



June 20, 2019

<Personal Information Redacted>

**By E-mail**

Nicole Frigault  
Environmental Assessment Specialist, Technical Support  
Branch  
Canadian Nuclear Safety Commission / Government of  
Canada

Dear Nicole Frigault:

**Re: Comments on NexGen Energy Ltd. Project Description**

On behalf of Métis Nation - Saskatchewan - Northern Region II and the Métis Nation – Saskatchewan (“MNS”), I would like to thank you for reviewing our concerns set out in this letter. As you may be aware, the MNS is different from other Indigenous governments. As the democratically constituted representative for the Métis in Saskatchewan, the MNS may require additional time and engagement through the consultation process. MNS has a unique relationship with Canada which has been recognized in a number of relevant and important documents, including the July 20, 2018 Framework Agreement for Advancing Reconciliation between Métis Nation - Saskatchewan and Canada.

The MNS has, at present, significant concerns regarding the Rook I Project ( “Project”), and seeks to be fully engaged throughout the federal and provincial EA processes. The Project is occurring on Métis lands which are the subject of a land claim. Canada agreed to address this land claim in the July 20, 2018 Framework Agreement for Advancing Reconciliation. Given the importance of these lands to MNS Citizens, and Canada’s express commitments made less than one year ago, we encourage you and the proponent to work cooperatively with MNS with the objective of achieving MNS’s consent for any development.

Full engagement must also include, but is not limited to, being provided sufficient time to engage with MNS Citizens on matters brought forward by NexGen Energy Ltd. (“NexGen”) and the Crown, and the allocation of appropriate capacity funding.

Our initial comments on the Rook I Project Description dated April 2019 (“Project Description”) are below. The MNS expects to be engaged throughout this regulatory process, including through opportunities to review and reply to responses from NexGen.

**A. Technical Proposal under The Environmental Assessment Act**

Section 1.1 of the Project Description states that it is being provided as the Technical Proposal for the *Environmental Assessment Act*. We have not conducted a full review, but note that the Project Description does not appear to satisfy the Technical Proposal Guidelines (“Guidelines”). In particular we note:

- a. The Project Description does not appear to include **examples** of how best management practices will be incorporated into construction, operation, and decommissioning, as required by the Guidelines. Please outline the relevant management best practices and identify the example of how they will be incorporated. Responses must go beyond simply asserting that activities will be conducted in accordance with best management practices.
- b. The Project Description does not satisfactorily address cumulative impacts as described in the Guidelines. We note in particular that, to our understanding, this is one of several proposed mines in a small local area.
- c. The Project Description does not satisfactorily identify all possible environmental impacts and measures planned to reduce or avoid these impacts as described in the Guidelines.
- d. The Project Description does not outline negative impacts on social or economic factors, as described in the Guidelines.
- e. Generally, the Project Description appears to be deficient as against the various requirements of the Guidelines. The MNS is prepared to identify additional deficiencies as against the Guidelines if requested.

#### **B. Prescribed Information for the Description of a Designated Project Regulations**

Section 1.1 of the Project Description states that it contains all of the information prescribed in the *Prescribed Information for the Description of a Designated Project Regulations* ("Regulations"). We have not conducted a full review, but note that the Project Description does not appear to satisfy the Regulations. In particular we note:

- a. Regulations Section 3 requires a description of, and the results of, any consultations undertaken with Aboriginal peoples. As drafted, the Project Description does not clearly communicate how consultation will be conducted, other than stating that "NexGen's approach to engagement is not intended to replace the government's duty to consult obligations". NexGen has identified that they have engaged with a number of communities, but have had very limited engagement with Northern Region II, which is the democratically elected representative of the MNS Citizens in the area of the Project. NexGen's scattershot approach undermines the value of "engagement" and raises questions about whether consultation has occurred. Canadian courts have repeatedly emphasized the importance of consultation being conducted in a forthright manner. We consider the CNSC to be the Crown entity responsible for duty to consult, and if any of this responsibility is assigned to the proponent we must be made aware of the nature and scope of this assignment.
- b. Regulation 12(d) requires a description of the Project's proximity to traditional territories. NexGen has not provided such disclosure, mentioning only in Table 5.2-1 that there is "potential overlap with traditional territory" for a number of

Métis Locals. This lacks the specificity required in Regulation 12(d), and fails to appropriately recognize that the relevant traditional territory should not be considered in respect of a single local, but in respect of the MNS and MNS Citizens as a whole.

