetlands and wetland function is insufficient. SNN recommends adding additional conditions to ensure certainty. These proposed conditions are based upon Condition 26 of Certificate EC-059 (the Manitoba-Minnesota Transmission Project).

Suggested Additional Conditions:

- 5.6.1 Compensation for any permanent loss of wetlands shall include a detailed wetland offset measures plan. The plan must include:
- 5.6.1.1 a description of site-specific details and maps showing the locations of permanent wetland loss as a result of project activities
 - 5.6.1.2 an explanation of how wetland function will be measured during the post-construction monitoring program, and any resulting accidental permanent loss to wetlands quantified and reported to the Agency
 - 5.6.1.3 a list of the offset or compensation measures that will be implemented to address permanent loss of wetlands
 - 5.6.1.4 an explanation of the expected effectiveness of each offset measure described above and the relative value of each offset measure towards achieving the offset
 - 5.6.1.5 the decision-making criteria for selecting specific offset measures and offset ratios that would be used under what circumstances
 - 5.6.1.6 a schedule indicating when measures will be implemented and estimated completion date(s)
 - 5.6.1.7 evidence and summary of consultation with Indigenous groups and relevant authorities, regarding the plan.
 - 5.6.1.8 The Proponent must offer reasonable capacity funding to Indigenous groups for consultation related to the wetland offset measures plan.

Atmospheric Environment

An additional condition is required to help manage perceptive effects and potential avoidance behaviors related to project emissions.

Suggested Additional Condition:

- 6.4.6 The Proponent shall submit to Indigenous groups, ongoing (a minimum of 2 per year) plain language summaries related to adverse changes to air quality attributed to the Designated Project.

Human Health

As above, a condition must be added to allow for sufficient capacity for development of a protocol for receiving complaints related to exposure to noise attributable to the Designated Project.

Suggested Condition Wording:

- 7.3.1 The Proponent must offer reasonable capacity funding to Indigenous groups for participation in the development of a protocol for receiving complaints related to exposure to noise attributable to the Designated Project.

As above, a condition must be added to allow for sufficient capacity for development of a communication plan prior to construction.

Suggested Condition Wording:

- 7.4.4 The Proponent must offer reasonable capacity for development of a communication plan prior to construction.

An additional condition is required to help manage perceptive effects and potential avoidance behaviors related to project noise.

Suggested Additional Condition:

- 7.4.5 The Proponent shall submit to Indigenous groups, ongoing (a minimum of 2 per year) plain language summaries related to adverse changes to noise attributed to the Designated Project.

An additional condition is required to help manage perceptive effects and potential avoidance behaviors related to project fugitive dust emissions.

Suggested Additional Condition:

- 7.5.3 The Proponent shall submit to Indigenous groups, ongoing (a minimum of 2 per year) plain language summaries related to adverse changes to fugitive dust emissions attributed to the Designated Project.

As above, a condition must be added to allow for sufficient capacity for participation in the development of a follow-up program to verify the accuracy of the environment assessment and the effectiveness of the mitigation measures as it pertains to contamination of country food.

Suggested Condition Wording:

- 7.8.5 The Proponent must offer reasonable capacity for participation in the development of a follow-up program to verify the accuracy of the environment assessment and the effectiveness of the mitigation measures as it pertains to contamination of country food.

As above, a condition must be added to allow for sufficient capacity for participation in the development of a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of the mitigation measures as it pertains to drinking water quality.

Suggested Condition Wording:

- 7.9.4 The Proponent must offer reasonable capacity for participation in the development of a follow-up program to verify the accuracy of the environmental assessment and the effectiveness of the mitigation measures as it pertains to drinking water quality.

Current Use of Lands and Resources for Traditional Purposes (pp. 17 – 20)

The conditions within Condition 8 all require significant capacity and involvement from SNN and other Indigenous groups. In order to identify, at the outset of this condition, that capacity will be provided, SNN suggests the following additional condition to replace Condition 8.1. All additional numbers will be updated to reflect this addition. This is particularly relevant for all activities related to the Land Use Area(s), which require extensive and careful consideration by SNN, as well as ongoing communication with SNN nation members.

Suggested Additional Condition:

- 8.1 The proponent must offer reasonable capacity for Indigenous groups to participate in consultation, plan or protocol development, ongoing monitoring or any activity otherwise identified within Condition 8.

Additional text must be added to condition 8.6 (updated to 8.7) to ensure the water rights of SNN, including free navigation of the rivers is maintained.

Suggested Condition Wording:

- 8.7 The Proponent shall maintain navigation on the Elbow River during all phases of the Designated Project. In doing so, the Proponent shall establish and maintain, in consultation with <<added text>> Indigenous groups and <<end added text>>Transport Canada, a portage route around the diversion inlet gate and the service spillway locations to maintain navigation on the Elbow River during construction of these project components and install safety signage to signal the presence of the diversion inlet gate and location of the portage route until such time that the portage route is no longer required to maintain navigation on the Elbow River.

