



MITCHIKANIBIKOK INIK

Algonquins of Barriere Lake
Les Algonquins du Lac Barrière

<contact information removed>

June 4, 2020

Electronic Submission

Impact Assessment Agency of Canada
22nd Floor, Place Bell
160 Elgin Street
Ottawa ON K1A 0H3

Attention: **Ian Ketcheson**
Director General, Crown Consultations

Dear Mr. Ketcheson,

RE: Algonquins of Barriere Lake Review of the draft Canada-Quebec Cooperation Agreement

I write on behalf of the Mitchikanibikok Inik (also known as the Algonquins of Barriere Lake) in response to the draft Canada-Quebec Cooperation Agreement on the Coordination of Environmental Assessment and Impact Assessment Procedures for the Gazoduq Project, provided to us by the Agency on May 15, 2020.

The Mitchikanibikok Inik asserts and exercises authority, jurisdiction and stewardship over lands threatened by the proposed Gazoduq project. As I have stressed in previous comments, our Nation strongly objects to the proposed project and neither recognizes nor accedes to Canadian state law, whether federal or provincial, as determinative of the project's legality. In submitting these comments, the Mitchikanibikok Inik should not be construed as accepting or otherwise supporting the project or the impact assessment regimes in general.

With that in mind, we hope that you will duly consider the following comments on the draft Cooperation Agreement:

1. Unclear as to Role Played by Indigenous Governing Bodies

The draft Cooperation Agreement states that Canada and Quebec, as government bodies, are together responsible for the environmental and impact assessments of the proposed project. Yet

the Agreement fails to recognize any role for the inherent jurisdiction of Indigenous governments, such as the Mitchikanibikok Inik, as affirmed and protected by s. 35 of the *Constitution Act, 1982*.

We note that the *Impact Assessment Act* itself acknowledges the jurisdiction of Indigenous governing bodies. Unfortunately, while Canada has pressed forward (despite an ongoing pandemic) to finalize the Canada-Quebec Cooperation Agreement, it has yet to make comparable efforts to develop and finalize regulations with respect to s. 114(1)(e) of the *Act*, which permits the Minister to enter into agreements or arrangements with Indigenous governing bodies. This clear expression of Canada's priorities about the proposed project is disheartening, to say the least.

Apart from the lack of consideration and respect displayed by Canada's approach, we are worried that the absence of regulations means that Canada will have "tied its own hands", so to speak, in failing to structure or impose standards for consultation with Indigenous governing bodies, especially as Canada continues to finalize key documents such as the Tailored Impact Statement Guidelines, the Canada-Quebec Cooperation Agreement and the Terms of Reference of the Integrated Review Panel.

As a result of Canada's approach, the Mitchikanibikok Inik and other First Nations affected by the project are not in a position to assess whether the Cooperation Agreement might or should be informed by the s. 114(1)(e) regulation, were one to exist, or whether the Agreement ought to be extended to include recognized Indigenous governing bodies.

There needs to be a fully formed regulatory framework in place before meaningful consultation can occur. My community has already raised concerns with Canada about the speed at which the assessment process is moving forward, especially while key regulatory components remain outstanding. We worry that the draft Cooperation Agreement, as well as the draft Terms of Reference, further illustrate Canada's habit of sidelining Indigenous interests in favour of commercial ones.

2. Unclear as to Scope of Duty to Consult

The draft Cooperation Agreement says the following about Indigenous consultation:

For the purposes of the environmental and impact assessment processes of the Project, the constitutional duty to consult and, where applicable, accommodate Indigenous groups is incumbent **not** on the BAPE Panel or the Federal Review Panel but on the Government of Quebec and the Government of Canada, represented for this purpose by the MELCC and the Agency respectively. The BAPE Panel and the Federal Review Panel **may**, however, consult Indigenous communities within the framework of their respective mandates.

(Emphasis added).

We request more clarity, including established guidelines, on the respective consultation roles of the Minister, the Agency and the BAPE and Federal Review Panels. It is less than clear, for instance, what it means for Indigenous consultation to be *permissible* but not *required* for the federal and provincial review panels. The draft Cooperation Agreement is also silent on the

question of whether and how the Minister and the Agency may be authorized to combine their consultation efforts.

We worry that, absent sufficient clarity and guidance at the outset, Canada and Quebec's consultation obligations toward Indigenous communities risk slipping through the cracks.

I hope, on behalf of my Nation, that you will treat these comments seriously and in the spirit of respect and reconciliation.

Yours truly,

Chief Casey Ratt
Mitchikanibikok Inik