

FEDERAL/PROVINCIAL CONSULTATION AND ACCOMMODATION REPORT
SITE C CLEAN ENERGY PROJECT

September 7, 2014

Table of Contents

- 1.0 Introduction
 - 1.1 Purpose of the Report
 - 1.2 Project Description
 - 1.3 Environmental Assessment Process
 - 1.4 Panel Report Conclusions

- 2.0 Engagement of Aboriginal Groups in the Environmental Assessment
 - 2.1 Aboriginal Groups Involved
 - 2.2 Bodies Representing Aboriginal Groups for Consultation Purposes
 - 2.3 Ethno-historic Information Sources Related to Aboriginal Groups
 - 2.4 Traditional and Socio-Economic Setting of Aboriginal Groups
 - 2.5 Consultation with Aboriginal Groups
 - 2.5.1 Principles Involved in Establishing Depth of Duty to Consult
 - 2.5.2 Approach to Assessing Potential Impacts of the Project to Aboriginal Interests
 - 2.5.3 Contextual Factors Related to Assessing Impacts on Aboriginal Interests
 - 2.5.4 Approach to Consultation with Treaty 8 First Nations
 - 2.5.5 Approach to Consultation with Non-treaty First Nations
 - 2.5.6 Approach to Consultation with Métis Nations

- 3.0 Summary of Consultation Process
 - 3.1 Proponent's Consultation Process
 - 3.1.1 Proponent Consultation Summaries
 - 3.2 Federal and Provincial Government Consultation
 - 3.2.1 Early EA Planning
 - 3.2.2 Environmental Impact Statement Guidelines
 - 3.2.3 Environmental Impact Statement
 - 3.2.4 Joint Review Panel Stage including Public Hearing
 - 3.2.5 Post Panel Stage and Decision Making Processes
 - 3.3 Participant Funding Provided
 - 3.4 Adjustments to EA Process and Timelines

- 4.0 Consideration of Aboriginal Interests and Concerns
 - 4.1 Crown Consultation Record and Tracking of Key Issues
 - 4.2 Addressing Key Aboriginal Interests and Concerns
 - 4.2.1 Project Modifications
 - 4.2.2 Potential Federal and Provincial Conditions
 - 4.2.3 Other Accommodation Measures
 - 4.2.4 Impacts to Hunting and Trapping
 - 4.2.5 Impacts to Fishing
 - 4.2.6 Impacts to Other Traditional Uses of the Land
 - 4.2.7 Socio-economic Concerns
 - 4.2.8 Assessment Methodology, Process and Consultation
 - 4.3 Key Issues Raised by Aboriginal Groups during Post-Panel Stage Consultation

- 5.0 Conclusions
 - 5.1 Adequacy of Consultation
 - 5.2 Status of Accommodation

Appendix A – Crown Consideration of Specific Aboriginal Interests and Concerns

- A1 - Athabasca Chipewyan First Nation
- A2 - Beaver First Nation
- A3 - Blueberry River First Nations
- A4 - Dene Tha' First Nation
- A5 - Deninu K'ue First Nation
- A6 - Doig River First Nation
- A7 - Duncan's First Nation
- A8 - Fort Chipewyan Métis Local #125
- A9 - Fort Nelson First Nation
- A10 - Halfway River First Nation
- A11 - Horse Lake First Nation
- A12 - Kelly Lake Métis Settlement Society
- A13 - Kwadacha First Nation
- A14 - Little Red River Cree Nation
- A15 - McLeod Lake Indian Band
- A16 - Métis Association of Alberta, Region 6
- A17 - Métis Nation British Columbia
- A18 - Mikisew Cree First Nation
- A19 - Northwest Territory Métis Nation
- A20 - Paddle Prairie Métis Settlement Society
- A21 - Prophet River First Nation
- A22 - Salt River First Nation
- A23 - Saulteau First Nations
- A24 - Smith's Landing First Nation
- A25 - Sturgeon Lake Cree Nation
- A26 - Tallcree First Nation
- A27 - Tsay Keh First Nation
- A28 - West Moberly First Nations
- A29 - Woodland Cree First Nation

Appendix B – Panel Recommendations

1.0 Introduction

This document provides a summary of the procedural and substantive aspects of Crown-Aboriginal consultation integrated into the environmental assessment (EA) of the proposed Site C Clean Energy Project (proposed Project).

The Environmental Assessment Office (EAO) and the Canadian Environmental Assessment Agency (Agency), collectively representing “the Crown” or “the Governments” have prepared this report to document the Aboriginal consultation conducted with respect to the responsible provincial Ministers and the Government of Canada’s respective EA decisions on the proposed Project including proposed accommodation for potential impacts to asserted or established Aboriginal or treaty rights (“Aboriginal Interests”). As such, this report is in keeping with the Crown’s constitutional duty to consult and, where appropriate, accommodate.

1.1 Purpose of the Report

The report’s key goals are to describe for federal and provincial decision makers:

1. Aboriginal consultation in respect of the proposed Project;
2. the views of Aboriginal groups on how the proposed Project, if it proceeds, has the potential to impact their Aboriginal Interests and other interests;
3. the measures proposed to address potential impacts on Aboriginal Interests and other interests raised by Aboriginal groups; and
4. the conclusions of the adequacy of Crown consultation, and the status of accommodation, as appropriate, to inform EA decisions in respect of the proposed Project.

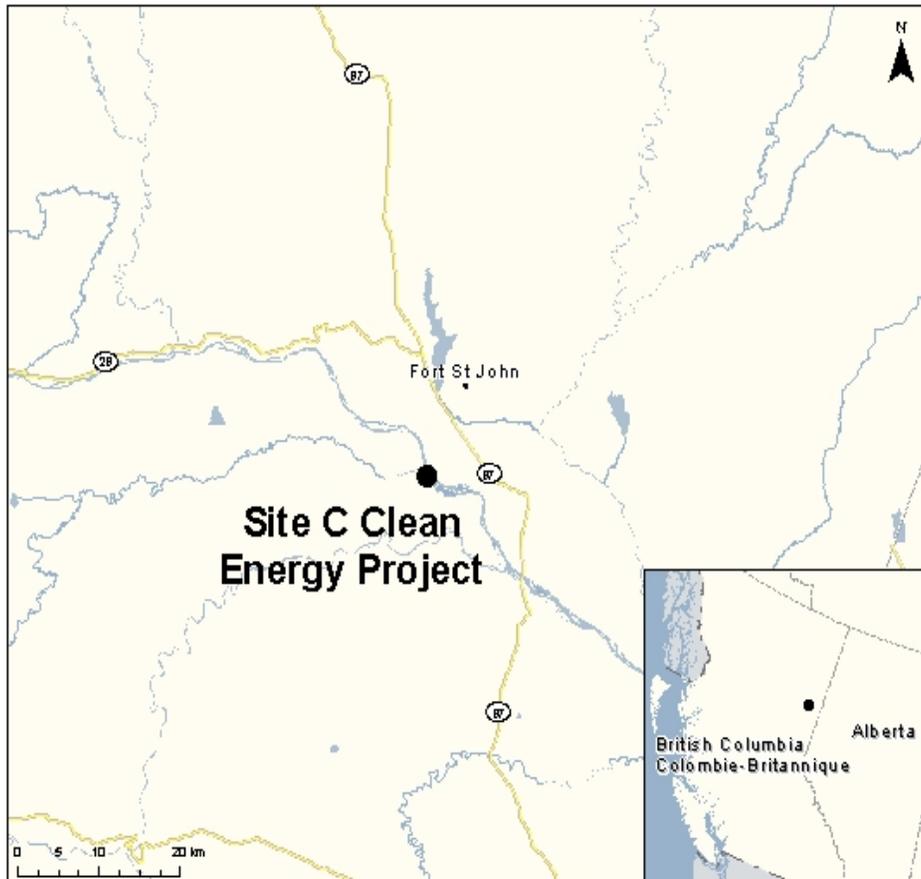
This report was developed based on consideration of information brought forward to the Governments by Aboriginal groups during the EA process, including submissions made by Aboriginal groups to the Joint Review Panel (Panel) and comments made directly to the Governments during the course of consultation on the proposed Project.

1.2 Project Description

BC Hydro and Power Authority (Proponent) proposes to develop and operate a dam and hydroelectric generating station on the Peace River approximately seven kilometres southwest of City of Fort St. John, British Columbia (Figure 1.1). The scope of the proposed Project would include the following major components: an earthfill dam 1,050 metres long and 60 metres high, an up to 1,100 megawatt generating station and associated structures, an 83 kilometre long reservoir, two 500 kV - 77 kilometre transmission lines connecting the Project to the Peace Canyon Dam, re-alignment of four sections of Highway 29, access roads and other proposed Project components and activities.

Preliminary design work was first conducted in the late 1970s, resulting in a project proposal in 1981. Further engineering activities took place between 1989 and 1991. In 2009, the Proponent concluded that the original project design required optimization to meet current seismic, safety and environmental guidelines. This design optimization work was completed in late 2010, and the final proposed Project description received by the Governments on July 20, 2011 reflects the updated design.

Figure 1.1 Location of the Proposed Project



Information provided by the Proponent in the form of its Project Description, Environmental Impact Statement (EIS) and supplementary material provided during the EA process, can be found on the Canadian Environmental Assessment Registry (<http://www.ceaa.gc.ca/050/details-eng.cfm?evaluation=63919>) and at the Electronic Project Information Centre of British Columbia's EAO (http://a100.gov.bc.ca/appsdata/epic/html/deploy/epic_project_home_371.html).

1.3 Environmental Assessment Process

This section presents an overview of the key steps of the EA process as they pertain to Aboriginal consultation. For a more detailed procedural summary of consultation conducted with Aboriginal groups throughout the EA, please see Section 3.

Preliminary Project Planning and Engagement

In 2007, the BC Energy Plan identified the proposed Project as a potential resource option to meet BC's future electricity needs and directed the Proponent to begin discussions with the public and Aboriginal groups. This was before a decision had been made by the Government of BC on whether to advance the proposed Project. Further details of the Proponent's early proposed Project planning and engagement activities from 2007 to the commencement of the EA, are presented in Section 3.

The Governments are responsible for the EA process, including ensuring that consultation and accommodation, where required, with Aboriginal groups, conducted by the Proponent and/or the Governments, is adequate. As part of discharging this responsibility, direction was provided to the Proponent through the EIS Guidelines, to engage and consult with Aboriginal groups potentially affected by the proposed Project, including seeking to find appropriate accommodation for the potential impacts of the proposed Project with potentially affected Aboriginal groups.

EA Commencement

The Proponent's preliminary project description was received by the Governments on May 18, 2011. During initial review of the Project Description, the Governments worked closely to plan how to coordinate their respective EA responsibilities. As part of this early EA planning, the Governments identified and sought the engagement of Aboriginal groups that could potentially be affected by the proposed Project. Further details of early Aboriginal engagement efforts are provided in Section 3 of this report.

On July 20, 2011, the Agency received an acceptable project description under the former *Canadian Environmental Assessment Act* (the former Act) and undertook to determine whether and by what form, an EA would be required. On August 2, 2011, EAO referred the proposed Project to the BC Minister of Environment under section 10(1)(a) of the *Environmental Assessment Act* (Act) for Ministerial determination of the scope, procedures and methods for conducting the EA.

On September 30, 2011, the federal Minister of the Environment referred the EA to an independent review panel under the former Act and posted a Notice of Commencement. At the same time, the federal and provincial governments announced that the proposed Project would be subject to a cooperative EA process that would include the Panel, and commenced a 30-day public consultation period on the draft *Agreement to Conduct a Cooperative Environmental Assessment Including the Establishment of a Joint Review Panel, of the Site C Clean Energy Project between the Minister of Environment, Canada and the Minister of Environment, British Columbia* (Agreement) and appended Joint Review Panel Terms of Reference (Panel Terms of Reference).

On October 5, 2011, EAO and the Agency hosted an introductory meeting of representatives of the federal, provincial, territorial, and local government and Aboriginal groups to discuss the process for the EA of the proposed Project.

Early EA Planning

Early on during the EA planning stage, potentially affected Aboriginal groups were engaged in discussion on a proposed approach to Crown-Aboriginal consultation for the EA, and were invited to apply for participant funding as described in Section 3.

Comments received on the draft Agreement including the Panel Terms of Reference, were considered by the Governments. On February 13, 2012, the final Agreement was announced by the federal Minister of the Environment and the provincial Minister of Environment. The Agreement established the scope, procedures and methods for conducting the EA process including the Pre-Panel Stage, the Panel Stage and Post-Panel Stage; the establishment of a Working Group consisting of federal, provincial, local government and Aboriginal groups; and the Panel Terms of Reference. The Panel was governed by the Agreement and the Panel Terms of Reference.

Environmental Impact Statement Guidelines

On January 26, 2012 the Proponent submitted the first draft of the EIS Guidelines to EAO and the Agency. On January 30, 2012 the Governments, provided preliminary draft EIS Guidelines for review and comment to 50 Aboriginal groups who were thought at the time to be potentially affected by the proposed Project. Aboriginal groups were invited to participate in a Project Working Group meeting on March 1, 2012. The draft EIS Guidelines were further developed by the Governments during the spring of 2012 based on Aboriginal group comments received, a formal review by the Working Group and a 45 day public comment period between April 17 and June 1, 2012. Six open houses were held in central and northern BC and Alberta in early May 2012.

The draft EIS Guidelines were further amended by the Governments following advice from the Working Group on the Proponent's responses to all comments received.

On July 6, 2012, the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) came into force. Section 126 of CEAA 2012 provides that an assessment by a review panel commenced under the former Act is to be continued under the process established in CEAA 2012. As a result of the coming-into-force of CEAA 2012, the Agreement was amended on August 3, 2012 to reflect federal timelines and requirements for the federal Minister's decision statement.