- c. Regulation 17 requires a description of any changes that may be caused to fish and fish habitat, aquatic species, and migratory birds. No such description is provided.
- d. Regulation 18 requires a description of any changes to the environment that may occur on federal lands outside of the province. Potential effects to federal lands due to the migration of airborne and waterborne waste and tailings has not been identified.
- e. Regulation 19 requires information on the effects on Aboriginal peoples of any changes to the environment that may be caused as a result of carrying out the Project, including effects on health and socio-economic conditions, physical and cultural heritage, the current use of lands and resources for traditional purposes or on any structure, site or thing that is of historical, archaeological, paleontological or architectural significance. NexGen has not satisfied this requirement.

### **C. General**

The following comments are not specific to any section of the Project Description, but should be considered in relation to the Project Description as a whole.

- a. NexGen incorrectly refers to the Métis Nation - Saskatchewan – Northern Region II as Métis Nation of Saskatchewan – Region 2.
- b. To understand Project impacts to MNS Citizens, NexGen must recognize and describe in the Project Description the Métis value of Connectivity, arising from Indigenous and natural law, and its role in the spiritual, social, cultural, legal, and economic nature of Indigenous decision-making.
- c. To conduct an effective review of the Project, NexGen must acknowledge the historic adverse effects of mining on Indigenous peoples, including on Indigenous rights and lands, Indigenous culture, Indigenous health and safety, and Indigenous governance. NexGen must also recognize the effects that colonialism, and colonial mining practices specifically, have had in advancing Canada's cultural genocide against Indigenous peoples, including MNS Citizens.
- d. To properly understanding the impacts to MNS Citizens, NexGen must recognize that the Project area belongs to the MNS and is the subject of a land claim which Canada has recently agreed to address.

- e. NexGen does not articulate the duty to consult and accommodate within the Project Description. The duty to consult and accommodate is a constitutional obligation on the Crown and cannot be avoided. Effective consultation requires seeking to address Indigenous concerns, and must contemplate acceptable accommodation.

#### **D. Specific Comments**

We note the following challenges and deficiencies in the Project Description as set out below.

- a. Reference is made in Section 1.2 to the Project residing in Treaty 8 territory, however the Project Description should also identify that the Project is located within the traditional territory of the MNS and is subject to a land claim which Canada has agreed to address.
- b. Greater detail should be provided with regard to the 24-year operating period referred to in Section 1.2. It is not clear if 24 years represents the full period of construction, extraction, and reclamation, or some other period. NexGen should ensure that its disclosure is consistent with its NI 43-101 report which describes a 9 year period of extraction.
- c. Section 1.4 refers to the need and benefits related to nuclear fuel. This description is biased, referring to international benefits while omitting international existential threats posed by the use of nuclear fuel, and the catastrophic long term regional effects potentially caused by the storage and release of hazardous materials.
- d. In describing the Environmental Assessment and Regulatory Requirements in Section 1.5, NexGen must reference the relevance of the following legislation, law, and relevant principles:
  - i. Section 35 of the *Constitution Act, 1982*;
  - ii. *R. v Powley*, 2003 SCC 43;
  - iii. *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12;
  - iv. *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73;
  - v. The United Nations Declaration on the Rights of Indigenous Peoples;
  - vi. July 20, 2018 Framework Agreement for Advancing Reconciliation between Métis Nation - Saskatchewan and Canada;
  - vii. Call to Action #92 from *Truth and Reconciliation Commission of Canada: Calls to Action*; and
  - viii. Calls for Justice #4.2, 13.1, 13.2, & 13.5 from *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*.

