



CONFIDENTIAL NOT FOR PUBLICATION

Sent via email: Jennifer.Howe@canada.ca

Jennifer Howe
Project Manager, Prairie and Northern Region
Impact Assessment Agency of Canada / Government of Canada

Dear Ms. Howe,

RE: Issues, Concerns and Resolutions of the Prairie Lights Power Project

KLCN is committed to principles of Aboriginal Title and Rights, economic sustainability, environmental stewardship, and self-determination in respect of its lands and resources and wishes to establish a cooperative and respectful long-term relationship with Prairie Lights Power Inc. (PLP) in keeping with this principle.

Objectives of KLCN:

- (a) protecting the Traditional Territory for the continuing benefit of the KLCN members, including traditional, cultural, vocational and other purposes;
- (b) impacts to KLCN's Aboriginal Title & Rights; land claim of over 40,000 square kilometres (**Attachment A Asiniwachi Niyaw Nation territory map**)
- (c) protecting the environment within the Traditional Territory;
- (d) maximizing the economic benefits of the Project to KLCN members in the context of an active business relationship between KLCN and Prairie Lights Power Inc.;
- (e) creating employment, training and educational opportunities for the KLCN members; and
- (f) developing permanent and mutual benefit of economic development for KLCN members

Impacts to KLCN Aboriginal Title and Rights

Canada is aware that since the recognition of Aboriginal and treaty rights in Canada by section 35(1) of the *Constitution Act, 1982*, the inherent right of the Aboriginal peoples to govern themselves has become a generally accepted aspect of Canadian constitutional law.¹ Achieving Indigenous sovereignty begins with a demonstration of our leaders' capability to govern, including a focus on leaders accounting to those who select them. While many indigenous people view self-government as far from perfect, it begins to return the Indigenous communities to "nation-to-nation" status with Canada, as defined in the 1763 Royal Proclamation; in court decisions and in the Canadian Constitution. As you are no doubt aware, since July 15, 1996, CLIFF CALLIOU ET AL v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA, T-1685-96, on behalf of Kelly Lake Cree Nation (KLCN), filed a land grievance against the Government of Canada (Canada) for aboriginal rights and title and other remedies. In our litigation against Canada, Canada has attempted to have our claim struck out on many occasions but we have been successful in having the Federal Court dismiss these applications.

Our jurisdiction is that of **territorial** in nature, over a specific geographical area which straddles the current border of the provinces of Alberta and British Columbia. This includes territory within Jasper National Park. Our territory is bounded on the north by the Peace River, on the west by the Rocky Mountains, on the south by the boundaries of *Treaty 6 and Treaty 8*, and on the east by the sixth meridian. Our traditional hunting, trapping and cultural use areas follow the tributaries where the Fraser meets the Athabasca to the north, where the Peace meets Smoky, and east to where the Peace meets the Mackenzie.

Since time immemorial our Rocky Mountain Indian ancestors have lived in the area along the border between Alberta and British Columbia, a majority of our Nation's citizens today reside in nearby cities within the Peace Regions of NEBC and NW Alberta. There is little infrastructure, socio-economic prosperity, housing or jobs available in the main community of Kelly Lake. 75% of our population currently resides in the Peace Region, mainly in Grande Prairie area. Despondently, over 95% of our population are forced to live within the territory in various nearby cities in NE BC and NW Alberta.

KLCN Governance and Inherent Right to Govern

KLCN's governance is a distinct system of Nehiyawan government consisting primarily of a council of 10 family representatives (Headmen/Headwoman, a traditional Chief, elders, and clan mothers who oversee their territories. Our language, Nehiyawin (Cree) and our leaders know their history, orations, culture and language. They are unique societies with each family having distinct protocols, ceremonies (as institutions) that carry their way of life from generation to generation. They are responsible for caring for territorial realities and address different political, social and economic realities and needs. Our

Nehiyaw political system continues to be extremely diverse and as a result we do not have elections for our leaders, it is the responsibility of the ten families and elders to decide who will speak for them. ¹

Identification of the appropriate elements for exercising inherent right of self-government should be up to Indigenous peoples themselves. **(Attached B is the Asiniwachi Niyaw Nation governance chart).**

The historical presence of our Nation in the Peace Country is as a result of the intersection of our Cree ancestors and our Beaver ancestors. When *Treaty No. 8* was signed in 1899 and adhesions to it signed in the years thereafter, the Kelly Lake Cree continued to be outside of the areas and peoples, who were treated with. The territory of the Asiniwachi Niyaw Nation and its citizens who are physically present within our territory, since time immemorial are an inherent government. **(Attached C Kelly Lake Cree Nation Leadership Accord).**