Additional amendments were made to the draft EIS Guidelines to reflect changes resulting from CEAA 2012, and after consideration of all comments received, the EIS Guidelines were finalized by the federal Minister of the Environment and EAO's Executive Director and issued to the Proponent on September 7, 2012. The final EIS Guidelines identified 29 Aboriginal Groups that were potentially affected by the proposed Project and were to be consulted by the Proponent. Section 2 lists these groups and the determination of depth of consultation.

Environmental Impact Statement

On January 25, 2013, the Proponent submitted its EIS to the Governments for review and comment. The Governments released the EIS to the public and the Working Group on January 28, 2013 and provided an opportunity for the EIS to be reviewed by Aboriginal groups, government agencies, and the public during a 60 day comment period from February 3 – April 4, 2013. EAO and the Agency held a Working Group meeting to discuss the EIS and update the EA process on February 19, 2013. Six open houses were held in the last two weeks of February in central and northern BC and Alberta. The Proponent responded to Aboriginal group comments on May 8, 2013, and the Working Group, including Aboriginal groups, provided advice by May 29, 2013. Three technical sub-Working Group meetings (terrestrial, aquatic and downstream effects) on the EIS were held in Dawson Creek, Fort St John and Peace River Alberta on June 4, 5, and 6, 2013 to identify further effects and specific mitigation and follow-up measures on key valued components that were assessed by the Proponent. The Working Group provided a forum for Aboriginal groups to discuss their concerns with federal, provincial and local government representatives in round-table discussions. The views of Aboriginal groups were also sought during Crown-Aboriginal group consultation meetings and exchange of correspondence on the information, methodologies and approach taken by the Proponent in its EIS.

Direction to the Proponent to amend the EIS was issued during July 2013 and on August 1, 2013 the amended EIS was deemed satisfactory by the Agency and EAO to proceed to the Panel Stage, based on a review and consideration of all comments received in the context of whether the EIS met the requirements established in the EIS guidelines and was technically adequate. On August 2, 2013, the Proponent forwarded the amended EIS to the Panel concluding the Pre-Panel Stage.

Joint Review Panel

Appointed Panel members were announced on August 2, 2013. The Panel issued three sets of Information Requests to the Proponent from August through November 2013 as it conducted a technical review of the amended EIS and on November 7, 2013, the Panel announced that it had sufficient information to proceed to the public hearing phase of the review.

The Panel held a public hearing from December 9 to 19, 2013 and from January 6 to 23, 2014, during which interested parties, including many Aboriginal groups, presented information to the Panel relating to the potential effects of the proposed Project. The Panel's hearing record closed on February 3, 2014 and the Panel issued its report to the federal Minister of the Environment and the Executive Director of EAO on May 1, 2014.

Post-Panel Report Consultation

On May 8, 2014, the Governments released the Panel Report and sent copies to Aboriginal groups to initiate a written comment period from May 8 to June 9, 2014.

Consultation with Aboriginal groups in the Post-Panel Stage included seeking feedback and discussing comments on the Panel Report and “draft Crown Consultation Report” which was distributed to Aboriginal groups on June 10, 2014 for initial comment. A revised “Consultation and Accommodation Report” was shared August 5, 2014 for final comments to be submitted by August 19, 2014. In addition, on June 10, 2014, the Governments also initiated consultation on potential conditions to be proposed for inclusion in the federal Minister of the Environment’s EA decision statement under CEAA 2012, and in the provincial EA certificate, should the proposed Project proceed.

Decision Making

In addition to providing an opportunity to review and comment on two previous versions of this report, Aboriginal groups were given an opportunity to provide a submission outlining any outstanding concerns, issues or fundamental views in respect of the proposed Project that would, along with this report, be provided directly to the respective provincial and federal decision makers.

1.4 Panel Report Conclusions

In accordance with its terms of reference, the Panel did not make any determinations regarding the nature and scope of asserted Aboriginal rights or the strength of those asserted rights, the scope of the Crown's duty to consult Aboriginal Groups, whether the Crown has met its duty to consult Aboriginal Groups and, where appropriate, accommodate their interests in respect of the proposed Project on asserted or established Aboriginal rights or treaty rights; whether the proposed Project is an infringement of Treaty No. 8; and any matter of treaty interpretation.

However, the Panel accepted rights as asserted by Aboriginal groups, and provided recommendations on means by which potential impacts to these asserted rights could be avoided or minimized, either by the Proponent or by the Governments. See section 4 for a discussion of relevant Panel recommendations.

Panel conclusions relevant to many of the issues raised during the Aboriginal consultation process are summarized in Table 1.1.

Table 1.1: Summary of Panel Conclusions Related to Key Aboriginal Group Issues

Issue	Panel Conclusion
Potential Project impacts to Aboriginal Interests	The proposed Project would result in significant adverse effects on fish and fish habitat, vegetation (including at-risk and sensitive ecological communities, wetlands, and rare plants), wildlife (including some listed species of migratory birds, bats, raptors, furbearers and one amphibian), current use of lands and resources for traditional purposes by Aboriginal peoples including fishing, hunting, trapping opportunities and practices and other cultural uses by some Aboriginal groups, and physical and cultural heritage (including visual resources). The Panel concluded that several of the effects are immitigable.
Need for the Project	The Panel concludes that BC will need new energy and new capacity at some point, the proposed Project would be the least expensive of the alternatives, and its cost advantages would increase with the passing decades as inflation makes alternatives more costly. The Panel concludes the Proponent has not fully demonstrated the need for the proposed Project on the timetable set forth.
Cumulative Effects	The proposed Project combined with past, present and reasonably foreseeable future projects would result in significant cumulative effects on fish, vegetation and ecological communities, wildlife, current use of lands and resources for traditional purposes, and heritage.
Peace Athabasca Delta	The Panel concluded there would be no effects from the proposed Project on any aspect of the environment in the Peace Athabasca Delta and a cumulative effects assessment on the Peace Athabasca Delta is not required.
Agriculture and Navigation	Effects on agriculture and navigation would not be significant except for the farmers who would bear the loss and the small number of users who traverse the dam site.

2.0 Aboriginal Groups Engaged in the Environmental Assessment

The proposed Project is located in the Treaty 8 territory in northeast BC, within which a number of First Nations have treaty rights. In addition, the area within which the proposed Project may interact with the environment covers a wide area of the Peace River watershed, proximal to areas where several non-treaty First Nations, Métis communities and other Aboriginal people assert Aboriginal rights. This section provides an overview of the approach to engaging these groups in consultation activities during the early stages of the EA process. This section also summarizes relevant ethnographic, socio-economic and other historical and contextual information related to Aboriginal groups whose Aboriginal Interests have the potential to be adversely affected by the proposed Project.

2.1. Aboriginal Groups Involved

Fifty individual Aboriginal groups were initially identified by either EAO or the Agency as being potentially impacted by the proposed Project, based on a preliminary review of potential Project effects, information on relevant historic traditional use areas and Aboriginal Interests. Notification letters were provided to all Treaty 8 First Nations and several non-treaty groups, introducing the proposed Project and EA process, to initiate the screening process used to refine the scope of consultation during the early planning stage of the EA.

The assessment of potential adverse impacts of the proposed Project on Aboriginal Interests requires reliable information about each potentially affected Aboriginal groups' traditional use in areas potentially affected by the proposed Project. Following an extensive information review and consultation with Aboriginal groups between June 2011 and July 2012, the Governments considered the information it had gathered on the 50 Aboriginal groups identified for the purposes of preliminary consultation for the EA, and identified 29 Aboriginal groups that have or assert Aboriginal Interests that may be potentially adversely affected by the proposed Project.

Direction was provided to the Proponent through the EIS Guidelines, to engage and consult with these potentially impacted groups. For Aboriginal groups where no potential for impacts were identified early in the process, including 19 Treaty 8 First Nations, letters were sent in the spring of 2012 informing them of this preliminary outcome. For one group, the Kelly Lake Cree Nation, the Governments identified no legal duty to consult with this group on the proposed Project, as no basis for representing collective rights under s.35 of the *Constitution Act, 1982*, is recognized, and the group is not considered a First Nation Band under the *Indian Act*.

The following table lists the 29 First Nation and Métis groups in BC, Alberta, and the Northwest Territories for which a legal duty to consult was identified.

Table 2.1: Aboriginal Groups to be Consulted During the EA Process

Treaty 8 First Nation Signatories or Adherents		
British Columbia	Alberta	Northwest Territories
Doig River First Nation Halfway River First Nation Prophet River First Nation West Moberly First Nations Saulteau First Nations Blueberry River First Nations McLeod Lake Indian Band Fort Nelson First Nation	Duncan's First Nation* Horse Lake First Nation* Dene Tha' First Nation * Woodland Cree First Nation Sturgeon Lake Cree Nation Beaver First Nation Tallcree First Nation Little Red River Cree Nation Mikisew Cree First Nation Athabasca Chipewyan First Nation	Salt River First Nation Smith's Landing First Nation Deninu K'ue First Nation
Non-treaty British Columbia First Nations		
Kwadacha First Nation Tsay Keh Dene First Nation		
Métis Communities		
British Columbia	Alberta	Northwest Territories
Métis Nation BC Kelly Lake Métis Settlement Society	Métis Nation of Alberta – Region 6 Paddle Prairie Métis Settlement Society Fort Chipewyan Métis Local 125	Northwest Territory Métis Nation

* Note: these Alberta-based Treaty 8 First Nations indicate that they also exercise treaty rights within BC

Figure 2.1 from the Proponent’s EIS shows the location of potentially affected Aboriginal group communities in relation to the Project. For additional reference, Figure 2.2 shows the location of Métis Nation of Alberta Association Regional Zones.

In its EIS, the Proponent defined spatial areas for the study of each valued component identified in the EIS Guidelines. The Local Assessment Area (LAA) was defined as the area within which the potential adverse effects of the proposed Project would be assessed by the Proponent. For each valued component (VC), including current use of lands and resources for traditional purposes by Aboriginal people, the LAA was defined in consideration of the expected maximum geographic extent of the potential for the proposed Project to cause an adverse effect on this VC. The Regional Assessment Area (RAA) was defined by the Proponent for each VC as the area within which projects and activities, the residual effects of which may combine with residual effects of the proposed Project, will be identified and taken into account in the Proponent’s cumulative effects assessment.

The Proponent also defined the “Project activity zone” as the area within which the proposed Project components will be found or will occur but not including existing transportation infrastructure that will be used without modification to transport materials or personnel required for the proposed Project.

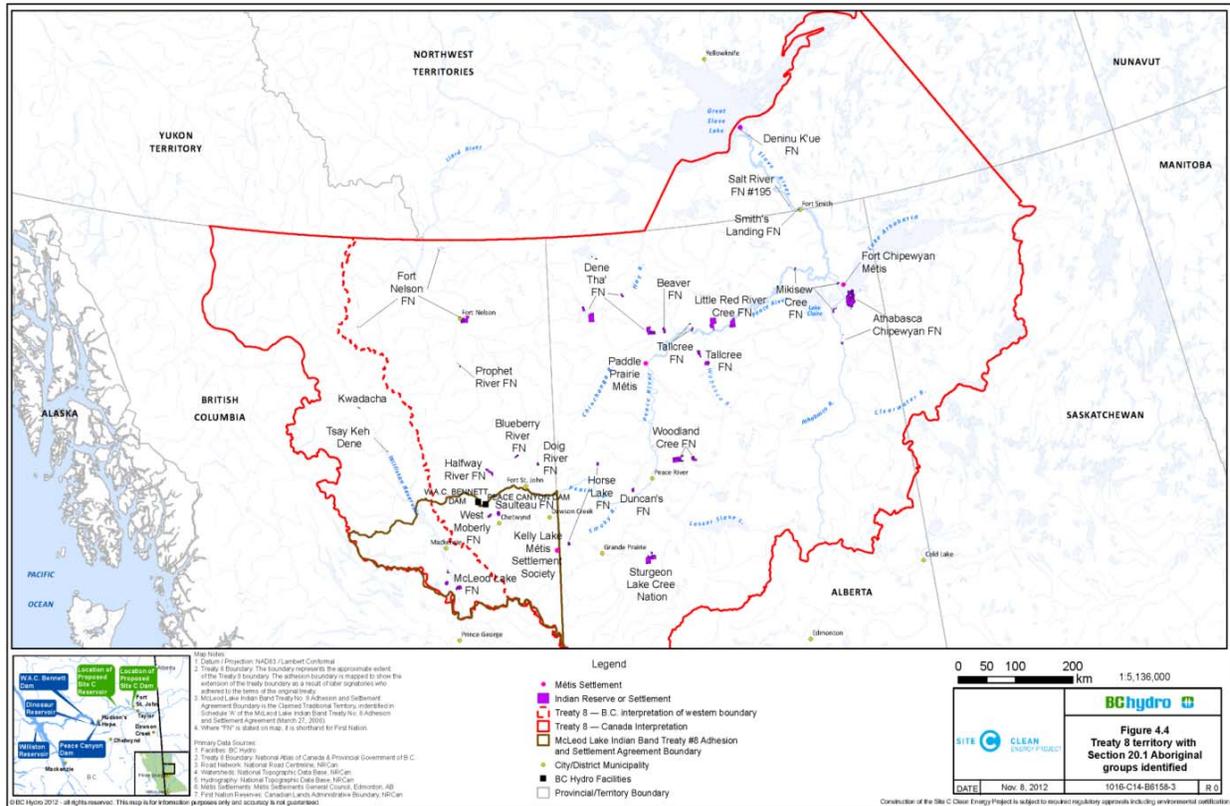
While the Panel independently assessed the VCs, the terms LAA and RAA were referred to extensively in the Panel Report and are used throughout this report as useful geographic descriptors.

