

Re: IAAC Request for Input, Designation Request for Chin Reservoir Expansion and Modernization Project; Snake Lake Reservoir Expansion Project and Deadhorse Coulee Reservoir Project.

The Canada Infrastructure Bank (“**CIB**”) is a federal Crown corporation established by the *Canada Infrastructure Bank Act*. The CIB’s purpose is to invest and seek to attract investment from private sector investors and institutional investors, in infrastructure projects in Canada or partly in Canada that will generate revenue and that will be in the public interest by, for example, supporting conditions that foster economic growth or by contributing to the sustainability of infrastructure in Canada.

The CIB develops projects in partnership with federal, provincial, territorial, municipal and Indigenous sponsors and the private sector. The CIB’s investments are focused on five priority sectors: public transit, clean power, green infrastructure, broadband, and trade and transportation.

As described in the CIB’s 2020-21 to 2024-25 Corporate Plan, the CIB has set an investment target of \$1.5 billion for agriculture-related infrastructure projects, starting with major irrigation projects in Western Canada to help the agriculture sector enhance production, strengthen Canada’s food security, and expand export opportunities.

In December 2020, the CIB announced its investment in the Alberta Irrigation Project (the “**Project**”). The CIB’s financial commitment is structured as a loan in the amount of up to \$466 million for permitted project costs. The Government of Alberta will contribute \$244.5 million and the irrigation districts (“**IDs**”) will contribute \$163 million. The Project is comprised of two-phases and involves construction of modern irrigation infrastructure and significantly expanding irrigable land opportunities within ten IDs in Southern Alberta:

- Phase 1 involves the development, construction, financing, operation and maintenance of irrigation infrastructure modernization works (the “**Modernization Works**”), including upgrading existing irrigation infrastructure by replacing canals with pipelines, rehabilitating large canals and replacing aging structures. The primary purpose of the Modernization Works is to improve the efficiency of water conveyance systems to conserve water by eliminating seepage, evaporation, and reduce return flow. Modernization Works are conducted entirely on private lands and existing rights-of-way that already contain irrigation infrastructure. Modernization Works are not expected to trigger a federal or provincial environmental assessment process, based on the scope of the activities and the absence of adverse impacts that would interfere with Indigenous peoples’ ability to exercise their rights protected by section 35 of the *Constitution Act, 1982*. Phase 1 of the Project is anticipated to be operational on or before 2025.
- Phase 2 involves the development, construction, financing, operation and maintenance of new and expanded off-stream reservoirs within some or all of the IDs’ lands (the “**Reservoir Works**”). The proposed Chin Reservoir Expansion and Modernization Project, Snake Lake Reservoir Project and Deadhorse Coulee Reservoir Project are each included within the scope of the Reservoir Works. The primary purpose of the Reservoir Works is to enhance water security and supply within the South Saskatchewan River Basin and allow for an earlier start to the irrigation season. Phase 2 of the Project is anticipated to be operational in 2028, having regard to completion of any required authorizations under provincial or federal environmental laws and regulations. At the time of the Project’s financial close in December 2020, the project development activities for the Reservoir Works were in early stages and the analysis of any required provincial environmental assessment or federal Impact Assessment was premature.

In exercising its authorities under the *Canada Infrastructure Bank Act*, the CIB is responsible for meeting its legal obligations, including responding to the Crown’s duty to consult, and where appropriate, accommodate any potential adverse impacts on Indigenous rights, and ensuring that projects have met environmental assessment and other regulatory requirements.

As a Crown corporation, the CIB is included within the definition of “federal authority” in the Impact Assessment Act (“IAA”). As a federal authority, the CIB has independent obligations with respect to “designated projects” and projects carried out on federal lands.

CIB’s legal documentation for the Project includes provisions to ensure if the Crown’s duty to consult arises, the duty will be appropriately discharged by the CIB, the Government of Alberta and the IDs, including working with the Government of Alberta to uphold the honour of the Crown. Moreover, the legal documentation for the Project includes specific covenants and conditions, including completing satisfactory due diligence review from the CIB and its Lenders Technical Advisory (LTA) before the IDs are entitled to receive funding from the CIB for eligible project costs. Conditions precedent include:

- Confirmation that current environmental assessment approvals (including Indigenous consultation and public engagement) and all necessary governmental authorizations (i.e., orders, licenses, permits, approvals and authorizations) required to commence construction have been obtained; and
- In the case of Reservoir Works, evidence that environmental permitting (including Indigenous consultation and public engagement) has been completed (i.e., an agreement with the Indigenous stakeholder).

It is the responsibility of the IDs to complete all required environmental approvals (including leading Indigenous consultation and accommodations on behalf of the Government of Alberta and the CIB as appropriate) and comply with any conditions of licences, permits and authorizations. As part of its project oversight, the CIB receives progress updates from the IDs on the ongoing development of Project, such as engineering studies, environmental permitting, consultations with stakeholders and required approvals to monitor the Project’s progress. At this time, the project development (including engineering design) for the proposed Phase 2 Reservoir Works is ongoing.

We have reviewed the designation requests under the IAA and the *Operational Guide: Designating a Project under the Impact Assessment Act* (the “**Guide**”).¹ The Guide advises that the Minister’s decision must take into account a number of relevant factors including whether or not “the potential adverse effects can be adequately managed through other existing legislative or regulatory mechanisms and “an assessment of environmental effects would be carried out by another jurisdiction.”

The CIB does not have specific expertise, specialized knowledge to advise the Impact Assessment Agency of Canada (“IAAC”) on the potential for the proposed Phase 2 Reservoir Works to cause adverse effects within federal jurisdiction or adverse direct or incidental effects as described in section 2 of the IAA. Moreover, to our knowledge, the Minister has not determined whether an assessment of environmental effects for the proposed Phase 2 Reservoir Works would be carried out by another jurisdiction, namely a mandatory provincial environmental impact assessment in Alberta. In addition to the IAA and the Physical Activities Regulations, we note that the following provincial acts and associated regulations and directives could apply to the Phase 2 Reservoir Works:

- *Environmental Protection and Enhancement Act*, RSA 2000, c E-12
- *Public Lands Act*, RSA 2000, c P-40
- *Water Act*, RSA 2000, c W-3
- *Environmental Assessment (Mandatory and Exempted Activities) Regulation*, Alta Reg 111/1993
- *Environmental Assessment Regulation*, Alta Reg 112/1993

¹ Impact Assessment Agency of Canada, *Operational Guide: Designating a Project Under the Impact Assessment Act*: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/designating-project-impact-assessment-act.html>

- *Alberta Dam and Canal Safety Directive*

Moreover, the proposed Phase 2 Reservoir Works lie within the Treaty 7 territory that covers most of Southern Alberta. Treaty 7 region is the traditional territory of the Blackfoot Confederacy (Peigan, Bloods, and Blackfoot tribes), Stoney Nakota Nation, and Tuss T'ina Nation. Harvesting rights of the local Indigenous groups were preserved by Treaty 7 throughout the treaty territory, and so any government contemplation of conduct or activities that could adversely impact these harvesting rights would trigger the Crown's duty to consult, and possibly to accommodate, the affected Indigenous group(s).

In conclusion, it would be premature for the CIB to opine on the requirement for or advisability of the Minister exercising his discretionary authority under subsection 9(1) of the IAA at this time. We will continue to monitor and exercise our compliance obligations regarding the IAA as part of our project oversight responsibilities, including confirming with the IDs that the legal covenants included in the credit agreement are satisfied.