The following Project-specific issues were raised by Kelly Lake Cree Nation based on their ongoing traditional use information:

- impact on water quality and quantity
- all species at risk including caribou habitat planning; wolverine populations study
- impacts to moose populations as a result of heavy traffic
- cumulative impacts to traditional plants, medicinal berry picking and sensitive use sites ie. Grave sites
- economic opportunities

Table 1 outlines the Project-related issues raised during the Prairie Lights Power Inc. Project's Aboriginal engagement activities for the time period from December 4, 2019 and ongoing. This table also summarizes KLCN's response or mitigation measures for those issues that are relevant and material to the Project.

¹ <https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>

**Table 1: Issues, Concerns and Resolutions Summary
Canadian Environmental Assessment Agency (CEA Agency)**

| Nation | CEA Agency – KLCN Concerns Report | | |
|--------|---|--|--|
| | Issue(s) / Concern(s) Identified | Recommendations / Mitigation Measures | Status / Outstanding Actions or Concerns |
| KLCN | KLCN remains concerned about the long-term cumulative impacts on caribou health and populations | <p>KLCN wants relevant information from the PLP as a result of the increase concern for caribou habitat, in the South Peace Northern Caribou population</p> <ul style="list-style-type: none"> • KLCN to contact PLP to seek their interest and participation in funding a program geared for the development a caribou protection plan for the South Peace Northern Caribou population | |
| | <ul style="list-style-type: none"> • Impact on water quality and quantity | KLCN wants to initiate a post and pre construction Aboriginal Construction Monitoring program. | |

Table 1: Issues, Concerns and Resolutions Summary

(CEA Agency-KLCN Issues and Concerns)

| Nation | KLCN Concerns Report | | |
|--------|---|--|--|
| | Issue(s) / Concern(s) Identified | Recommendations / Mitigation Measures | Status / Outstanding Actions or Concerns |
| KLCN | River Crossings effects as a result of overlapping projects: Simonette, Smoky, Kakwa, Cutbank, Wapati when utilized used as a water source for Projects. It was recommended that KLCN monitor all river crossing between before, during and after water is withdrawn for hydrostatic testing, as well as for construction phases of the project | KLCN wants to monitor wetlands and watersheds pre construction and post construction monitoring. | |

| Nation | KLCN Concerns Report | | |
|--------|--|---|--|
| | Issue(s) / Concern(s) Identified | Recommendations / Mitigation Measures | Status / Outstanding Actions or Concerns |
| | <ul style="list-style-type: none"> KLCN suggestions included focusing restoration efforts on lands disturbed by Project construction, including temporary workspaces, the Project right-of-way (approximately 32 m wide) as well as the existing, adjacent right-of-way to the Project (ROW approximately 10-20 m wide) rather than offsite restoration at locations such as abandoned wellsites or seismic clearings. KLCN also noted that if seismic lines were open, they were likely used by trappers and should remain open. | <p>KLCN wants to initiate the PLP project post and pre construction of the PLP.</p> | |

Table 1: Issues, Concerns and Resolutions Summary

| Nation | CEA Agency - KLCN Concerns Report | | |
|--------|---|--|--|
| | Issue(s) / Concern(s) Identified | Recommendations / Mitigation Measures | Status / Outstanding Actions or Concerns |
| KLCN | KLCN has requested a site visit of the right-of-way, fly over of proposed project area pre-construction phase | | |
| | KLCN are concerned over the increase in cumulative effects within the territory. | <ol style="list-style-type: none"> 1) Increase access to remote areas 2) Sensory disturbance of wildlife 3) Habitat loss and fragmentation 4) Impacts from stream crossings 5) Vegetation and habitat loss 6) Disruption of natural forest 7) Loss of old growth dependent species 8) Soil erosion | |

Cumulative effects of Major Projects

KLCN traditional territory has some of the richest oil gas reserves and natural resources in Canada. The rapid growth of these oil and gas in the territory has raised serious concerns about cumulative impacts from oil and gas related activities alone and in combination with other major projects in mining, energy, forestry and hydroelectric projects (Site C dam), human settlement, farming and other resource based activities. In recent years, the territory has experienced significant industrial growth. Alberta currently lacks a legal framework to proactively and comprehensively manage the cumulative impacts of multiple resource developments within the same region, including the effects of climate change. The impact of this gap can be seen starkly in the northeast of the province, where 75 percent of the Peace region has already been impacted by oil and gas development, logging, mines, large dams and other industrial infrastructure, leaving few intact natural areas. This is the roughly ¾ of the entire traditional territory of the KLCN.