The current use VC was defined in Table 10.2 of Volume 2 of the EIS as the aggregate of:

- the Peace River in the proposed reservoir area; tributaries entering the proposed reservoir; the Peace River downstream of the proposed Project to Many Islands, Alberta; watercourses and waterbodies within the transmission line and roadway rights-of-way; watercourses and waterbodies within the proposed Project activity zone (construction materials); riparian areas adjacent to identified watercourses and waterbodies;
- The proposed Project activity zone, buffered by an additional 1,000 m, including new roads, roads requiring sizable upgrades, quarries, the dam site, and the transmission line. For the proposed reservoir the Erosion Impact Line has a 1,000 m buffer;
- The LAA also extends downstream from the dam to the Alberta border, and includes a 1,000 m buffer on both the south and north banks of the Peace River

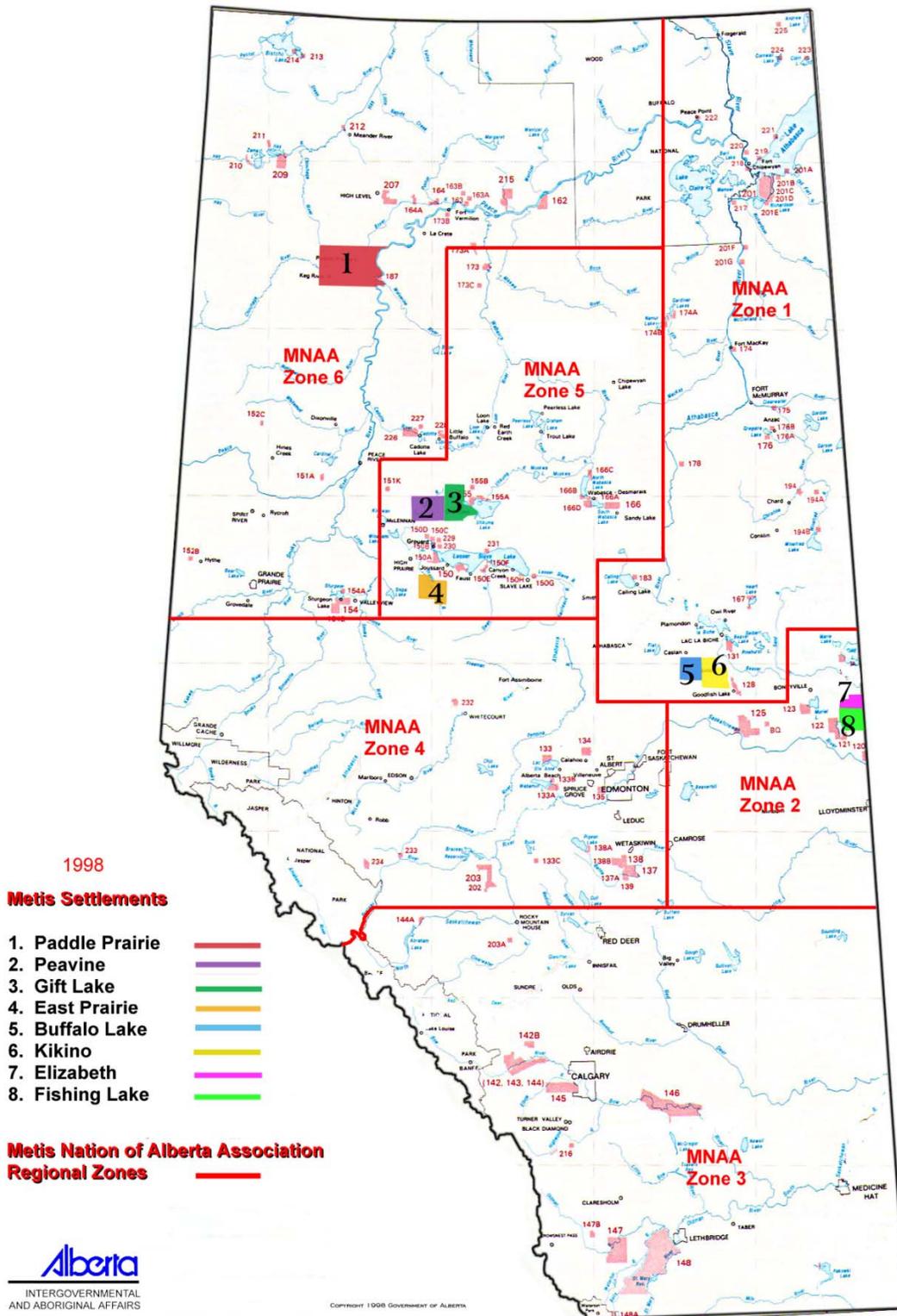
The initial EAO assessment of the potential impacts of the proposed Project on Aboriginal Interests identified the same groups as the federal Crown’s scope of consultation, with the exception of Kelly Lake Métis Settlement Society and Métis Nation BC (BC does not recognize a legal obligation to consult these groups as BC is of the view that no Métis community is capable of successfully asserting specific Section 35 rights in BC). The federal Crown has consulted directly with these two BC Métis communities. The Agency ensured that Kelly Lake Métis Settlement Society and Métis Nation BC were apprised of any EA-related notifications or correspondence sent out by BC.

Figure 2.1 Location of Potentially Affected Aboriginal Groups in Relation to the Proposed Project



The rationale for the selection of the 29 Aboriginal groups listed in Table 2.1 took into account the Crown’s initial views of the nature of the impacts of the proposed Project to the Aboriginal Interests of the different Aboriginal groups, and for the Métis groups, the *prima facie* case supporting their strength of claimed Aboriginal rights. How the Governments were proposing to approach consultation with each Aboriginal group was communicated to Aboriginal groups in customized Consultation Plans, setting out the types of consultation activities groups could expect to engage in with the Crown and the types of information the Crown would be seeking throughout the various stages of the EA process. The Consultation Plans also explained the Governments’ intent to rely on the EA process to the extent possible, while recognizing that additional consultation will be required in the regulatory and permitting stage that could potentially follow the EA decisions. For certain matters that fall outside the review of the proposed Project, reconciliation efforts may need to continue through other appropriate Crown-led processes. A summary of the consultation process for the proposed Project is found in Section 3.

Figure 2.2 Map of Métis Nation of Alberta Association Regional Zones



2.2 Bodies Representing Aboriginal Groups for Consultation Purposes

As described above, a broad and inclusive approach was taken in identifying potentially affected Aboriginal groups, and this approach included corresponding with tribal organizations or councils.

Treaty 8 Tribal Association

The Treaty 8 Tribal Association (T8TA) was incorporated under the BC *Society Act* in order to provide advisory services and claims research to Treaty 8 Aboriginal groups. Current members include the Doig River First Nation, Halfway River First Nation, Prophet River First Nation, Sauteau First Nations and West Moberly First Nations. For the proposed Project EA process, Doig River First Nation, Halfway River First Nation, Prophet River First Nation and West Moberly First Nations expressly mandated T8TA to carry out consultation activities on their behalf during the Pre-Panel and Panel Stages of the EA. As of April 2014, the Crown was advised that moving forward, Doig River First Nation would be representing its own consultation interests in respect of the proposed Project.

Métis Nation BC

The Métis Nation British Columbia (MNBC) represents all of its chartered Métis communities in BC for consultation purposes. All consultation activities with MNBC chartered Métis communities are carried out through MNBC.

2.3 Ethno-historic Information Sources Related to Aboriginal Groups

The Proponent's EIS (Volume 5) provides an overview of the potentially affected Aboriginal groups, including tribal council/association affiliations; language, governance, population, and socio-economic information; proximity of communities to the proposed Project and associated activities; status within the formal treaty process in British Columbia; history of land occupation; and traditional and contemporary resource use information on the Aboriginal groups. Specifically, this information is found in Volume 3, Appendix B and Volume 5, Appendices A, C, and D of the Proponent's Amended EIS.

These sources of information, in addition to documentation provided by Aboriginal groups, and consultations with Aboriginal groups throughout the EA, has helped the Crown to understand traditional and contemporary land and resource uses and associated Aboriginal Interests related to the proposed Project. The Panel Report also provides summary-level information about potentially affected Aboriginal groups, in Appendix 10.

2.4 Traditional and Socio-Economic Setting of Aboriginal Groups

The Proponent's amended EIS and reports submitted by Aboriginal groups identify the nature, extent and importance of traditional and cultural activities practiced by many potentially affected Aboriginal groups in the proposed Project vicinity. These traditional and cultural activities include practices that rely on the availability, quality and access to ecosystems and natural resources, such as the land, rivers, fish and wildlife, and vegetation.

Aboriginal groups continue to place economic, social and cultural importance on their seasonal round. For example, the Saulteau First Nations' Traditional Land Use Study (TLUS) indicates that members continue to maintain a local hunting and trapping economy, and rely on these activities for food security and transmission of traditional knowledge and cultural connections to the landscape. Similarly, Blueberry River First Nations' TLUS states that members rely upon and prefer country foods as important dietary staples, with family trap lines being highly valued elements of their traditions, customs and culture.

Since non-Aboriginal people began settling in the region in the early 20th century, agricultural and industrial activities such as large-scale resource development, including mining and oil and gas exploration and development and hydroelectric projects, have been important economic drivers of the region. Although hunting, trapping and fishing continue to be economically important to First Nations and Métis communities, many individual members of these communities have entered the region's wage economy. However, many Aboriginal groups have reported that recent economic activities, including large development projects and supporting infrastructure, have been accompanied by unwanted pressure on their ability to pursue traditional uses of the land, including use of preferred sites, and has resulted in increased competition for fish and wildlife.

The Community Baseline Survey conducted by four BC-based Treaty 8 First Nations explained how regional development including oil and gas, forestry, coal mining, sport hunting, agriculture and hydroelectric development, have required traditional land users to travel farther away to exercise their treaty rights. The key valued socio-economic components identified in this First Nations Community Baseline Survey were:

- Meaningful practice of treaty rights;
- Protection and promotion of culture;
- Meaningful engagement of Treaty 8 First Nations in governance and stewardship;
- Access to equitable education and training opportunities;
- Equity and engagement in the wage economy (especially employment and business opportunities); and
- Healthy Treaty 8 First Nations communities.

In BC, Treaty 8 First Nations assert their treaty rights include a barter, sale or trade component for sustenance, and undeveloped areas of the Peace River Valley are becoming increasingly important for traditional sustenance activities (see section 2.5 for further context on the exercise of asserted or established Aboriginal and treaty rights).

Aboriginal groups also identify the need to address barriers to their communities' participation in economic opportunities, including from the proposed Project, and are interested in avoidance and mitigation of potential impacts to the ability of Aboriginal groups to continue traditional activities, while developing their own community economies using the natural resources in their territories.

Socio-economic concerns regarding the potential effects of the proposed Project, as identified by Aboriginal groups, focus on the community economic and social challenges that may arise if the proposed Project proceeds. For example, the Saulteau First Nations and T8TA have raised concerns about the potential for an increase in drug and alcohol-related problems experienced by the youth in their communities, and attribute these concerns to the increased wages generated by the resource-based industry and insufficient social support programs.

Despite the socio-economic concerns noted above, Aboriginal groups have seen economic benefits of development and have formed business ventures or contracting opportunities as development has increased in the region.

2.5 Consultation with Aboriginal Groups

Governments consult with Aboriginal groups for many reasons, including: statutory, contractual, policy and good governance, (including to build relationships and understanding of Aboriginal group communities), and the constitutional duty to consult. Through the consultation process, Governments seek to reconcile Aboriginal Interests with the interests of other parties.

One purpose of CEAA 2012, pursuant to sub-section 4(1)(d), is to promote communication and cooperation between the federal government and Aboriginal peoples (including Métis as defined in the *Constitution Act, 1982*) with respect to environmental assessment. CEAA 2012 works to ensure that projects are considered in a careful and precautionary manner before federal authorities take action in connection with them, in order to ensure that such projects do not cause significant adverse environmental effects. Included within the definition of environmental effects under subsection 5(1)(c) of CEAA 2012 is the effect to Aboriginal peoples of any change that the proposed Project may cause on the environment to:

- health and socio-economic conditions;
- physical and cultural heritage;
- the current use of lands and resources for traditional purposes; or
- any structure, site or thing that is of historical, archaeological, paleontological, or architectural significance.

In addition, CEAA 2012 enables the consideration of community knowledge and Aboriginal traditional knowledge into the EA process.

The federal and provincial EA decisions that trigger the duty to consult include the following:

- Issuing an EA decision statement following decisions by the Minister of the Environment and the Governor in Council, as applicable, under sections 52 and 53 of CEAA 2012; and

- Issuing an EA certificate under the Act. Should the EA decisions under CEAA 2012 and the BCEAA enable the proposed Project to proceed, the proposed Project may require Fisheries and Oceans Canada and Transport Canada to issue authorizations, permits or approvals pursuant to the *Fisheries Act*, and the *Navigation Protection Act*, respectively. In addition, Provincial regulators, such as the Ministry of Forests, Lands, and Natural Resource Operations may issue permits, approvals and authorizations pursuant to provincial statutes, such as the *Water Act* and *Land Act*.

2.5.1 Principles Involved in Establishing Depth of Duty to Consult

In *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, the Supreme Court of Canada established that the Crown is required to consult with Aboriginal groups with respect to Crown-authorized activities that might affect the exercise of asserted or established Aboriginal rights, including rights to title over land, and that the extent of or level of the consultation is proportionate to the:

- strength of the case for the claimed Aboriginal rights that may be adversely affected; and
- seriousness of potential impact of contemplated Crown action or activity to adversely impact those claims.

