MITCHIKANIBIKOK INIK
Algonquins of Barriere Lake
Les Algonquins du Lac Barrière
<contact information removed>

July 24, 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 Terms of Reference

---

I write on behalf of the Mitchikanibikok Inik (also known as the Algonquins of Barriere Lake) in response to the draft Terms of Reference for the Integrated Review Panel 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. 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.

Our comments on the draft Terms of Reference are as follows:

1. **<u>Unclear as to Role of Indigenous Knowledge</u>**

The draft Terms of Reference state, at several places, that the Review Panel has obligations to consider Indigenous knowledge:

- Section 3.1(g): "In conducting the impact assessment, the Review Panel will include consideration of the factors listed in subsection 22(1) of the IAA: … <u>Indigenous knowledge provided with respect to the Project</u>";

- Section 3.2: "In conducting its assessment under the CERA, the Review Panel must take into account – in light of, among other things, any Indigenous knowledge that has been provided to the Review Panel and scientific information and data – all considerations that appear to it to be relevant and directly related to the pipeline";
- Section 4.2: "The Review Panel will ensure that an impact assessment takes into account scientific information, Indigenous knowledge, and community knowledge";
- Section 4.3(d)(iii): "In accordance with subsection 51(1) of the IAA, the Review Panel must: … prepare a report with respect to the impact assessment that: … subject to section 119 of the IAA, sets out how the Review Panel, in determining the effects that are likely to be caused by the carrying out of the Project, took into account and used any Indigenous knowledge provided with respect to the Project";
- Section 4.10(e): "The Review Panel will ensure that Indigenous communities and Nations are provided an opportunity to meaningfully participate in the impact assessment process, including … subject to the provisions of section 119 of the IAA, accepting Indigenous knowledge provided in confidence";
- Section 7.2: "The Review Panel will create a process that allows it to hear Indigenous knowledge. The Review Panel will recognize that Indigenous knowledge is holistic and, in an impact assessment, it can provide information and perspectives for understanding the biophysical environment, as well as social, cultural, economic, health, Indigenous governance and resource use" (emphasis added).

The recognition of Indigenous knowledge is a much-needed advance from the previous legislation. Unfortunately, the procedure for bringing Indigenous knowledge before the Review Panel remains less than clear.

Section 7.2 suggests that the Panel will be directly soliciting knowledge from affected Indigenous peoples, communities and elders. If so, then the Terms of Reference should expressly identify the applicable process or processes. Alternatively, if the idea is for Indigenous knowledge to be provided as part of the proponent's own submissions, then the Terms of Reference should account for the possibility that the proponent fails to adequately solicit and/or communicate relevant Indigenous knowledge to the Agency.

Our worry is that, absent a clear procedure identified at the outset, there is a risk that relevant Indigenous knowledge will simply not make it before the Review Panel.

2. Unclear as to Role Played by Indigenous Governing Bodies

As mentioned in our comments on the draft Canada-Quebec Cooperation Agreement, dated June 4, 2020, we are concerned about Canada's failure to develop and finalize key regulations under the *Impact Assessment Act*. A particular concern is Canada's failure to enact regulations under

section 114(1)(e) of the *Act*, which permits the Minister to enter into agreements or arrangements with Indigenous governing bodies.

The significance of this failure is highlighted by section 3.1 of the draft Terms of Reference:

> 3.1 In conducting the impact assessment, the Review Panel will include consideration of the factors listed in subsection 22(1) of the IAA:
>
> …
>
> q. any assessment of the effects of the Project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the Project;
>
> r. any study or plan that is conducted or prepared by a jurisdiction — or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition jurisdiction in section 2 of the IAA — that is in respect of a region related to the Project and that has been provided with respect to the Project[.]
>
> (Emphasis added.)

Section 3.1 clearly presumes an operative framework for recognizing and working with Indigenous governing bodies. Yet until the Minister is empowered by regulation to enter into agreements under section 114(1)(e) of the *Act*, it is unclear to us how an Indigenous governing body should – or can – go about conducting an assessment of its own.

In your letter of July 10, 2020, you assured us that "the absence of the availability of such an agreement established by the regulations in no way prevents the Agency from working with you to conduct this assessment in a collaborative manner". Presumably, section 114(1)(e) plays a role over and above what the Minister and/or the Agency is otherwise authorized to do under the *Act*. We would appreciate greater clarity on what makes section 114(1)(e) distinctive within the new impact assessment regime.

Notwithstanding your assurances, we respectfully ask that Canada refrain from finalizing the Terms of Reference and other key documents until the necessary regulatory framework has been put into place.

3. Constitution of Review Panel

Section 5.7 of the draft Terms of Reference, which addresses the constitution of the Review Panel, provides as follows:

> The persons appointed to the Review Panel must be unbiased and free from any conflict of interest relative to the Project and have knowledge or experience relevant to the Project's anticipated effects or have knowledge of the interests and concerns of the Indigenous peoples of Canada that are relevant to the assessment.

Given the significant risks that the project poses for Indigenous peoples, such as the Mitchikanibikok Inik, the Terms of Reference should expressly require the Review Panel to

include at least one appointee with knowledge of the interests and concerns of affected Indigenous communities.

Furthermore, the terms "unbiased" and "conflict of interest" should be defined so as to not exclude qualified Indigenous knowledge holders from the Review Panel. In order for a person to have "knowledge of the interests and concerns of the Indigenous peoples of Canada that are relevant to the assessment" – at least in any meaningful sense – that person must have a real and substantial connection to the Indigenous communities in question. Accordingly, the Terms of Reference should clarify that the existence of such a connection (short of, say, direct ties to an Indigenous government) will not itself amount to bias or conflict of interest.

4. Indigenous Knowledge Holders

Section 9.2 of the draft Terms of Reference states that the "Review Panel may also retain the services of independent nongovernment experts, including Indigenous knowledge holders, to provide advice on certain subjects within these Terms of Reference" (emphasis added). Section 9.5 goes on to say that the "Review Panel may also request an 'External Technical Review' by independent scientific and technical experts or Indigenous knowledge holders" (emphasis added).

The permissive language in these sections ("may") should be made mandatory in light of the vital rights and interests of affected Indigenous persons, communities and peoples. Given the history of Crown-Indigenous relations in Canada, unless the references to Indigenous knowledge holders are made into a requirement, we cannot help but doubt whether they will ultimately be acted upon.

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

Yours truly,

Chief Casey Ratt
Mitchikanibikok Inik