Water Quality concerns

KLCN identified that the Nation were concerned about the impact on the Simonette, Smoky, Kakwa, Cutbank, Wapati, all tributaries of the Peace River when utilized used as a water source for many of the overlapping projects in the area. It was recommended that KLCN monitor all river crossing between before, during and after water was withdrawn for hydrostatic testing, as well as for construction, in previous regulatory assessments completed for projects such as the NGTL 2021 Project. KLCN wants it determined which crossings would not impact water sources for the Project. KLCN is in the process of notifying trappers which water course crossings will not be a water source for this project.

Aboriginal Construction Monitoring Program

KLCN wants to create opportunities for their citizens to be able to be involved in the construction, monitoring and economic opportunities of the PLP. It is well known that the Government of Canada has a duty to consult with First Nations groups and communities. Consultation is required if existing or asserted Aboriginal rights may be impacted by a government decision, for example by the issuance of a permit related to a project. Although the Crown is responsible for undertaking adequate consultation and accommodation, it is often advantageous for project proponents to undertake engagement and consultation with those First Nations who may potentially be impacted by a project. Impact Benefit Agreements – or IBAs – can be an effective way for participants on a project to provide accommodation, although IBAs are separate from consultation. An IBA is an agreement for the proponent to provide benefits to the First Nations in exchange for the Nations' support of the project. The agreement can be altered and changed. If the PLP changes ownership then the agreement will be nullified. This has occurred in the past with other major projects. In order that does not occur, KLCN citizens want to ensure that further capacity through the Aboriginal Construction Monitoring plan will ensure that KLCN citizens are directly involved in the planning, construction and rehabilitation of transmission corridor ROW that traverse the territory.

KLCN wants to ensure the implementation of an Aboriginal Construction Monitoring Program (the 'program') during the construction phase on the transmission corridor within Sections 3, 10, 15, 22, 27, 33, Township 68, Range 5, W6M • Sections 4, 9, 17, 20, 29, 32, Township 69, Range 5, W6M • Sections 5, 8, 17, Township 70, Range 5, W6M. The purpose of the program is to work with a qualified Aboriginal monitors to provide assistance in identifying and monitoring potential environmental and cultural concerns during construction activities, while providing opportunities for the Aboriginal monitor to enhance their skills and knowledge with respect to environmental monitoring of applied environmental process and mitigation during pipeline impacts and transmission corridor impacts and transmission corridor construction.

Plans for the Aboriginal Construction Monitoring Program need to be discussed in detail with the Nation, and KLCN will be meeting with each of the trappers and families to initiate the logistics for this program.

Economic Participation

A common interest for KLCN engaged in the Project is participation in economic activities, including environmental field programs and contracting opportunities during construction and operation. In addition to the monitoring program described above and as previously outlined by KLCN. KLCN wants to ensure the PLP include participation clauses in the Prime Contractor tendering documents to encourage local and Aboriginal participation in employment and contracting opportunities related to construction of the project. KLCN will continue to provide the Nation with project updates, including construction schedule and information related to contracting, employment, and training opportunities.

Aboriginal Construction Monitoring

No Prejudice to Rights of the Parties. Notwithstanding any other provision in this Issue, Concerns document, the Parties acknowledge and agree that this document, any discussions and correspondence relating to them do not prejudice any of the following rights:

- (g) KLCN's inherent aboriginal rights, claims or interests;
- (h) KLCN's rights to or benefits of notice, consultation, negotiation or accommodation from any person, including governmental and regulatory bodies or agencies, arising directly or indirectly from KLCN's aboriginal rights or title;
- (i) ongoing or future land claims and self-government negotiations affecting or relating in any way to KLCN; and
- (j) Prairie Lights Power Inc.'s rights, claims or interests in the Project.

Please contact Linette Hodges at lhodges@kellylakecreenation.com with any questions or comments about this letter. We look forward in working with you regarding the Prairie Lights Power Inc. file.

Sincerely,

<Original signed by>

Chief Cliff Calliou
Kelly Lake Cree Nation

cc: Merle Alexander, Principal First Nations Economic Development, Miller Titerle & Co