In *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69, the Supreme Court of Canada also applied this consultation framework to treaty rights, where a Crown-authorized activity may adversely affect a treaty right. The continued application of this framework to treaty rights was recently confirmed in *Grassy Narrows First Nation v. Ontario (Natural Resources)*, 2014 SCC 48.

The levels of consultation are on a spectrum from notification (low) to deeper levels of engagement (high); whereas the stronger the case for supporting a claimed Aboriginal right (or an established right) and the greater the potential of impact on the exercise of those rights, the deeper the level of consultation that may be required. Factors that may indicate a low level of consultation include:

- Little or no indication of any historical or current use of area by the Aboriginal group; or
- Proposed Crown action or activity is anticipated to result in minimal to no impact on the land or resources, i.e. potential for adverse impacts to Aboriginal Interests is minor or unlikely.

Conversely, factors that may indicate a high level of consultation include:

- Many indications of historical and current use of area by the Aboriginal group; and
- Proposed Crown action or activity is anticipated to result in a moderate to severe impact on the land or resources and corresponding Aboriginal Interests.

Consultation must also be carried out in good faith, and where appropriate, may lead to a duty to accommodate. While there is no duty on the government or on the Aboriginal group to reach agreement, the Crown is required to afford the Aboriginal group consultation that is meaningful, i.e. that provides opportunities for Aboriginal groups to learn about the proposed Project, have their interests heard, understood and responded to or accommodated as appropriate. Aboriginal groups must not frustrate Government's reasonable, good faith attempts to consult, and should express their interests and concerns once they have had an opportunity to consider information provided by Government or the Proponent, and to consult in good faith.

2.5.2 Approach to Assessing Potential Impacts of the Project to Aboriginal Interests

This section presents the Crown's methodology for assessing the seriousness of potential impacts of the proposed Project to Aboriginal Interests, which is an important factor informing the depth of consultation. The Crown's preliminary assessments were initially informed by information gathered during the Pre-Panel Stage, and refined based on the following:

- information contained in the Proponent's EIS;
- information provided by Aboriginal groups regarding their views of how their Aboriginal Interests may be impacted from the proposed Project;
- input from Aboriginal groups on assessing potential impacts of the proposed Project to Aboriginal Interests;¹
- conclusions of the Panel in respect of the residual effects of the proposed Project; and
- consultation with Aboriginal groups during the Post-Panel Stage.

The Governments consider the following types of information in assessing the seriousness of a potential impact on Aboriginal Interests:

- The location of each Aboriginal group's traditional territory; and
- Past, present, and anticipated future Aboriginal uses of the proposed Project area and its surroundings, including the frequency and timing of such uses by each Aboriginal group.
- The baseline conditions associated with the exercise of Aboriginal Interests, including a consideration of other activities or development in the local or regional area that are in proximity to the proposed Project that may contribute to the current condition. The Crown also recognizes that in *West Moberly*, the court held that the "historical context is essential to understanding the seriousness of the impacts from a current decision."²(see discussion in section 2.5.3);
- The potential impact of proposed Project components and activities on the current exercise of Aboriginal Interests, including consideration of magnitude and direction

¹ Sources include Treaty 8 Tribal Association memo to BC Hydro, December 21, 2012, "Methodology for Assessment of Current Use of Lands and Resources for Traditional Purposes"

² *West Moberly First Nations v. British Columbia (Ministry of Energy, Mines and Petroleum Resources)*, 2011 BCCA247 [2011], B.C.J. No. 942, paras. 117 and 181

of change, geographic extent, duration and frequency of change, reversibility of the change, probability, and overall level of confidence in the assessment;

- The efficacy of measures proposed to mitigate (e.g. avoid or minimize) adverse effects to biophysical aspects corresponding with Aboriginal Interests, and, where necessary, specific mitigation measures in relation to effects to Aboriginal Interests not directly linked to a biophysical aspect;
- Any residual and cumulative effects of the proposed Project on biophysical aspects associated with the exercise of Aboriginal Interests;
- The extent to which the proposed Project would affect each Aboriginal groups' access to and use of the proposed Project area to exercise Aboriginal Interests;
- The relative importance of the proposed Project area and its surroundings to the exercise of each group's Aboriginal Interests, including any special characteristics or unique features of that area; and
- The relative availability of other areas in reasonable proximity, within the traditional territory of each Aboriginal group.

The Crown's assessment of the seriousness of a potential impact on Aboriginal Interests considers likely adverse residual effects that could cause a change to the practice of a right, whether deemed significant or not, after mitigation measures are applied.

The outcome of this assessment is an impact statement that describes the level of severity of potential impacts from low to high/serious. Impact statements can be found for each Aboriginal group in the conclusions for Appendices A1-29 and are further referenced in section 5.

The following definitions are used for the level of severity of potential impacts on rights:

Low: ability to exercise the right is minimally disrupted

Moderate: group would need to change the way it exercises that right to less preferred options

High/Serious: ability to meaningfully exercise that right has been significantly diminished

As further discussed in section 2.5.4, the decision to consult many of the BC Treaty 8 First Nations at a deep level was based on the following factors:

- "Treaty 8 Rights" are considered by the court to be "proven" rights for the purposes of section 35(1) of the *Constitution Act, 1982*; and
- There is a high probability that the proposed Project, if it proceeds, would impact the ability of some First Nations to meaningfully exercise specific Treaty 8 rights in the area³.

³ Based on Provincial Preliminary Assessment Guidelines (May 2010), pg. 5; and the Federal Government's *Updated Guidelines for Federal Officials to Fulfill the Duty to Consult* (March 2011).

2.5.3 Contextual Factors Related to Assessing Impacts on Aboriginal Interests

This section provides a summary of contextual factors relevant to understanding how the proposed Project may potentially impact Aboriginal Interests, based on information provided by Aboriginal groups during the EA, and other available information including the conclusions of the Panel in its report.

Hydroelectric Development

The Proponent owns and operates two hydroelectric generation facilities on the Peace River. The two existing facilities, the W.A.C Bennett Dam and Williston Reservoir and the Peace Canyon Dam and Dinosaur Reservoir, together account for greater than 30% of the capacity of the electrical power generation facilities in BC. The construction of the W.A.C Bennett Dam in 1968 resulted in the inundation of approximately 360 km of the Findlay, Parsnip and Peace Rivers and lower portions of the smaller tributaries flowing into them on the west side of the Rocky Mountains. According to the Proponent, flooding of river valleys and tributaries also resulted in the loss of valley bottom habitats used by wildlife and displacement of wildlife to upland habitats or to adjacent unaffected river valleys. Also, flooding resulted in elevated levels of methylmercury (MeHg) in water, sediment and organisms above that expected in lakes in the region. Levels of MeHg are declining according to the Proponent and are expected to continue to decline. As water is withdrawn from the reservoir during routine operations, littoral areas and shoreline can be exposed for months at a time resulting in blowing dust.

The construction of the Peace Canyon Dam in 1976 created the smaller Dinosaur Reservoir immediately downstream of the Williston Reservoir. The extent of inundation was more limited than with the W.A.C Bennett Dam because of the shorter length of the reservoir and steepness of the canyon in which it is located.

Historic and ongoing effects from W.A.C. Bennett and Peace Canyon Dams have been extensively documented by Aboriginal groups in the proposed Project study area, informed by Elders and knowledge holders who remember interactions with the Proponent from the 1970's, and who have lived most of their lives with the Proponent's Peace River dams in place.

Based on the knowledge the Aboriginal groups have gathered on changes to the environment they attribute to the W.A.C. Bennett and Peace Canyon Dams, they maintain that those dams have impacted and continue to impact their ability to exercise Aboriginal or treaty rights. These impacts include loss of hunting, fishing and trapping opportunities including on the Peace River, Slave River, the Peace Athabasca Delta and the Slave River Delta, as well as inundation of lands, homes and burial sites, impacts on fish, wildlife and vegetation, impacts on hydrology, loss of language and connectedness, impacts on micro-climate and ice regime, loss of revenue from guide outfitting, debris, landslides and sloughing, and increase in non-Aboriginal use of the land. Aboriginal groups stated there was a lack of dialogue between the Proponent and various Aboriginal groups regarding grievances related to the W.A.C. Bennett and Peace Canyon dams.

A residual and ongoing effect of past reservoir development, is the distrust by Aboriginal groups in the quality of the fish and food resources that use the area impacted by the existing reservoirs. Today, many Treaty 8 First Nations report a sense of betrayal and governmental dishonesty with respect to the impacts that are claimed to have resulted from Peace River flow regulation, and many fears exist that history may repeat itself if the Site C dam and reservoir are constructed.⁴

Downstream of the Peace Canyon Dam there have been changes in the water regime on an annual basis, and more noticeable changes in seasonal and daily flows. The nature and extent of the changes to the surface water regime due to regulation depends on the time of year and distance downstream from the Peace Canyon Dam. Average monthly flows released from the Peace Canyon Dam are between 18% (June) and 590% (February) of flows observed before the dams came into operation. Changes in river flow and water levels are most pronounced downstream of the Peace Canyon Dam and attenuate with increasing distance downstream due mainly to the contribution from tributaries including the Halfway and Beatton Rivers.

In the Peace River lowlands of Alberta and as far downstream as the Peace-Athabasca and Slave River Deltas, traditional knowledge holders have reported that before regulation, the Peace River reached spring high levels adequate to replenish culturally and ecologically important wetland habitat on a semi-annual basis. Athabasca Chipewyan and Mikisew Cree First Nation elders have indicated that pre-regulation flow conditions created hydraulic damming and reversed flows in the Peace-Athabasca Delta every four or five years which replenished the wetlands. Since flow regulation on the Peace River, water levels adequate to reverse flow are reported to have occurred in only three years, including 2013.

Past and ongoing impacts due to Proponent dams on the Peace River are understood by many upstream and downstream Aboriginal groups to have caused, and continue to cause, impacts that make both the riverine and wetland ecosystems vulnerable to any incremental changes.⁵ Ongoing changes have been reported to Peace River channel geomorphology, aquatic habitat, vegetation communities and ice regime.

The Proponent has established a separate process to address claims from its two existing hydro-electric facilities. To date, the Proponent has resolved historic grievances with three Aboriginal groups, the Athabasca Chipewyan First Nation in Alberta, and the Kwadacha First Nation and Tsay Keh Dene First Nation in BC. Issues and concerns with respect to historic grievances raised during the consultation on the proposed Project are set out in Volume 1 Appendix H of the Proponent's EIS: Aboriginal Information Distribution and Consultation Supporting Documentation.

⁴ Craig Candler, Ph.D. and the Firelight Group, July 11, 2013, "Athabasca Chipewyan First Nation and Mikisew Cree First Nation Initial Report on Peace River Knowledge and Use for BC Hydro's Proposed Site C Project", p.iv (Adobe p.88 of September 23, 2013 letter to Panel regarding sufficiency of the Proponent's EIS, available at CEAR #1611).

⁵ Sept. 20 2013 ACFN TUS p.iv

Other Anthropogenic Impacts

According to the T8TA, industrial and other anthropogenic changes which are increasing in intensity have severely constrained the availability and sufficiency of lands and the resources within them to sustain Aboriginal traditional uses of the land over time. Many Aboriginal groups, including the Treaty 8 First Nations, provided evidence before the Panel that the adaptability of Aboriginal groups to environmental change has increasingly become forced rather than voluntary, with a shrinking land and resource base, and that there may not be adequate lands and resources left for Aboriginal peoples to maintain adequate year to year adaptability.⁶ Many Aboriginal groups have documented that existing impacts on the landscape have led to a heightened importance placed on cultural landscapes like the remaining free-flowing portion of the Peace River.

T8TA members have also indicated that some species harvested and preferred by traditional land users in the Peace Valley are becoming hard to find elsewhere in the traditional territories of the Treaty 8 First Nations. For some species, including some fish and medicinal plants, Treaty 8 First Nations claim that the Peace River valley is the only place in their territory where these resources are reliably available and accessible in sufficient quantity. Treaty 8 First Nations have indicated that there are no known alternative locations with equivalent resources.

Historic maps, aerial photography⁷ and other geographic representations submitted to the Panel indicate that northeast BC is being impacted by oil and gas or other development. Traditional use maps provided by Aboriginal groups to the Proponent indicate that some of the last and best remaining available and accessible lands for the practice of Aboriginal Interests are in the Peace River Valley, suggesting that the extent of lands and resources already taken up and removed is a significant proportion of what existed only decades ago.⁸ A study commissioned by the David Suzuki Foundation and West Moberly First Nation found that more than 20% of the Peace Region has been directly impacted by human land use since the 1960's⁹. When a 500 metre buffer is included around areas of disturbance from industrial activities, such as roads for example, to account for potential environmental effects, this study indicates almost 67% of the total area is disturbed. The study concludes that the cumulative effects of development to date in the region have degraded the habitat of wildlife such as grizzly and caribou, which are now both endangered in the region.