While the Land Use Plan will secure an area to support and prioritize Indigenous groups' practice of traditional activities within the project development area, there is still a loss of unoccupied Crown land or private land to which Indigenous groups have a right of access through project development which must be addressed. To address this, SNN request a Crown Land Offset plan be applied as a condition of approval. This proposed condition is based upon Condition 26 of Certificate EC-059 (the Manitoba-Minnesota Transmission Project).

Suggested Additional Condition:

- 8.8.5 Based on the calculated permanent loss of unoccupied Crown land and private land to which Indigenous groups have a right of access, the Proponent must develop and provide a Crown Land Offset Measures Plan to the Agency and Indigenous groups. The Plan must include:
- 8.8.5.1 A description of site-specific details and maps showing the locations where unoccupied Crown land or private land to which Indigenous groups have a right of access is no longer available for traditional use as a result of Project activities
 - 8.8.5.2 A list of the offset or compensation measures that will be implemented to address the permanent loss of unoccupied crown lands and private lands to which Indigenous groups have a right of access identified in 8.8.5.1 above
 - 8.8.5.3 An explanation of the expected effectiveness of each offset measure described in 8.8.5.2 for each Indigenous group
 - 8.8.5.4 The decision-making criteria for selecting specific offset measures that would be used and under what circumstances
 - 8.8.5.5 A schedule indicating when measures will be implemented and the estimated completion date(s)
 - 8.8.5.6 A summary of consultation by the Proponent with any impacted Indigenous groups and relevant authorities regarding the Plan.

Physical and Cultural Heritage and Structures, Sites or Things of Historical, Archaeological, Paleontological or Architectural Significance (pp. 20 – 22)

As above, a condition must be added to allow for sufficient capacity for participation in consultation related to the scope, purpose and objectives of the participation of Indigenous monitors.

Suggested Condition Wording:

- 9.1.1 The Proponent must offer reasonable capacity for participation in consultation related to the scope, purpose and objectives of the participation of Indigenous monitors.

As above, a condition must be added to allow for sufficient capacity for participation in the development and implementation of a historic resource impact assessment of the project development area.

Suggested Condition Wording:

- 9.2.1 The Proponent must offer reasonable capacity for participation in consultation related to the development and implementation of a historic resource impact assessment of the project development area.

As above, a condition must be added to allow for sufficient capacity for participation the development of an archaeological and heritage management plan for any structures, sites, or things of historical, archaeological, paleontological, or architectural significance or physical or cultural heritage resources within the project development area, including, but not limited to sites and things subject the Alberta Historical Act.

Suggested Condition Wording:

- 9.3.1 The Proponent must offer reasonable capacity for the development of an archaeological and heritage management plan for any structures, sites, or things of historical, archaeological, paleontological, or architectural significance or physical or cultural heritage resources within the project development area, including, but not limited to sites and things subject the Alberta Historical Act.

As above, a condition must be added to allow for sufficient capacity for participation the development of a cultural awareness training for all employees associated with the Designated Project during all phases of the Designated Project.

Suggested Condition Wording:

- 9.4.1 The Proponent must offer reasonable capacity for participation the development of a cultural awareness training for all employees associated with the Designated Project during all phases of the Designated Project.

As above, a condition must be added to allow for sufficient capacity for participation in the development of a follow-up program to verify the accuracy of the environmental assessment and to determine the effectiveness of all mitigation measures for effects to any structures, sites, or things of historical, archaeological, paleontological, or architectural significance or physical or cultural heritage resources.

Suggested Condition Wording:

- 9.9.1 The Proponent must offer reasonable capacity for the development of a follow-up program to verify the accuracy of the environmental assessment and to determine the effectiveness of all mitigation measures for effects to any structures, sites, or things of historical, archaeological, paleontological, or architectural significance or physical or cultural heritage resources.

Accidents and Malfunctions (pp. 22)

As above, a condition must be added to allow for sufficient capacity for consultation on measures to be implemented to prevent accidents and malfunctions.

Suggested Condition Wording:

- 10.2.1 The Proponent must offer reasonable capacity for consultation on measures to be implemented to prevent accidents and malfunctions.

As above, a condition must be added to allow for sufficient capacity for development of an accident and malfunction response plan in relation to, and for all phases of the Designated Project.

Suggested Condition Wording:

10.3.7 The Proponent must offer reasonable capacity for development of an accident and malfunction response plan in relation to, and for all phases of the Designated Project.

As above, a condition must be added to allow for sufficient capacity for development of a communication plan for accidents and malfunctions occurring in relation to the Designated Project, including accidents and malfunctions occurring within the project development area which may affect area(s) outside of the project development area.

Suggested Condition Wording:

10.3.7 The Proponent must offer reasonable capacity for development of a communication plan for accidents and malfunctions occurring in relation to the Designated Project, including accidents and malfunctions occurring within the project development area which may affect area(s) outside of the project development area.

Appendix C – Previously Collected Harvesting and Land Use Data

Figure 1-1

Figure 1-2

Figure 1-3

Appendix D – Stoney Nakoda Nations Cultural Assessment for the
“Enhancing Grizzly Bear Management Programs through the
Inclusion of Cultural Monitoring and Traditional Ecological
Knowledge”