- e. Please explain why CEAA 2012 is the appropriate framework for assessing the Project given the pending implementation of Bill C-69. Please also explain how the honour of the Crown can be maintained by proceeding with CEAA 2012, given the protections for Indigenous peoples under Bill C-69.
- f. Please explain how NexGen will alter its engagement process and regulatory approach if Bill C-262 is passed, which requires that all Canadian laws be brought into conformance with the United Nations Declaration on the Rights of Indigenous Peoples, and why such steps are not being adopted at this time.
- g. The objectives in Section 2.0 must be expanded to:
  - i. identify and prevent adverse effects to Métis rights and interests, and to implement accommodation measures agreed to with MNS where adverse effects cannot be prevented;
  - ii. maximize benefits from the Project for section 35 rights holders with traditional territories overlapping with the Project, through negotiations aimed at achieving the consent of the Indigenous party;
  - iii. replace language which appears to prioritize the interests of non-rights holders, including non-Canadians, ahead of section 35 *Constitution Act*, 1982 rights holders who are also significantly more likely to experience the adverse effects of the Project:
    - 1. [original] “maximize the value of the Project for all shareholders by reducing operating and capital costs necessary to achieve safe production without compromising any of the objectives outlined above.”
    - 2. [new] “maximize the value of the Project for all shareholders and impacted Section 35 rights holders by, where appropriate, reducing operating and capital costs necessary to achieve safe production without compromising any of the objectives outlined above, recognizing that Indigenous peoples have a right to choose how their traditional territories are used and to meaningfully share in the resource wealth of their traditional territories.”
- h. Section 2.3.2.2 notes that the Project is anticipated to have a life of 24 years. NexGen must, in its assessment, consider potential impacts of longer and shorter operational lifespans, including in the context of factors such as:
  - i. increased birthrates among Métis Citizens as compared to other Canadians;
  - ii. the potential for the Project to prompt the development of infrastructure through Métis traditional territory, including electrical transmission works, roads, rail, and airports, including the potential impact of such works; and
  - iii. the impact on MNS’s right to self-government and capacity to limit or encourage future development within the Métis traditional territory.

- i. Section 2.4 states that runoff prevention will be prepared for a 1:100 year storm event. Please explain:
  - i. how the 1:100 year flood was calculated;
  - ii. how such prevention will manage a flood that is greater in magnitude than a 1:100 year flood;
  - iii. why 1:100 is an appropriate measurement, given the importance of the area to MNS Citizens and the movement of culturally harvested species through the Project area;
  - iv. what is the methodology for incorporating changes to the 1:100 year event stemming from the range of anticipated climate change scenarios;
  - v. how NexGen will consider the significant effects of climate change when evaluating the potential flood risk, throughout the life of the Project as projected and as may be further extended as a result of changing prices, technology, and resource definition; and
  - vi. what methodology is proposed to continually refine the model, and to modify the surface runoff regime if needed?
- j. NexGen must consider the impact of additional truck traffic, including on dust, wildlife, visual values of land to Métis Citizens, and the Métis sense of place and territory, as well as the risk for potential accidents and releases of materials during transport.
- k. NexGen must consider the impact of low level flights in and out of the Project's airstrip on wildlife, the visual values of the land to Métis Citizens, and the Métis sense of place and territory.
- l. Reference is made in Section 3.8.1 to treaties, but the Project Description does not identify how Métis traditional land use and resource use has been identified.
- m. The Project Description provides no description of the history the Métis Nation in Saskatchewan or the MNS.
- n. The Project Description incorrectly states that the nearest Indigenous community is approximately 150 km south of the Project, while also identifying that the Métis of Descharme Lake are located within 75 km of the Project.
- o. Reference is made in 3.8.2 to recreational and commercial fishing, but not to food, social, and ceremonial harvesting and uses of fish, including as may be protected as Section 35 *Constitution Act, 1982* Aboriginal rights.
- p. Under Section 2.8, NexGen must ensure that its Human Resources and Development Program:
  - i. includes a requirement that all Project employees and contractors complete awareness training on Indigenous cultures, including Métis culture;