After changes resulting from previous development upstream, the areas and confluences downstream of the Proponent's existing dams, which would be inundated if the proposed

⁶ Letter from Treaty 8 Tribal Association to the Panel Secretariat concerning the Sufficiency of the Amended Environmental Impact Statement and Evidentiary Update - Advice and Supplemental Information Requests, September 23, 2013, p. G-38 (available at CEAR #1607)

⁷ Lee, P and M. Hanneman. 2012. Atlas of land cover, industrial land uses and industrial-caused land change in the Peace Region of British Columbia. Global Forest Watch Canada report #4 International Year of Sustainable Energy for All. 95 pp. available at <http://www.ceaa.gc.ca/050/documents/p63919/96538E.pdf>

⁸ T8TA Sept 2013 p.G-46 (see: <http://www.ceaa-acee.gc.ca/050/documents/p63919/94604E.pdf>)

⁹ Lee, P and M. Hanneman. 2012. Atlas of land cover, industrial land uses and industrial-caused land change in the Peace Region of British Columbia. Global Forest Watch Canada report #4 International Year of Sustainable Energy for All. 95 pp. available at <http://www.ceaa.gc.ca/050/documents/p63919/96538E.pdf>

Project is built, were reported by Treaty 8 First Nations to be the only comparable cultural landscapes and harvesting (hunting, trapping and fishing) and cultural use areas remaining within their territories.¹⁰ In its Panel submission, McLeod Lake Indian Band stated that the elimination of an additional 87 km of preferred Peace River shoreline fishing territory on top of 270 km already lost from the Peace and Parsnip Rivers as a result of creation of the Williston Reservoir, would amount to 62 km of Peace River (in BC) remaining between the Site C dam site and the Alberta border, and that this would represent less than 15% of the large river environs that existed in McLeod Lake territory no more than three generations ago.¹¹

Due to concerns regarding ongoing Peace River flow regulation, as well as other unrelated industrial activities and land use throughout the Peace River Valley, relatively undisturbed portions of the Peace River watershed have been described by Treaty 8 First Nations as becoming increasingly important to the practice of Aboriginal Interests.¹² According to the Proponent, “past land use has shaped much of the [Peace River] region’s current wildlife habitat abundance and distribution. In the future, many of the same activities associated with the baseline case will continue (e.g., forestry, oil and gas development) and residual effects are expected, regardless of the Project proceeding (Future Case without the Project).”¹³

2.5.4 Approach to Consultation with Treaty 8 First Nations

Nature and Scope of Treaty 8 Rights

Early in the EA process, Treaty 8 First Nations sought to engage the Crown in consultation regarding the nature and scope of rights protected under Treaty 8. Extensive efforts were made by both the First Nations and the Crown in examining this issue and communicating views in an open and transparent manner in order to focus consultations on the potential impacts of the proposed Project on the First Nations’ treaty rights. The Crown does not view the EA as a process designed to determine specific rights recognized and affirmed under s.35(1) of the *Constitution Act, 1982*, but instead, to reasonably understand the nature and extent of treaty rights potentially being impacted by contemplated Crown actions in order to assess the severity of potential impacts to them.

During 2012, the Governments undertook a detailed review of information, including considerable input from the First Nations regarding the nature and scope of their Treaty 8 rights.¹⁴

¹⁰ T8TA response to Panel undertaking #40 (January 21, 2014), p.6

¹¹ McLeod Lake Indian Band, April 14, 2013, Comments on the Site C EIS (Current Use VC, Volume 3, s.19, extending to s. 34 (Volume 5) and s.5 (Volume 1), pp.11, available at CEAR 1402.

¹² T8TA response to Panel undertaking #40 (January 21, 2014), P.6, and Indian Claims Commission report for Athabasca Chipewyan First Nation, 1988, pp.50-51.

¹³ BCH response to Panel undertaking #73, January 16, 2014, p.13

¹⁴ For example, “Minimum Scope of the Harvesting Rights under Treaty No. 8”, November 4, 2011. “Perspectives on Treaty 8 Land-based rights and duties: What Would Treaties Mean if We Took Indian Understandings Seriously?”, February 24, 2012, letters to the Governments from Athabasca Chipewyan First Nation (September 26, 2012). Mikisew Cree First Nation (July 26, 2012) and Little Red River Cree Nation (April 2, 2012).

As a result of its review, the Governments provided letters to each of the Treaty 8 First Nations between December 2012 and October 2013, setting out the Governments' view of the nature and scope of Treaty 8 rights. While the letters recognized that different perspectives on the scope and nature of treaty rights exist, the Crown also recognized that any discussions of such matters must be generous and that it is crucial to be sensitive to the First Nations' perspectives on the meaning of the rights negotiated under the provisions of Treaty 8.

Treaty No. 8 was negotiated by the federal Crown in 1899 with Cree, Beaver, Sekani, Chipewyan and other Indians, in an area that encompassed northeastern BC, northern Alberta, the northwest corner of Saskatchewan and part of the Northwest Territories.

In understanding the scope and nature of the rights and obligations under Treaty 8, the Crown is guided by the text of the treaty, as well as the understandings and intentions of the First Nations and Crown participants to the making of the treaty or subsequent adhesions, following rules of treaty interpretation articulated by the Supreme Court of Canada.

As with other historic treaties, the Crown understands that for the parties to it, Treaty 8 had the effect of exchanging all undefined Aboriginal rights in or to the lands described, both surface and subsurface, for the defined rights in the treaty. More specifically, in exchange for a surrender of "all rights, titles and privileges whatsoever, to the lands" and other promises, the Crown agreed, among other things, to set aside land as reserves, to provide both one-time and annuity payments, and to allow the First Nations pursuit of their "usual vocations of hunting, trapping and fishing" subject both to the geographical limitations with respect to lands "required or taken up from time to time for settlement, mining, lumbering, trading or other purposes" and to reasonable government regulation. The Crown also understands that in Alberta or Saskatchewan the Treaty 8 right was modified following the conclusion of the *Natural Resource Transfer Agreements*, restricting the hunting, trapping and fishing right for the purpose of food.

In addition, the treaty right to hunt, fish and trap includes those activities reasonably incidental to the right itself.

The historical and cultural context in which the treaty was made is relevant to its interpretation, and to the rights and obligations of the parties to it. With respect to Treaty 8, that context includes the report submitted to the Superintendent General of Indian Affairs on September 22, 1899, which cites assurances given that the treaty would not lead to any "forced interference with mode of life" and that "the same means of earning a livelihood would continue after the treaty as existed before it". The Crown views these aspects of the report as being consonant with the terms of the treaty insofar as the mode of life and livelihood referred to in the report were the hunting, trapping and fishing activities protected by the treaty. Rights protected under the treaty may also include harvesting activities undertaken for spiritual and cultural purposes.

As stated by the Supreme Court of Canada in *Mikisew (SCC, 2005)*, and recently reaffirmed in *Grassy Narrows (SCC, 2014)*¹⁵, the Crown's right to take up lands under Treaty 8 is not absolute, and is subject to the duty to consult and, if appropriate, accommodate the Treaty 8 First Nations' interests before reducing the area over which their members may continue to pursue hunting, trapping and fishing rights. Although all Treaty 8 First Nations are entitled to engage in hunting, fishing and trapping activities within the whole of the Treaty 8 area, where a Treaty 8 First Nation no longer has a meaningful right to hunt, trap or fish in relation to the territory over which it traditionally hunted, trapped or fished, this would result in a treaty infringement.

When intending to take up lands, the Crown must exercise its powers in accordance with the Crown obligations owed to the Treaty 8 First Nations, which includes being informed of the impact of the project on the exercise of the rights to hunt, trap and fish, communicate such findings to the First Nations, deal with the First Nations in good faith, and with the intention of substantially addressing their concerns. The extent or scope of the duty to consult and accommodate required with a Treaty 8 First Nation depends on the seriousness of potential impacts to that First Nation, as discussed in the following sections of this report.

British Columbia Treaty 8 First Nations

Seven of the original forty Treaty 8 First Nations communities are located in BC (Doig River First Nation; Halfway River First Nation; Prophet River First Nation; West Moberly First Nations; Saulteau First Nations; Blueberry River First Nations; and Fort Nelson First Nation). The McLeod Lake Indian Band adhered to Treaty 8 in 2000 in accordance with the McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement reached in 1999.

The Governments and the Proponent have been engaged in consultation with the Treaty 8 First Nations from the early stages of the review of the proposed Project as detailed in Section 3. The goal has been to discuss the potential for adverse impacts on their treaty rights should the proposed Project proceed, and to develop measures to avoid, mitigate or otherwise accommodate for potential impacts to those rights.

The broad preliminary potential impacts of the proposed Project on the treaty rights and other interests of the potentially impacted BC Treaty 8 First Nation's rights and other interests were communicated to the Crown by the Proponent during early EA planning. This list of preliminary potential impacts was subsequently updated by the Crown and communicated by letters sent to Aboriginal groups to reflect additional input received by the Crown during the EA process, including through direct Government to Aboriginal group consultations.¹⁶ The identification of potential impacts was also based on the Governments' understanding of Treaty 8 rights as described at the beginning of this section.

¹⁵ *Mikisew* para. 56 and *Grassy Narrows* paras. 50-3.

¹⁶ Agency letters of March 1, 2012 to Doig River, Prophet River, West Moberly and Halfway River First Nations, and Agency letters of March 9, 2012 to Saulteau and Blueberry River First Nations, and McLeod Lake Indian Band; EAO letters of March 13, 2012 to BC Treaty 8 First Nations outlining the potential impacts of the

Through research on, and initial engagement of Aboriginal groups, the Governments determined early on that the BC Treaty 8 First Nations (except Fort Nelson First Nation) exercise Treaty 8 rights in the area proposed to be inundated by the reservoir and in areas around the proposed Project footprint. That is, the proposed Project was identified as having the potential to significantly impact the exercise of Treaty 8 rights of the following First Nations in British Columbia:

- Doig River First Nation;
- Halfway River First Nation;
- Prophet River First Nation;
- West Moberly First Nations;
- Saulneau First Nations;
- Blueberry River First Nations; and
- McLeod Lake Indian Band.

While Prophet River First Nation has treaty rights to hunt, trap and fish throughout the entire Treaty 8 area, land use information from the Aboriginal Land and Resource Use Summary in the Proponent's EIS suggests that the key interaction between the proposed Project and Prophet River's traditional uses is for spiritual or cultural sites that will be inundated by the reservoir. Recognizing that the four groups represented by T8TA during the Pre-Panel and Panel Stages of the EA have presented TLUS information without much differentiation, Prophet River First Nation appears to principally exercise hunting, trapping and fishing rights ~200 km north of the area to be directly impacted by the proposed Project.

In these circumstances, the Governments approached consultation with the BC Treaty 8 First Nations (except Fort Nelson First Nation) at the **deep** end of the consultation spectrum. See section 4 for further analysis of the potential impacts of the proposed Project on each of the Treaty 8 First Nations' rights and other interests.

While Fort Nelson First Nation has treaty rights to hunt, trap and fish throughout the entire Treaty 8 area, information available to the Crown suggests that the proposed Project is about 400 km south of the core area where Fort Nelson members exercise their treaty rights. In this circumstance, the Governments approached consultation with the Fort Nelson First Nation at the **low** end of the consultation spectrum.¹⁷

Project on treaty rights. Agency letters of October 3, 2013 provided an update to the potential impacts of the Project on treaty rights for these Treaty 8 First Nations.

¹⁷ Agency letter of March 29, 2012 and EAO letter of March 2012 to Fort Nelson First Nation outlining the potential impacts of the Project on treaty rights; Agency letter of October 3, 2013 to Fort Nelson First Nation updating the potential impacts of the Project on treaty rights.

Alberta Treaty 8 First Nations

A distinction is made between those Alberta Treaty 8 First Nations with asserted traditional territories in BC (Duncan's First Nation, Horse Lake First Nation and Dene Tha' First Nation) and other Treaty 8 First Nations downstream of the proposed Project along the Peace River in Alberta and the Northwest Territories. The broad preliminary potential impacts of the proposed Project on the treaty rights and other interests of the downstream Treaty 8 First Nations were communicated to the Crown by the Proponent during early EA planning. This list of preliminary potential impacts was subsequently updated by the Crown and communicated to the groups to reflect additional input received by the Crown during the EA process, including through direct Government to Aboriginal group consultations.¹⁸ The identification of potential impacts was also based on the Governments' understanding of Treaty 8 rights as described at the beginning of this section.

Duncan's First Nation

Duncan's First Nation has asserted a traditional territory (within the context of the larger Treaty 8 land area) in the trans-boundary Peace River district of BC and Alberta. Duncan's First Nation is located in Alberta, but a portion of its claimed traditional territory falls within eastern BC.

The EIS predicted short to medium-term impacts to Duncan's hunting, trapping and fishing rights (boat access along 85 km shoreline, inundation, displacement during construction and operation phases and then some recovery to baseline conditions). Proponent findings included a modification to the exercise of rights to hunt, trap and fish. Permanent loss of use of and access to certain culturally important places was predicted. Predicted level of impacts was expected to be **moderate**. In this circumstance, the Governments approached consultation with Duncan's First Nation at the **moderate** level of the consultation spectrum.

Horse Lake First Nation

Horse Lake First Nation has asserted a traditional territory (within the context of the larger Treaty 8 land area) in the trans-boundary Peace River district of BC and Alberta. Horse Lake First Nation's community is located in Alberta, but a significant portion of its asserted traditional territory falls within eastern BC, extending from approximately 50 km south of Tumbler Ridge to 150 km north of Fort St. John, and as far west as Mackenzie.

The EIS predicted short to medium-term impacts to Horse Lake's hunting, trapping and fishing rights (boat access along 85 km shoreline, inundation, displacement during construction and operation phases and then some recovery to baseline conditions).

¹⁸ Agency letters of March 26 and 29, 2012 outlining the potential impacts of the Project on treaty rights for Alberta-based Treaty 8 First Nations; Agency's letters of October 11, 2013 provided an update to the potential impacts of the Project on the treaty rights of Alberta-based Treaty 8 First Nations.

