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Moraine Power Generation Project
Impact Assessment Agency of Canada
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To whom it may concern:

Re: Initial Project Description – Moraine Power Generation Project

We write on behalf of Alexis Nakota Sioux Nation (“**ANSN**”) in respect of the application by Moraine Initiatives Limited (“**Moraine**”) for its proposed natural gas-fired power generation facility with integrated carbon dioxide capture (the “**Project**”). In this letter, we are providing comments on the proposed Project’s Initial Project Description (“**IPD**”).

The proposed Project is located directly adjacent to the ANSN Whitecourt 232 reserve in ANSN’s traditional territory, which has historically and remains important for the exercise of ANSN’s section 35 Aboriginal and treaty rights protected by the *Constitution Act, 1982*.

ANSN is already facing the cumulative impacts of development within its territory and is concerned about the potential impacts of this proposed Project on its rights given the nature of the activities, the overlap of the Project location with areas of importance to ANSN for the continued exercise of its rights and culture, and the reality that ANSN relies on the integrity of its traditional territory to support habitats, vegetation, and traditional resources which are required for the continued exercise of rights. ANSN has not been provided with funding to undertake a review of the IPD, therefore this letter in no way represents a thorough technical evaluation of the Project’s impacts.

About Alexis Nakota Sioux Nation

ANSN is a First Nation with Aboriginal and Treaty rights protected by s. 35 of the *Constitution Act, 1982*, and a band within the meaning of s. 2 of the *Indian Act, RSC 1985, c. I-15*, located in Alberta. ANSN members are direct descendants of the Nakota (Assiniboine) and the Indigenous kinship groups the Nakota (Assiniboine) married into.



Treaty 6 was signed on August 23, 1876 at Fort Carlton. Alexis Kees-Kee-Che-Chi – ancestral chief of the ANSN – signed an Adhesion to Treaty 6 at Fort Edmonton on August 21, 1877. In exchange for the Indigenous signatories’ agreement to “cede, release and surrender and yield up to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors forever, all their rights, titles and privileges, whatsoever, to the lands included” (121,000 square miles of Alberta’s fertile plains), the Indigenous signatories were promised that they would be able to continue hunting and fishing throughout the surrendered lands. ANSN’s traditional territory spans from Cardinal River in the south along the foothills and Rocky Mountains beyond Whitecourt and the Swan Hills in the north, and to the east past Barrhead.

ANSN people have strong, persistent connections to their land. Many families have fur management areas, gather herbs and berries, and hunt on a regular basis throughout their traditional territory. Community members use their traditional lands for spiritual activities and to watch over the gravesites of their ancestors. Every ANSN family has been directly or indirectly impacted by industrial development on the land that their ancestors have used since time immemorial.

ANSN is Concerned about the Project’s Impacts on its Aboriginal and Treaty Rights

In this preliminary assessment, ANSN identifies that the proposed Project could have an adverse effect on ANSN members’ Treaty and Aboriginal rights and their ability to use this area for traditional, cultural, and sustenance purposes. Exclusion from lands represents a significant infringement on ANSN members’ ability to harvest traditional foods, engage in ceremony, visit cultural sites, transfer knowledge across generations, and uphold traditional stewardship and cultural roles.

ANSN has historically exercised its Treaty rights and related activities within the Project area. The Project will have negative impacts on ANSN’s continued ability to do so. In the IPD, Moraine recognizes that the proposed Project crosses areas of high historical resource potential, that migratory bird habitat will be lost, fish habitat will be disrupted or destroyed, air emissions may extend to Indigenous lands in the area, and the Project area overlaps with known areas where Indigenous groups practice hunting, fishing, trapping, traditional plant uses, and cultural transmission. While Moraine has indicated in the IPD that there may be positive socioeconomic effects such as employment opportunities for Indigenous groups, there are also direct impacts to individuals from the Project, including health impacts from air quality and noise changes.