- ii. addresses systemic disparities and obstacles experienced by Métis peoples, including a legacy of cultural genocide in Canada;
  - iii. is developed, periodically reviewed, and updated in collaboration with MNS, so as to reflect Métis values, interests, and concerns; and
  - iv. promotes opportunities and equity for Métis peoples, including in relation to employment and training opportunities, promotion opportunities, and fair representation of MNS Citizens among Project senior managers.
- q. NexGen must include the MNS in all discussions, processes, and decisions relating to tailings management throughout the life of the Project and afterwards.
- r. NexGen should work with the MNS to prepare a comprehensive study of the socio-economic effects of the Cluff Lake mine, as this information will be relevant to understanding the potential effects of the Project.
- s. To better understand the potential effects of the Project, NexGen must disclose in Section 3.2.1 anticipated changes to the climate over the life of the Project and for as long as toxic waste or other pollutants remain within the Project area.
- t. Noise, air quality, and light testing described in Section 3.2.2, 3.2.3, and 3.2.4 are based on existing circumstances, including ongoing activities which were authorized prior to the Crown's duty to consult being meaningfully articulated and enforceable. Noise and air quality values should be amended to recognize that higher standards for Indigenous engagement and the pursuit of Indigenous consent will result in fewer project approvals, and together with the declining lifespan of existing activities, will result in an improving "base rate" over the coming decades.
- u. Section 3.6 should be expanded to identify how NexGen intends to address forest fire risks, how forest fire suppression activities around the Project could impact local ecosystems, and the risk of promoting catastrophic forest fires within the MNS traditional territory.
- v. Section 3.6.2 should identify the need to consider cumulative effects on caribou populations and other relevant species, and to assess causes of significant species declines where applicable.
- w. NexGen should disclose how it will work with the MNS to review and assess the adequacy of cultural resource studies. NexGen must also be forthright in acknowledging that only MNS can appropriately assess cultural resources.
- x. Section 3.8.2 must refer to other cultural activities, including spiritual activities, camping and cultural teachings, instruction, and mentorship.
- y. The statement in Section 3.8.2 that "there are no communities located in the immediate vicinity of the Project": appears to be based on colonial concepts of land use and proximity; marginalizes Métis perceptions of community areas and land use areas; and is not an objectively true statement.

- z. Section 3.9.2 identifies infrastructure and services. To provide context, NexGen must also describe outcomes to capture the effectiveness, adequacy, and pressure on infrastructure and services, including education outcomes, health outcomes, emergency service outcomes, transportation outcomes, and economic outcomes. While NexGen does identify housing outcomes, it must incorporate this information into each relevant step of the Project impact assessment.
- aa. Section 3.9.3 lacks a description of the presence and role of the traditional economies within communities, including Métis traditional economies.
- bb. Section 3.9.3 fails to provide relevant information regarding:
  - i. economic capacity;
  - ii. local skills and skills capacity;
  - iii. rates of poverty and economic stress;
  - iv. representation of Indigenous peoples, including Métis specifically, in management, leadership and high-compensation employment roles;
  - v. economic marginalization and systemic discrimination experienced by Indigenous peoples, including Métis specifically;
  - vi. resources available to Indigenous entrepreneurs, including Métis specifically, the existence of systemic discrimination in the allocation of resources, including financial resources, and the ability for Métis entrepreneurs to access financial resources; and
  - vii. the disparate treatment of, and resources made available to, Métis peoples and those Aboriginal peoples included in the *Indian Act*, by Canada and Saskatchewan.
- cc. We note that the potential areas of concern identified for the Project in Section 4.1 should be expanded to include:
  - i. effects on wildlife, including caribou, migratory bird species, and other animals with cultural significance to the Métis;
  - ii. effects on fish;
  - iii. effects on heritage resources;
  - iv. effects on the ability to fully exercise the Métis right of self-government;
  - v. effects on Métis sense of place, particularly in the context of the risk of very long term environmental contamination and perceived risks and heightened stress within Métis communities as a consequence of uranium mining activities;
  - vi. effects on Métis Aboriginal title, including as a consequence of permanently altering lands subject to an Aboriginal title claim and the long term storage of hazardous materials therein;