Proponent findings included a modification to the exercise of rights to hunt, trap and fish. Permanent loss of use of and access to certain culturally important places was predicted. The predicted level of impacts was expected to be **moderate**. In this circumstance, the Governments approached consultation with Horse Lake First Nation at the **moderate** level of the consultation spectrum.

Dene Tha' First Nation

Dene Tha' First Nation has asserted a traditional territory in the trans-boundary Peace River district of BC and Alberta. Dene Tha' First Nation's main communities are located in northwestern Alberta, but a portion of its claimed traditional territory falls within eastern British Columbia. Some individual Dene Tha' First Nation hunters exercise their Treaty 8 rights in the vicinity of Fort St. John¹⁹, including the area of the proposed Project and portions of the assessment areas chosen by the Proponent in its EIS²⁰, and in particular to hunt moose, geese and ducks.²¹

The EIS predicted a temporary reduction in Dene Tha' First Nation's ability to exercise its hunting and trapping rights via displacement of the exercise of rights to hunt and trap. No impacts were predicted by the Proponent to Dene Tha' First Nation fishing rights. The predicted level of impacts was expected to be **moderate**. In this circumstance, the Governments approached consultation with Dene Tha' First Nation at the **moderate** level of the consultation spectrum.

For the remaining Alberta Treaty 8 First Nations, the proposed Project footprint was not expected to overlap with their traditional use areas. However, using information obtained throughout the EA process, the Governments determined that the following Alberta-based First Nations practice Treaty 8 rights in the area of the Peace River and a potential existed for downstream effects of the proposed Project to interact with the traditional use areas of these First Nations:

- Athabasca Chipewyan First Nation;
- Beaver First Nation;
- Little Red River Cree Nation;
- Mikisew Cree First Nation;
- Sturgeon Lake Cree Nation;
- Tallcree First Nation; and
- Woodland Cree First Nation.

The Proponent's EIS predicted no interactions between the proposed Project's potential effects and the exercise of these First Nations' treaty rights, but the input of many of these

¹⁹ July 6, 2013 supplemental TUS provided to BC Hydro and the Agency by letter dated July 8, 2013

²⁰ Final written submissions to the Panel on behalf of Dene Tha' First Nation, February 3, 2014

²¹ Marc Stevenson, *Dene Tha' Traditional Land Use with Respect to BC Hydro's Proposed Site C Dam, Northeast British Columbia* (October 22, 2012), November 25, 2013, CEAR 1814, ["Traditional Land Use Report"] p. 12 (Adobe 15) and Appendix A (at Adobe 40).

groups throughout the EA process suggests that uncertainty exists in the review of proposed Project specific data, relevant literature, and professional opinion. Based on the low magnitude and limited extent of potential impacts of the proposed Project on Treaty 8 rights exercised by these First Nations, the Governments determined at an early stage in the EA process that it was appropriate to engage with all of these First Nations at the **low** end of the consultation spectrum.

The Mikisew Cree First Nation has a Treaty Land Entitlement Agreement with Canada that includes, under section 10, a contractual obligation that Canada recognizes to “...continue to make every reasonable effort to correct man-induced changes to the natural water regime in the Peace/Athabasca Delta basin.”²² This obligation was taken into account within the federal government’s consultation assessment, and influenced the conduct of federal consultations with Mikisew Cree First Nation as well as the level of engagement and focus on downstream issues by relevant federal expert authorities, in particular Environment Canada and Parks Canada.

Northwest Territories Treaty 8 First Nations

In its preliminary understanding of the nature of the proposed Project and its potential effects, the Governments determined that the Deninu K’ue First Nation, Smith’s Landing First Nation and Salt River First Nations practice Treaty 8 rights north of the Peace Athabasca Delta and similarly to the Alberta Treaty 8 First Nations there was a potential for downstream effects from the proposed Project to impact the exercise of their treaty rights. However, the EIS predicted no interactions between the proposed Project’s potential effects and the exercise of these First Nations’ treaty rights as the proposed Project footprint was not expected to overlap with their traditional use areas.

The predicted level of impacts was expected to be **low** to **negligible** and in this circumstance; the Governments determined at an early stage in the EA process that it was appropriate to engage with these First Nations at the **low** end of the consultation spectrum.

Other Treaty 8 First Nations

In its preliminary understanding of the nature of the proposed Project, the Governments determined that the remainder of the Treaty 8 First Nations in Alberta and Saskatchewan have not traditionally exercised rights in the area that would have the potential to be adversely impacted by the proposed Project. As such, the potential for the proposed Project to result in adverse impacts to the exercise of treaty rights of these First Nations was considered by the Governments to be negligible. These groups included the following Treaty 8 First Nations: Chipewyan Prairie, Fort McKay, Fort McMurray, Bigstone Cree, Driftpile, Loon River, Peerless/Trout Lake, Sawridge Band, Sucker Creek, Whitefish Lake, Swan River, Lubicon Lake, Kapawe’no, Lutsel K’e Dene, Yellowknife Dene, Katlodeeche, Black Lake, Clearwater River Dene, and Fond du Lac. In this circumstance, the Crown did not identify a duty to consult, and provided letters notifying these groups of the Crown’s view that the proposed Project had no potential to impact their exercise of treaty rights.²³

²² Treaty Land Entitlement Agreement between Canada and Mikisew Cree First Nation, Dec.23, 1986, p.6

²³ Agency letters to Treaty 8 FNs communicating preliminary depth of consultation assessment, May 7, 2012

2.5.5 Approach to Consultation with Non-treaty First Nations

Kwadacha and Tsay Keh Dene First Nations have Aboriginal Interests within their asserted traditional territory and the Final Agreements between these groups and BC are relevant to consultation with respect to the proposed Project. Section 9.9 of the Kwadacha and Tsay Keh Dene Final Agreements specify that in a situation where the Proponent is considering constructing a hydroelectric project that depends on the storage of water in a reservoir that falls within the main stem of the Peace River between the Peace Canyon Dam and the Alberta border, the Proponent will engage Kwadacha First Nation and the Tsay Keh Dene First Nation in a process to: 1) ensure that any potential impacts on these First Nations are identified; 2) attempt to address potential impacts; 3) identify any investing, contracting, or other opportunities; and 4) provide reasonable capacity funding. The Proponent has consulted on the proposed Project with both First Nations on the basis of these Final Agreements.

The broad preliminary potential impacts of the proposed Project on the asserted rights and other interests of Kwadacha First Nation and Tsay Keh Dene First Nation were communicated to the Crown by the Proponent during early EA planning. This list of preliminary potential impacts was subsequently updated by the Crown and communicated to the groups to reflect additional input received by the Crown during the EA process, including through direct Government to Aboriginal group consultations.²⁴ The identification of potential impacts was also based on the Governments' understanding of the asserted rights and interests of these First Nations as described below.

Kwadacha First Nation

Kwadacha First Nation has not asserted Aboriginal rights or title in the area identified by the Proponent as being potentially impacted by the proposed Project. The Crown further understands that the asserted traditional territory of the Kwadacha First Nation lies upstream of the area potentially affected by the proposed Project.

The predicted level of impacts of the proposed Project on the Aboriginal Interests of the Kwadacha First Nation within its traditional territory was expected to be **low**. Thus, consultation at the **low** end of the consultation spectrum was considered appropriate.

Tsay Keh Dene First Nation

Tsay Keh Dene First Nation has not asserted Aboriginal rights or title in the area potentially impacted by the proposed Project. Tsay Keh Dene's asserted traditional territory is located upstream of the proposed Project area.

As with Kwadacha First Nation, the predicted level of impacts of the proposed Project on the Aboriginal Interests of the Tsay Keh Dene First Nation within its asserted traditional

²⁴ Agency letters of June 1, 2012 to Kwadacha and Tsay Keh Dene First Nations, outlining the potential impacts of the Project on asserted rights; Agency letters of October 25, 2013 to Kwadacha and Tsay Keh Dene First Nations, updating on the potential impacts of the Project on asserted rights.

territory was expected to be **low**. Thus, consultation at the **low** end of the consultation spectrum was considered appropriate.

Other Aboriginal Groups Asserting Rights within the Project Area

As described in section 2.1, in its preliminary review of Aboriginal groups whose interests may be affected by the Project, the Governments did not identify a legal duty to consult with the Kelly Lake Cree Nation. However the group asserted Aboriginal rights within the proposed Project study area during early EA planning, and identified various potential impacts from the proposed Project to their asserted rights to hunt, fish, gather and trap. In this case, while no formal legal duty to consult was recognized, the Agency did decide to provide participant funding to Kelly Lake Cree Nation to enable its members opportunities to participate in the EA to provide information to the Governments and the Panel concerning any potential adverse environmental effects described under CEAA 2012 s.5(1)(c).

2.5.6 Approach to Consultation with Métis Nations

Overview of Aboriginal Rights for Métis Nations

Métis are Aboriginal peoples of Canada, such that section 35 of the *Constitution Act, 1982* protects the customs, practices and traditions that were historically important features of Métis communities, who emerged subsequent to European “contact” and prior to the exercise of “effective control” by the European settlers. For Métis to be able to exercise Aboriginal rights they must be able to demonstrate they are members of a modern Métis community that has ancestral linkages to an historic rights bearing Métis community. The test for establishing Métis Aboriginal rights was set out by the Supreme Court of Canada decision in *R. v. Powley [2003] 2 S.C.R.*

In 2004, the Métis Nation of Alberta signed an Interim Métis Harvesting Agreement with the Government of Alberta. The Agreement recognizes the Métis right to harvest for food through hunting, trapping, and fishing and applies to animals, fish and fowl in their Harvesting Lands. The Métis Harvesting Agreement recognizes that Alberta Métis can harvest year-round (unless there is a closure for conservation reasons) on all unoccupied Crown lands unless there is activity or development on the lands that would make harvesting unsafe. Alberta Métis can harvest on all occupied Crown lands, such as wild land parks, natural zones and some types of provincial parks and other provincial protected areas that have areas designated as harvesting zones. Alberta Métis can also harvest on private lands with permission from owners or occupants.

No Métis rights-bearing community in BC has been recognized by a court. In *R v. Willison*, 2006 BCSC 985, the BC Supreme Court was unable to conclude there was an historic Métis community in existence along the fur brigade trail in the southern part of the province. There has not been a judicial determination regarding the existence of a Métis community in northern BC.

British Columbia Métis Organizations

There are two Métis groups in BC: Métis Nation BC and Kelly Lake Métis Settlement Society. The Province does not recognize a legal obligation to consult with Métis people as it is of the view that no Métis community is capable of successfully asserting site specific Section 35 rights in BC. The Agency directed the Proponent to consult with these Métis groups in BC, and ensured that any EA-related correspondence or notifications from EAO were forwarded to the appropriate Métis organizations.

Kelly Lake Métis Settlement Society

Kelly Lake Métis Settlement Society represents the historic Métis community of Kelly Lake, located in northeastern BC approximately 120 km southwest of Dawson Creek. Most of the land at Kelly Lake is privately owned and was originally acquired by the original Métis settlers under the right of pre-emption. Kelly Lake Métis Settlement Society has asserted Aboriginal rights related to harvesting and trapping in that area. Kelly Lake Métis Settlement Society has indicated interest in being granted a greater role in consultation processes and ensuring that their traditional and spiritual lands are respected and cared for.

Kelly Lake Métis Settlement Society is not a member of Métis Nation BC. Aboriginal Traditional Knowledge and Use studies performed by Enbridge for the proposed Northern Gateway Pipeline Project and other ethno-historical sources suggest that there have been Métis people settled in the Kelly Lake area since the early 20th century, who originally migrated from Flying Shot Lake in Alberta. An Aboriginal Traditional Knowledge and Use report funded by the Proponent for the proposed Project contains a traditional territory map that includes the proposed Project area. Kelly Lake Métis Settlement Society assert rights such as guiding, hunting, trapping, fishing and spiritual practices throughout their entire traditional territory. The proposed Project appears to be within Kelly Lake Métis Settlement Society community trapline and hunting areas, as depicted in the Proponent's EIS (Figure 6 of the Site C Aboriginal Traditional Knowledge study, Volume 5, Appendix A12, Part 3, p 14).

The Agency has made a preliminary assessment that the strength of claim to Aboriginal rights related to harvesting and trapping by Kelly Lake Métis Settlement Society members in the proposed Project activity zone is **weak to moderate**.

The Proponent's EIS indicated that insufficient information is available from Kelly Lake Métis Settlement Society on their traditional uses of lands within the proposed Project area to determine potential impacts of the proposed Project on any such use. However, the Agency proceeded on the basis that the potential impacts of the proposed Project to Kelly Lake Métis Settlement Society Aboriginal Interests include possible displacement of hunting practices, increased hunting pressure and other effects as documented for MNBC below. Based on available information, the potential impacts on Kelly Lake Métis Settlement Society Aboriginal Interests were considered **moderate**. The federal government therefore approached consultation with Kelly Lake Métis Settlement Society at a **moderate** level on the consultation spectrum.

Métis Nation British Columbia

MNBC conducts consultation on behalf of its chartered communities and their citizens. Métis Nation British Columbia asserts Aboriginal rights to unique Métis cultural and heritage resources including traditional land use resources.

There is a Métis community in the Fort St John area that claims ties to the Métis families (dating to 1799) at the Rocky Mountain Fort on the Peace River. Moccasin Flats – a MNBC chartered Métis community based in Chetwynd – is located in the vicinity of the proposed Project, as is the North East Métis Association located in Dawson Creek. Their citizens assert harvesting and hunting rights through the MNBC.