The Project’s adverse impacts on wildlife habitat, migratory birds, and fish and fish habitat will further impede ANSN members’ ability to exercise their rights. As stated in the IPD, there are numerous environmentally sensitive habitats within the Project region including a Migratory Bird Nesting Zone and an important ungulate winter range (which



is also listed as a Key Wildlife Biodiversity Zone). Moose, elk, and deer are important for ANSN harvesting practices, and can be used as part of traditional ceremonies or as traditional medicines.

The Project overlaps with bog and fen lands, which are important ecosystems to ANSN. ANSN members have traditionally relied on healthy wetlands for gathering mosses for medicinal purposes and continue to rely on healthy wetlands for gathering cranberries, roots, and other herbs.

ANSN is further concerned about the proximity of this proposed Project to the Athabasca River. The PGF site is proposed to be established less than 1 km from the Athabasca River, and pipelines may cross the Athabasca River and its tributaries. ANSN is concerned that the IPD mischaracterizes the risks and potential devastating impacts of the Project's location when it states that nothing will directly flow into the Athabasca River. ANSN people place a high value on water for both their own health as well as the health of the ecosystems they rely on. Ecosystem health relies on the same clean, natural water that ANSN people do.

ANSN is Concerned about the Project's Contribution to Cumulative Effects

The proposed Project will also contribute to the cumulative effects on ANSN's traditional and cultural use of the area – the potential for which was recognized by Moraine in the IPD. Canadian courts have recognized that “historical context is essential to a proper understanding of the seriousness of the potential impacts”¹ – meaning that, as the Supreme Court of Canada has stated – it is “impossible to understand the seriousness of the impact of a project on s. 35 rights without considering the larger context”.² This inquiry is about recognizing the “existing state of affairs” and addressing the consequences of what *may result* from the project.³ Canadian courts have further highlighted that the consultation process is not concerned with environmental effects *per se*, but rather focuses on the impact to the right.⁴ The cumulative effects of development have serious detrimental impacts on ANSN members' ability to exercise their Treaty and Aboriginal rights.

ANSN is already facing the cumulative effects of development within its traditional territory. Lands within ANSN's traditional territory have already been taken up for industrial development purposes and the community is already dealing with the negative impacts of this loss. The IPD specifically states that the Project may contribute to the ongoing cumulative effects of development in this area. These ongoing, compounding

¹ *West Moberly First Nations v BC (Chief Inspector of Mines)*, [2011 BCCA 247](#) at para 117.

² *Chippewas of the Thames v Enbridge Pipelines Inc.*, [2017 SCC 41](#) at para 42.

³ *Chippewas of the Thames*, citing *West Moberly*, at para 119.

⁴ *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, [2017 SCC 40](#) at para 45.



and cumulative effects of development continue to impact ANSN's way of life and members' ability to exercise their Treaty and Aboriginal rights.

ANSN Consultation

ANSN is concerned about the potential impacts of this proposed Project on its traditional territory and seeks to fully understand the potential impacts. ANSN expects that before moving forward with a proposal in its traditional territory, that it will be meaningfully and directly engaged in consultation to fulfil the Crown's duty to consult. The Crown must direct Moraine to engage with ANSN to understand its way of life and the conditions necessary for ANSN members to continue this way of life and exercise their Treaty and Aboriginal rights.

As stated earlier, ANSN has not yet received capacity funding to participate in this process. While some funding may be available through IAAC for participation in this process, meaningful consultation requires sufficient funding to review the material in detail, conduct traditional land use studies of the impacted area, and engage meaningfully with the proponent. The Supreme Court of Canada has indicated that a lack of participant funding can contribute to a finding that the duty to consult has not been met.⁵

Conclusion

To meaningfully participate and respond to the consultation request, ANSN must review available traditional land use information to identify uses in the area, and identify further locations within and around the proposed Project area that may be affected. Without the ability (including time and resources) to gather and analyse this information, ANSN cannot provide a meaningful assessment of impacts to rights from the proposed Project.

ANSN looks forward to a meaningful response and continued discussions about these issues as part of ongoing consultation on the proposed Project.

Sincerely,
JFK Law LLP

Per:
Louise Kyle
Associate

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⁵ *Tsilhqot'in Nation v British Columbia*, [2007 BCSC 1700](#) at para 1138, affirmed in 2012 BCCA 285, but not on this point.