- vii. the use and storage of materials, fuel and waste, including long-term storage after the closure of the Project; and
  - viii. effects on climate and the acceleration of the climate emergency.
- dd. Section 4.2.4 makes reference to land clearing and construction, but does not appropriately identify terrestrial changes as a result of the placement of waste rock, including how the structure and grade of such materials may impact wildlife, traditional land use, and the Métis sense of place.
- ee. Section 4.2.4 does not appropriately identify impacts to psychological health, including as may be impacted by the perceived risks of radioactive materials on lands, foods, family and community members, the exercise of spiritual and cultural practices, and on the Métis sense of place.
- ff. Section 4.7.2 identifies uses of “water, plants, animals, and other biophysical properties” but lacks a clear reference to the cultural significance of the lands themselves.
- gg. Section 4.7.2 suggests that socio-economic effects will likely be assessed through positive and negative changes to employment, training, economic development, and community services. This is an incomplete approach that appears to bias the analysis in favour of outcomes correlated with resource development. An analysis of impacts to the socio-economic environment must consider the potential impacts of the Project on:
- i. family structures and the communication and conveyance of cultural values between generations, including traditional knowledge keeping;
  - ii. Indigenous women, girls, and 2SLGBTQQIA individuals (including in contemplation of The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls);
  - iii. the elderly, including their role and position in Métis society and potential risks of elder violence;
  - iv. the right of MNS Citizens to benefit from resources on their lands, the economic consequences of resources being extracted prior to the resolution of the Métis claim to Aboriginal title, and the right for MNS to choose how and when resources on Aboriginal title lands will be extracted once its claim to Aboriginal title is resolved;
  - v. educational outcomes, including for Métis youth;
  - vi. the migration of peoples and the potential dilution of a Métis voice;
  - vii. public safety and the adequacy of resources (including crime and violence, access to justice, and resources for both victims and perpetrators of crimes);
  - viii. addiction and mental health;

- ix. experiences of racial and cultural prejudice and violence;
  - x. physical health and diet;
  - xi. Métis sense of place; and
  - xii. the legacy of abuse and cultural genocide perpetrated against Métis peoples (including as referred to in the Final Report of the Truth and Reconciliation Commission).
- hh. Section 4.3 should explicitly include, at all steps, engagement with the MNS through a process which provides appropriate resources for the MNS to engage the Métis community, technical experts, and other necessary administrative and legal support.
- ii. NexGen's reference in Section 5.0 referring to all communities, residents, businesses, organizations, and land users as "stakeholders" is inappropriate. The Métis are not "stakeholders". They are peoples holding constitutionally protected rights across their traditional territory, and represented by the MNS. Grouping Métis with "stakeholders" misrepresents the unique Nation-to-Nation relationship between Canada and the MNS.
- jj. NexGen's statement in Section 5.0 that "[s]ince exploration commenced in 2013, NexGen has undertaken to meet regularly with identified stakeholders" is misleading, and conflates stakeholders with constitutionally protected rights holding peoples. A review of Table 5.2-2 shows that engagement has been mostly limited to the most recent two years, and only two meetings have been held with Métis Nation - Saskatchewan – Northern Region II, the designated consultation representative for locally impacted MNS Citizens.
- kk. Section 5.2 states that NexGen has prepared an Indigenous Engagement Report. We request a copy of this report and may provide additional comments.
- ll. Section 5.2 does not reference other relevant rights of the Métis, including the right of self government and the claimed Métis right to Aboriginal title.
- mm. Section 5.2 must include an objective of working with the MNS to identify, discuss, and agree upon accommodation measures.
- nn. Section 5.2.1 should include, as an indicia of a relevant community, the existence of agreements with Canada, such as the Framework Agreement for Advancing Reconciliation, dated July 20, 2018 and entered into between the Métis Nation - Saskatchewan and Her Majesty the Queen in Right of Canada.
- oo. Section 5.2.1 refers to the Comprehensive Study Report for the Cluff Lake Decommissioning project. We note that this study predates the Supreme Court of Canada's decisions in *R v Powley* and *Daniels*, which are both relevant to understanding the rights of Métis peoples.
- pp. Table 2.2-1 contains a number of Métis Locals, but does not contain Métis Nation - Saskatchewan – Northern Region II, which is the relevant section of the Métis