The Moccasin Flats chartered Métis community and the North East Métis Association both assert various Aboriginal rights, such as harvesting and trapping, through the MNBC. There is currently little information on specific species or locations in the proposed Project vicinity that would be of special importance to the Métis citizens and the practice of their asserted rights. The information in the federal government's possession regarding the practice of Aboriginal rights by MNBC citizens indicates that they practice those rights over a large area, reflecting the semi-nomadic nature of historic Métis communities and practices. The MNBC has made no assertions regarding title on behalf of their chartered communities and citizens.

The Agency made a preliminary assessment that the strength of claim to Aboriginal rights related to harvesting and trapping by MNBC members in the area potentially affected by the proposed Project is **weak to moderate**.

The Proponent's EIS predicted short to medium-term impacts to some Métis harvesters' fishing rights (boat access along 85 km shoreline, inundation, displacement during construction and operations phases and then some recovery, increased competition with non-Aboriginal anglers, hunters, and reduced access to targeted species).

Based on available information, the potential impacts on MNBC Aboriginal Interests were considered **moderate**, and the federal government approached consultation with MNBC at a **moderate** level on the consultation spectrum.

Alberta Métis Organizations

Paddle Prairie Métis Settlement

The Paddle Prairie Métis Settlement is a recognized Alberta Métis Settlement under Section 2(1) of the *Alberta Métis Settlements Act*, RSA 2000, cM-14. The Alberta Court of Appeal found that membership in a Métis Settlement created in the Act is not sufficient to establish Métis rights under Section 35 (*L'Hirondelle v. Alberta (Sustainable Resource Development)*, 2013 ABCA12). The Alberta Court of Appeal reinforced the principle that

the criteria laid out in *Powley* determine whether a Métis community is a rights-bearing community.

Based on a review of available information, it is believed that the Paddle Prairie Métis historically exercised traditional activities in the area of the Peace River, downstream of the dam. The information obtained indicates that historically the Paddle Prairie Métis used the lands and resources in the areas along the Peace River and downstream from the proposed dam for social, economic, subsistence and cultural activities. Given the information available, the Crown's assessment is that the Paddle Prairie Métis Settlement's claim to Aboriginal rights in the proposed Project activity zone is **weak to moderate**.

Based on available information, the potential impacts of the proposed Project on Paddle Prairie Métis Aboriginal Interests were considered **minimal to negligible**. Governments therefore approached consultation with Paddle Prairie Métis at the **low** end of the consultation spectrum.

Métis Nation of Alberta Region 6

Evidence of historic Métis communities has been reported at Fort Dunvegan, Peace River Crossing and Fort Vermilion, along the Peace River (Public History 2012). There is evidence that members of these communities have been engaging in traditional activities for generations, The Métis Nation of Alberta – Region 6 has asserted to the Governments that it represents the present members of those historic communities.

The information obtained indicates that historically the Métis Nation of Alberta Region 6 used the lands and resources in the areas along the Peace River and downstream from the proposed dam for social, economic, subsistence and cultural activities. Given the information available, the Crown's assessment is that the Métis Nation of Alberta Region 6's claim to Aboriginal rights in the proposed Project activity zone is **weak to moderate**.

Based on available information, the potential impacts on Métis Nation of Alberta Region 6 Aboriginal Interests were considered **minimal to negligible**. Governments therefore approached consultation with the Métis Nation of Alberta Region 6 at the **low** end of the consultation spectrum.

Fort Chipewyan Métis Local 125

Based on a review of available information, the Governments believe that Fort Chipewyan Métis Local 125 members historically engaged in traditional activities in the area of the Peace Athabasca Delta, downstream of the proposed Project. In its Métis Harvesting in Alberta policy, issued in June 2010, the Province of Alberta recognized Fort Chipewyan as an historic and contemporary Métis community. The information obtained indicates that historically the Fort Chipewyan Métis Local 125 used the lands and resources in the Peace Athabasca Delta for social, economic, subsistence and cultural activities. Given the information available, the Governments' assessment is that the Fort Chipewyan Métis Local 125's claim to Aboriginal rights in the proposed Project activity zone is **weak**.

Based on available information, the potential impacts of the proposed Project on Fort Chipewyan Métis Local 125's Aboriginal Interests were considered **minimal to negligible**. Governments therefore approached consultation with Fort Chipewyan Métis Local 125 at the **low** end of the consultation spectrum.

Northwest Territories Métis Organizations

Northwest Territory Métis Nation

Members of the Northwest Territory Métis Nation reside mainly in the communities of Hay River, Fort Smith, Fort Resolution and Yellowknife in the Northwest Territories, and assert rights as Métis people living in the region since the 1780s. It is believed that the Northwest Territory Métis Nation member communities historically engaged in traditional activities in the area of the Peace Athabasca Delta and the Slave River, downstream of the proposed Project. The information obtained indicates that historically the Northwest Territory Métis Nation used the lands and resources in the Peace Athabasca Delta for social, economic, subsistence and cultural activities. Given the information available, the Governments' assessment is that the Northwest Territory Métis Nation's claim to Aboriginal rights in the proposed Project activity zone is **weak**.

Based on available information, the potential impacts on Northwest Territory Métis Nation's Aboriginal Interests were considered **minimal to negligible**. Governments therefore approached consultation with Northwest Territory Métis Nation at the **low** end of the consultation spectrum.

Other Métis Communities

Based on available information, the Governments' determined that there was no potential for the Project to adversely affect the Aboriginal Interests of other Métis Communities in Alberta.

The broad preliminary potential impacts of the proposed Project on Métis Communities' Aboriginal Interests, were communicated to the groups early on in the EA process, and subsequently updated through additional correspondence.²⁵ The identification of preliminary potential impacts was based on the Governments' understanding of asserted rights as described at the beginning of this section, as well as the information provided by the Proponent and Métis groups regarding potential proposed Project effects.

²⁵ Agency letters of April 16, May 23 and July 3, 2012 outlining the potential impacts of the Project on Métis Communities' Aboriginal Interests; Agency's letters of October 25 and 28, 2013 provided an update to the potential impacts of the Project on Métis Communities' Aboriginal Interests.

3.0 Summary of Consultation Process

The following sections discuss the process of consultation undertaken by the Proponent, the Agency on behalf of the federal government and EAO on behalf of the Province of BC.

3.1 Proponent’s Consultation Process

This section provides a summary of the Proponent’s consultation with Aboriginal groups, including:

1. an overview of the Proponent’s approach and objectives, how the consultation process was structured and funded, methods of sharing information with and seeking input from Aboriginal groups, and Aboriginal participation in fieldwork; and
2. descriptions of consultation with BC Treaty 8 First Nations, non-treaty BC First Nations, Alberta and Northwest Territories Aboriginal groups, BC Métis groups, and the Kelly Lake Cree Nation.

Table 3.1 provides a chronology of key events in the Proponent’s consultation process.

More detailed information regarding the consultation undertaken by the Proponent with each of the 29 Aboriginal groups listed in the EIS Guidelines is provided in EIS Volume 5 Appendix A (Aboriginal Interests and Information Requirements Supporting Documentation). The issues, interests and concerns raised by Aboriginal groups through the consultation process are presented in EIS Volume 1 Appendix H (Aboriginal Information Distribution and Consultation and Documentation).

Table 3.1 Consultation activities of the Proponent with Aboriginal Groups.²⁶

Timeframe	Consultation activity
Stage 2 Consultation (Fall 2007 – Spring 2010). Project Definition and Consultation	The Proponent engaged with 41 Aboriginal groups on the proposed Project, conducting over 140 meetings prior to any decision to advance the proposed Project to an EA.
November 2007	Initial contact made with 41 Aboriginal groups, consisting primarily of Treaty 8 Aboriginal groups in BC, as well as Treaty 8 groups in Alberta and the Northwest Territories. In Stage 2, the Proponent initiated consultation with all of the Aboriginal groups listed in the EIS Guidelines with the exception of the Métis Nation of Alberta – Region 6 and MNBC.
March 2008	Initial meetings with proposed Project Area First Nations to provide a high level introduction to the proposed Project, and to describe the status of early exploratory work and the process continuing if the proposed Project is advanced to the next stage.

²⁶ Volume 1: section 9 of the EIS

Timeframe	Consultation activity
Spring 2008	The Proponent provided copies of the Summary: Stage 1 Review of Project Feasibility report to Aboriginal groups, and attended follow-up meetings with 21 Aboriginal groups.
September 16, 2008 – June 25, 2009.	Consultation agreements (designed to provide a structured framework for dialogue, dispute resolution processes, work plan and funding) negotiated between the Proponent and the following Aboriginal groups: Duncan's First Nation; Blueberry River First Nations; Treaty 8 Tribal Association (on behalf of Doig River, Fort Nelson, Halfway River, Prophet River, Saulteau and West Moberly First Nations); Horse Lake First Nation; Dene Tha' First Nation; Little Red River Cree First Nation; Tallcree First Nation; and McLeod Lake Indian Band. The Proponent tabled consultation agreements with five other Aboriginal groups.
2008 -2009	The Proponent created Technical Advisory Committees (TAC) to seek input from Aboriginal groups on a range of studies related to the environment, archaeology, socio economic conditions and land use. BC Treaty 8 First Nations were invited to participate in the TACs, along with federal, provincial and local government, but only the Blueberry River First Nations participated.
March – November 2009	Technical Advisory Representative Process (TAR) was established with the T8TA that covered the same key program areas as the TAC. Seven meetings over 10 days resulted in the completion of a joint report and sharing information on studies, mapping, and technical presentations.
Fall 2009	The Proponent released a final report summarizing the outcomes of Stage 2, including its consultation with Aboriginal groups between 2007 and 2009, and provided that report to Aboriginal groups.
Stage 3 Consultation (Spring 2010 to present) Regulatory and Environmental Assessment Stage	
April 2010	Aboriginal groups were advised that the Project was proceeding to the Regulatory and EA stage and provided access to copies of some reports and studies on the proposed Project.
July 2010 – September 2012	The Proponent continued to build on the working relationships established in Stage 2 by reaching consultation agreements with the following Aboriginal groups: Saulteau First Nations Kwadacha First Nation Mikisew Cree First Nation Treaty 8 Tribal Association (on behalf of Doig River, Halfway River, Prophet River and West Moberly First Nations) Deninu K'ue First Nation Athabasca Chipewyan First Nation Fort Nelson First Nation All of the agreements provide for a framework for consultation and the identification of any potential effects of the Project on Aboriginal and treaty rights. Capacity funding was provided as discussed in section 3.3.
March 2011	The Proponent provided Aboriginal groups with a summary of its preliminary report on potential downstream changes, and offered to meet to discuss the report.
Spring 2012	The Proponent set up a secured file transfer website, and provided access to 55 Aboriginal groups. The website includes key environmental and engineering reports, fieldwork updates, and information regarding economic opportunities associated with the Project.
April – July 2012	The Proponent reached letters of understanding to provide capacity funding to support consultation activities with the following Aboriginal groups: Kelly Lake Métis Settlement Society Métis Nation British Columbia Kelly Lake Cree Nation

Timeframe	Consultation activity
October 2011 - August 2012.	The Proponent negotiated TLUS Agreements with the following Aboriginal groups located downstream of the proposed Project or in the proposed Project Activity Zone: Treaty 8 Tribal Association Duncan's First Nation Saulteau First Nations Blueberry River First Nations Horse Lake First Nation Dene Tha' First Nation McLeod Lake Indian Band The Proponent also funded and received existing traditional use information from the Kelly Lake Métis Settlement Society, Métis Nation BC, Athabasca Chipewyan First Nation, and Mikisew Cree First Nation.
2011 and 2012	The Proponent consulted proposed Project Area First Nations and others on proposed Project components, such as transmission line options, Highway 29 realignment and reservoir clearing options through meetings with Chief and Council, community meetings, and/or with technical representatives.
May 2012	In May 2012, the Proponent provided Aboriginal groups with the updated report on potential downstream changes, requested input on the results, and offered to schedule meetings with the Proponent's subject matter expert in hydrology. In the spring and summer of 2012, the Proponent conducted meetings with representatives of Athabasca Chipewyan, Beaver, Dene Tha', Deninu K'ue, Duncan's, Horse Lake, Mikisew Cree, and Smith's Landing First Nations as well as the Kelly Lake Métis Settlement Society, Métis Nation of Alberta – Region 6 and the Northwest Territory Métis Nation.
May 2012	The Proponent sent a letter to Aboriginal groups that explained the process and rationale used to identify valued components in the draft EIS Guidelines, and the process used to select spatial boundaries for each valued component. The Proponent expressed interest in receiving feedback from Aboriginal groups regarding the proposed valued components and related spatial boundaries.
2012	Consultation with proposed Project Area First Nations and others with respect to the potential effects of the proposed Project on fish and fish habitat, vegetation and ecological communities, wildlife resources and heritage resources. The Proponent sought to integrate traditional knowledge made available to the Proponent and seek input from Aboriginal groups into its preliminary effects assessment and mitigation strategies.
January 2012 – March 15, 2012	The Proponent prepared the first draft of the EIS Guidelines and amended the EIS Guidelines based on comments from the Working Group including Aboriginal groups. The EIS Guidelines were finalized on September 21, 2012.
2013	The Proponent submitted the EIS for review and comment, and amended the EIS based on comments from Aboriginal groups and others and also addressed requests from the Panel for supplemental information
Dec – Jan 2013/14	The Proponent participated in the Panel hearing

Overview

The Proponent is the provincial Crown actor that makes the decisions to plan, construct and operate the dam and transmission facilities. The Proponent, in its capacity as a proponent, was delegated certain procedural aspects of consultation through provisions in the EIS Guidelines.