Nation - Saskatchewan authorized to consult with NexGen. NexGen needs to work with Métis Nation - Saskatchewan – Northern Region II, which represents Métis peoples in the Project region, including those in each identified local.

- qq. Figure 5.2-2 provides CNSC's consultation activity spectrum. Please advise whether a strength of claim assessment has been prepared and will be shared with the MNS.
- rr. NexGen should include rights recognition language, including the words used in the statement of Prime Minister Justin Trudeau: *"For too long, Indigenous peoples have had to prove their rights exist and fight to have them fully recognized and implemented."* NexGen should also incorporate reference to the Prime Minister's commitment to respect *"the inherent right of self-government – and move towards a Canada where Indigenous peoples thrive and have full control over their lives and their future."*
- ss. The MNS faces ongoing challenges resourcing consultation, particularly as consultation requirements grow. As part of capacity outlined in Section 5.2.3, NexGen must also provide reasonable capacity funding that recognizes the significance of the Project and the desire of the MNS to fully engage with the associated regulatory process. The MNS also requires funding for legal support, as it works to identify and express its rights-based concerns, represent each of the Locals identified by NexGen (and all other Métis), and to understand and mobilize to effectively engage with a process that NexGen has had years to formulate
- tt. Section 5.2.3 identifies an "engagement plan". MNS must be provided with the engagement plan and provided the opportunities and resources necessary to review and respond with concerns.
- uu. Section 5.2.3 must include a process whereby MNS can review and comment on any meeting minutes promptly following the meeting, so as to avoid any misrepresentation.
- vv. NexGen must describe how it will identify rights-based concerns raised by MNS Citizens and collected through the public engagement process (rather than directly from MNS), so as to ensure that they are appropriately communicated to MNS, and where endorsed by MNS, considered and accommodated by NexGen and Canada.
- ww. In Table 5.2-3, NexGen states that in response to a question regarding Impact Benefits Agreement, NexGen stated that it is not in a position to discuss formal agreements at this point in time. NexGen should update this response to reflect its letter of June 4, 2019 which proposed discussions regarding Impact Benefit Agreements.

## **E. Amended Submission**



Attached hereto is an amended submission for consideration, previously shared by MNS.

**F. Responses**

MNS looks forward to reviewing responses to its concerns outlined above and to reviewing the amended Project Description.

Yours truly,

<Personal Information Redacted>

**Submission to the Canadian Nuclear Safety Commission and Saskatchewan  
Ministry of the Environment re: NexGen Rook 1 Project**

**Submitted by: NexGen Energy Ltd.**

**Reference Document: Rook 1 Project, Project Description, April 2019  
Submitted by Metis Nation of Saskatchewan**

**Introduction**

The Metis Nation of Saskatchewan (MN-S) is comprised of several regions and locals all falling under the jurisdiction of provincial governance. MN-S is a governing member of the Metis National Council, along with Metis Nation British Columbia, Metis Nation of Alberta, Manitoba Metis Federation and the Metis Nation of Ontario.

Citizens of MN-S have a unique culture that has evolved from people of North American Indian and European ancestry who coalesced into a distinct nation in the northwest in the late 18th century. “Historic Métis Nation Homeland” means the area of land in west central North America used and occupied as the traditional territory of the Métis or Half-Breeds as they were then known. The MN-S includes values of both rural and urban citizens. Citizenship is predicated on individuals demonstrating this genealogy and cultural connection to that time and place and is governed by MN-S through the citizenship registry.

Under Section 35 of the *Constitution Act 1982*, Citizens of MN-S are defined as Indigenous. This confers all respective rights and obligations as defined therein to MN-S as a Rights Bearing Nation and to the Crown and/or its agents. The Framework Agreement for Advancing Reconciliation was executed between the Metis Nation - Saskatchewan and the Crown on July 20, 2018 and defines that the parties may address environmental assessment as a subject matter (section 2, subsection h page 11). The MN-S recognizes the Canadian Nuclear Assessment Agency as an agent of the Crown and therefore bound by the framework agreement.

The MN-S has available on its website guidelines and principles concerning engagement, consultation and accommodation

(<https://metisnationsk.com/land/#duty>). These are summarized below:

- The fulfillment of the duty requires good faith on the part of all parties and consultations must be conducted in equitable, transparent and respectful manner.
- Timelines must be reasonable and provide sufficient opportunity for the Métis to review and assess the information provided by the Crown or industry.
- The Crown must recognize and support the unique capacity needs and realities of the Métis people and their elected governance structures.

- The Crown must provide the necessary funding/capacity to MN-S or ensure the necessary funding/capacity is provided to MN-S to engage with government and/or industry, as well as with Métis Citizens.
- Consultations must be with the Métis government structures that are elected and supported by the Métis Citizens. Consultations with individual Métis and Métis Locals, service delivery organizations, mayors and municipal councils, and pan-Aboriginal structures cannot discharge the duty owed to the Métis, as a rights-bearing people.
- Métis government has the responsibility to consult with its citizens and represent its citizens, not the Crown or industry.
- Métis consultation processes must provide all Métis Citizens and their representatives the opportunity to participate and be heard (i.e. public meetings, timely information, etc.)
- Ultimate decision-making with respect to consultation and accommodation must rest with the MN-S and its Citizens.

Our goals in providing this document are as follows:

- Provide a summary of engagement between MN-S and Nexgen
- Provide our project specific perspectives on Indigenous Knowledge and Protocols
- Provide an overview of project specific environmental concerns

### Engagement with Nexgen

It is critical for the regulator and proponent to understand that unlike First Nations, where Section 35 rights stem from the individual First Nation which then may be part of a larger organization such as a Tribal Council, Metis Rights stem from the provincial body (MN-S) and are organized then to the regional and local levels. Both the Crown and proponent must engage with MN-S, through Métis Nation – Saskatchewan, Northern Region II, as the body representing Metis Rights under Section 35. We welcome a discussion regarding next steps in this process.

### Indigenous Knowledge and Protocol

Present legislation and regulatory guidelines do not create a meaningful methodology to bring forth and properly consider Indigenous Knowledge with regards to projects subject to federal environmental assessments nor are these factors considered when developing and implementing environmental protection plans. This circumstance arises from a number of factors:

- Legislative gaps: As written and applied legislated standards do not consider Indigenous Knowledge. Two specific examples would be the gap in the provincial Heritage Property Act which may recognize Indigenous sites as having heritage resource value but does not require Indigenous participation or feedback in the desktop or field assessment of known sites, or in the field investigation of areas without known resources. Additionally, the Species at Risk Act especially as applied to rare plants does not consider species that are important to the Indigenous community. Under legislation, and environmental protection plan may ignore these culturally significant species.
- Indigenous Knowledge as accommodation: Traditionally the completion of Traditional Land Use studies has been done as a form of accommodation for impacted Nations and considered for accommodation. This principle is evident in the spirit and execution of Impact Benefit Agreements, where some set of impacts (often poorly defined) to Rights Holders is balanced by benefits to the Rights Holder as negotiated between the proponent and the Rights Holder.
- Indigenous Protocol: Ensuring projects are done 'the right way' is of high priority to Rights Holders. Recent projects have shown that Nations are much more comfortable with projects if there is an acceptance on behalf of the proponent to allow for and facilitate protocol as defined by the Nation. This activity also significantly builds trust between the proponent and the Rights Holder.

We acknowledge that from a regulatory point of view that our concerns are not addressed directly. MN-S asserts that they have a strong claim of interest in this project (CNSC REGDOC-3.3.2, page 86). We view this document as an opportunity to raise these points and work together with the proponent and regulator to come up with co-managed solutions. It is our opinion that the most effective way to ensure these outcomes is to fully participate in a CNSC environmental assessment of the project. We feel that an essential tool to fulfill the obligation of the MN-S to its citizens is to have an independent Traditional Land Use study completed prior to, or concurrent with work supporting an environmental assessment.

#### Project Specific Environmental Concerns

We have reviewed the project description and have the following comments. Note that we understand that this project description does not comprise a complete environmental assessment but we are hopeful that our comments help the regulator and proponent further scope the pending environmental assessment. These comments are predicated on the assumption that appropriate resourcing, through a capacity funding agreement, will be provided to the MN-S.

- Integration of Indigenous Knowledge and Protocols into the assessment plan: In most cases the approved environmental assessment forms the basis for the environmental protection plan for the project. Without the inclusion of Indigenous Knowledge and Protocols into the environmental assessment, there

is only the opportunity to have an environmental protection plan address these as an accommodation in an ad hoc manner.

- Our understanding is that baseline studies have already taken place. The MNS requests disclosure of these studies for our review and comment to inform the environmental assessment process and subsequent steps.
- MN-S requests that we are given the opportunity to assess from a technical point of view the following project specific scopes and plans (when available):
  - Traffic modeling and assessment
  - Spill response and event specific remediation
  - Integrated waste management plan
  - Emergency response procedures and planning
- As with other remote sites with poor instrumental record summaries for hydroclimatological data, the MNS has identified the need to gather and interpret baseline monitoring data as a key function to evaluate the performance of site models. We strongly feel that a meteorological station with real time reporting is warranted and should be in place as soon as possible.
- MN-S would like to know if the proponent is planning on installing cellular network coverage for the mine site, and if so, when this is anticipated.
- MN-S would like to request any and all information relevant to the protection of woodland caribou as pertains to present and planned site activities.
- MN-S requests any and all soil data for the site. We would also like to clarify whether permafrost may impact the surficial stability of the location over the short term or under accepted climate change scenarios.
- MN-S supports the integration of lower carbon emission power sources for this project.
- MN-S requests the opportunity to assess and comment on the site hydrological model for surface water and near surface groundwater as it pertains to site performance under expected conditions, extreme events and forecasted climate change scenarios.
- Given the significant gaps in legislation regarding Saskatchewan Heritage Resource Impact Assessments (HRIA), MN-S requests that an independently scoped HRIA assessment is completed. Although the provincial Heritage Conservation Branch has confirmed that not further work is required under legislation, MN-S strongly disputes this finding and notes that there was no engagement between the branch, Nexgen's agent CanNorth and the MNS who are the unique holders of cultural knowledge for the location.

## Conclusion

We would like to thank the CNSC and the proponent in advance for their careful consideration of this submission. Our hope is to develop better relationships with each party and to work together in partnership to ensure the goals of every group are met



in an efficient and timely manner. We are always open to dialogue and engagement and invite formal or informal feedback.

We agree with the proponent that this project warrants a federal environmental assessment and meets the definition of a development under the guidelines of the Province of Saskatchewan. We look forward to collaborating on next steps.

Respectfully;

<Personal Information Redacted>