In February 2007, the BC Energy Plan identified the proposed Project as a potential resource option to meet BC's future electricity needs and directed the Proponent to begin discussions with Aboriginal groups. This was before a decision had been made by the province of BC on whether to advance the proposed Project to an EA. Later that year, the Proponent made initial contact with Aboriginal groups in BC, Alberta, and the Northwest Territories. The Proponent provided proposed Project-related information and requested input from those Aboriginal groups. Early consultation (referred to by the Proponent as

Stage 2), provided for the establishment of Proponent-Aboriginal group relationships and opportunities for sharing information and developing knowledge and mutual understanding about the potential effects of the proposed Project. During Stage 2, the Proponent made initial contact with 41 Aboriginal groups, which later increased to 60 groups during the EA (referred to by the Proponent as Stage 3).

Over the following six years, the Proponent consulted with Aboriginal groups regarding Project components and activities, the potential effects of the proposed Project and potential strategies or measures to avoid, mitigate or otherwise accommodate the potential effects of the proposed Project. The Proponent has also supported consultation with Aboriginal groups as part of the EA process, including the draft EIS Guidelines and the EIS. Consultation with Aboriginal groups will continue in relation to permit applications required for the proposed construction and operations stage should the proposed Project be approved by the Governments.

The Proponent's approach and its objectives

The extent and level of consultation with Aboriginal groups has been guided by their proximity to the proposed Project area and the potential for impacts on the exercise of Aboriginal Interests, as well as the level of interest expressed. In keeping with this approach, the Proponent has engaged in consultation that has ranged from notification of key proposed Project milestones for those Aboriginal groups where Governments anticipate little to no potential adverse changes in the environment from the proposed Project, to structured consultations aimed at identifying and assessing potential effects of the proposed Project on those groups located in and around the proposed Project area that may experience those effects, and seeking to address them.

The Proponent has consulted in greater depth with Treaty 8 First Nations that are in close proximity to the proposed Project and that may experience direct effects. The Proponent has also consulted with Aboriginal groups located downstream of the proposed Project, including Treaty 8 First Nations and Métis groups in Alberta and the Northwest Territories, in close proximity to the Peace River and along the Slave River. The Proponent has consulted with Tsay Keh Dene First Nation and the Kwadacha First Nation, both non-treaty First Nations in BC whose communities are located at the north end of the Williston Reservoir. The Proponent has engaged Métis groups to varying degrees, dependent upon jurisdiction, level of interest expressed and proximity to the proposed Project or the Peace River watershed consistent with the potential for impacts. The Proponent also engaged with additional Métis organizations and all remaining Treaty 8 Aboriginal groups in Alberta, the Northwest Territories and Saskatchewan. Further detail of consultation activities with specific Aboriginal groups is provided below.

The Proponent has consulted with Aboriginal groups to achieve the following objectives:

- Provide access to information to facilitate an understanding of proposed Project-related information;

- Create opportunities to receive input from Aboriginal groups into the planning, design, construction and operation of the proposed Project;
- Facilitate Aboriginal participation in the EA process through provision of capacity funding and access to technical expertise as it relates to the proposed Project;
- Identify and understand the issues, interests and concerns brought forward by Aboriginal groups as they relate to the potential effects of the proposed Project on:
 - The exercise of Aboriginal Interests;
 - The past, current and reasonably anticipated future use of lands and resources for traditional purposes; and
 - Potential training, employment, contracting and broader economic opportunities related to the Project that may be of interest to Aboriginal groups or individuals.
- Identify strategies or measures to avoid, mitigate or otherwise accommodate the potential effects of the proposed Project.

How the consultation process was structured and funded

The Proponent entered into formal consultation agreements with 19 Aboriginal groups, including all of the Treaty 8 First Nations in closest proximity to the proposed Project area to enable those groups to participate in consultation, including the EA process, and to provide the Proponent with information on their Aboriginal Interests. In some cases, in lieu of formal consultation agreements, the Proponent and Aboriginal groups signed letters of understanding, which also facilitated a structured process for consultation in relation to the potential impacts of the proposed Project. Capacity funding was provided under the agreements and letters of understanding as described in section 3.3. As of the end of May 2014, the Proponent had provided approximately \$13.4 million in funding to Aboriginal groups for consultation activities, which included capacity, TLUS and community baseline funding. The Proponent has made commitments to provide further financial support for consultation activities.

The Proponent's methods of sharing information with Aboriginal groups and seeking input from them

The Proponent used several approaches to distribute information on the proposed Project. These included setting up a proposed Project website in 2007 and a secured file transfer website in 2012. This latter website was set up to ensure distribution of key documents to all Aboriginal groups including access to otherwise confidential information, such as up to date mapping. The Proponent also directly engaged with Aboriginal groups through meetings, telephone calls, conference calls, site visits, faxes letters and emails. The Proponent organized and/or attended community meetings, in-community conferences, events and celebrations. The Proponent technical experts and consultants worked directly with their counterparts on staff with or retained by Aboriginal groups to review technical reports, as part of the Working Group or technical sub-committees.

The Proponent provided Aboriginal groups with information needed to better understand the proposed Project. In meetings with community members, the Proponent sought to convey information about the proposed Project in a form that was accessible to a non-

technical audience. Where a more thorough or nuanced understanding of specific issues was necessary, the Proponent brought its technical experts and consultants to the meetings to explain the information. In 2011 and 2012, prior to the submission of the EIS, the Proponent facilitated meetings with Aboriginal groups where subject matter experts shared information regarding:

- Proposed Project components, including transmission line options, worker accommodation, Highway 29 realignment options, reservoir clearing options, proposed road access, and alternative dam sites;
- The results of preliminary assessments on the potential effects of the proposed Project on wildlife, fish, vegetation and heritage resources, and,
- The results of studies on the potential effects of the proposed Project on the downstream environment.

This approach was intended to ensure that the Proponent's subject matter experts heard the issues and concerns brought forward by Aboriginal groups directly. In these meetings, the Proponent sought input from Aboriginal groups on, among other things, potential impacts to the exercise on their Aboriginal Interests, as well as potential strategies to mitigate the effects of the proposed Project.

Participation by Aboriginal groups in Project-related field work

While not considered a consultation activity, the Proponent has also facilitated Aboriginal participation in proposed Project studies. There has been extensive employment of Aboriginal people on heritage field programs to date, involving 63 different Aboriginal community members working the equivalent of about 3,700 days in the field over three years. There are plans to work with Aboriginal groups to ground truth specific important site locations with elders and other Aboriginal community members if there is interest.

3.1.1 Proponent Consultation Summaries

Consultation with BC Treaty 8 First Nations

The Proponent consulted most actively with seven Treaty 8 First Nations that are in closest proximity to the Project area and most likely to be impacted by the proposed Project ("Project Area First Nations"). These are:

- Blueberry River First Nations;
- Doig River First Nation;
- Halfway River First Nation;
- McLeod Lake Indian Band;
- Prophet River First Nation;
- Sauteau First Nations; and
- West Moberly First Nations.

In 2008, five of the proposed Project Area First Nations (Doig River, Halfway River, Prophet River, Sauteau, West Moberly) and Fort Nelson First Nation asked the Proponent to consult with them collectively through the representation of the T8TA, rather than through the

individual communities. In 2010, Sauteau First Nations and Fort Nelson First Nation withdrew from this arrangement, indicating their preference to consult directly with the Proponent. In spring 2014, following the Panel hearings, Doig River First Nation also elected to represent its consultation interests individually moving forward. In September 2014, Halfway River informed the Proponent that effective immediately it will represent itself bi-laterally with the Proponent on the proposed Project. The Proponent entered into formal consultation agreements in Stages 2 and 3 with all seven of the proposed Project Area First Nations, either through the T8TA or individually.

Initial meetings with proposed Project Area First Nations occurred in March 2008. These meetings allowed the Proponent to provide a high-level introduction to the proposed Project, and describe the status of early exploratory work. In the early stages of consultation, the Proponent made efforts to seek input from the proposed Project Area First Nations on the scope of baseline environmental and socio-economic studies, and to meet with community members and Elders to provide information about the Project, answer their questions, and hear their concerns.

In 2008, the Proponent invited the proposed Project Area First Nations and others to participate in the Technical Advisory Committee (TAC) process, along with provincial, federal, and municipal government agencies. The objectives of the TACs included, among other things, identifying data requirements for baseline studies and receiving input on the scope of baseline studies on, among other things, wildlife, fish and vegetation. This process resulted in the integration of traditional knowledge shared by community members and Elders of the Blueberry River First Nations into the baseline studies on wildlife. In addition, a stand-alone technical advisory process was set up with the T8TA, which covered the same topics areas as the TACs. In a series of seven meetings in 2009, the Proponent shared completed studies; proposed study outlines and preliminary wildlife inventory results, and asked for input from the T8TA.

In 2009, representatives of the Proponent attended open house meetings in the communities of the Prophet River, West Moberly, Doig River, and Sauteau First Nations. Based partly on input from community members in the open house meetings, a list of 97 questions about the proposed Project was tabled by the T8TA, and written responses to those questions were provided by the Proponent. Representatives of the Proponent also attended meetings with community members and Elders of the Blueberry River First Nations (2008, 2009, 2011, 2012) and McLeod Lake Indian Band (2010, 2012). The Proponent also met with off-reserve members of the McLeod Lake Indian Band in Prince George and Vancouver in 2012.

Beginning in 2008 and throughout Stages 2 and 3, the Proponent consulted with the proposed Project Area First Nations on the permits required for geotechnical investigations and provided them with weekly environmental and archaeology monitoring reports on the progress of investigative work, issues and recommended protective measures. The Proponent also provided proposed Project Area First Nations with regular information on environmental field work, including study outlines, status updates and summaries of completed work, and invited them to review the information and provide input.

In 2011 and 2012, the Proponent consulted with the proposed Project Area First Nations regarding the need for, and alternatives to, the proposed Project as part of its broader consultation on the Integrated Resource Plan (The Proponent's long-term strategic plan to meet BC's growth in electricity demand over the next 20 years). As part of this consultation:

- The Proponent held workshops in regional locations in March 2011, which were attended by the T8TA, Blueberry River First Nations and McLeod Lake Indian Band; and
- The Proponent provided BC First Nations with a draft of the Integrated Resource Plan in May 2012 and hosted workshops in June and July 2012 to discuss the draft, and invited comments on it (including the recommendation to "build Site C"). Representatives of the T8TA attended a workshop in July 2012 and submitted written comments in August 2012.

The Proponent took steps to obtain information about use of land and exercise of treaty rights by the proposed Project Area First Nations, and incorporate that information into the assessment of the effects of the proposed Project, where appropriate. Funding was provided to each of the proposed Project Area First Nations to complete TLUS reports and related maps. The Proponent engaged Traditions Consulting Services to review the completed TLUS reports and maps, and prepare summaries of the material (see EIS, Volume 5 Appendix A01-A29, Part 4) for consideration as baseline information in the assessment of effects on current use of lands and resources for traditional purposes. The TLUS reports and maps were also provided directly to technical staff responsible for conducting the effects assessments for wildlife resources, vegetation and ecological communities and fish and fish habitat.

The Proponent also worked with the proposed Project Area First Nations to gather social, economic, land use and human health baseline information specific to their communities. The Proponent provided funding and training to support the preparation of "community baseline reports" to support the assessment of potential social and economic effects of the proposed Project. In addition, the T8TA received funding to complete an "Issues Scoping Study" which identified, catalogued and prioritized issues to be considered by the parties in the EA process, and an "Impact Pathways Identification Report" which identified potential pathways of effects between the proposed Project and the Treaty 8 First Nations' society, economy and culture.

Throughout consultation with the proposed Project Area First Nations, the Proponent entered discussions and sought feedback on how to address substantive issues related to the proposed Project that were of most concern to them. This included meetings that focused on options for the design and location of specific proposed Project components, and meetings at which the Proponent sought input on mitigation measures for effects on fish, wildlife and vegetation, and for effects on uses of land including hunting, fishing and trapping. Examples of specific issues, concerns and interests raised by proposed Project Area First Nations, and corresponding consultation activities, are provided below:

- Blueberry River First Nations expressed interest in employment, training and procurement opportunities related to the proposed Project. In 2011 and 2012, these issues were discussed in a series of meetings with Blueberry River First Nations' band council and representatives of Blueberry River First Nations' band-owned businesses. This included a meeting with the Proponent's Executive Vice President in September 2011;
- Saulteau First Nations expressed concern about the potential for the proposed Project to affect traplines owned by its members. In March and April 2011. The Proponent interviewed five Saulteau trappers regarding their trapping activities within areas potentially impacted by the proposed Project. In August 2012, The Proponent met with a group of Saulteau trapline owners and Lands Office staff. It was agreed that the Proponent would contact trappers to discuss proposed work within a registered trapline, and employ trappers as monitors in relation to work occurring on their traplines;
- Blueberry River First Nations and the T8TA expressed interest in consulting with the Proponent on potential alternative sites for the dam. The Proponent's Chief Engineer and technical consultants met with the T8TA (October 2011) and Blueberry River First Nations (February 2012) to review the Proponent's studies and analysis on alternative dam sites, and to obtain and consider their input. In May 2012, capacity funding was provided to the T8TA to engage consultants with engineering expertise to review the Proponent's analysis of alternative dam sites;
- West Moberly and Saulteau First Nations expressed concern regarding the potential effects of the expansion of the transmission line corridor on the south side of the Peace River on their harvesting activities. The Proponent determined that a proposal by Saulteau First Nations to move the transmission line to the north side of the Peace River was not feasible. However, the Proponent found ways to reduce the impact through the removal of the existing 138 KV transmission line, and by sequencing the construction in a way that will reduce the clearing required along the right-of-way; and,
- Saulteau First Nations and the T8TA expressed concern about the potential effects of the proposed Project on rare and medicinal plants. As a way to accommodate these effects, the Proponent has committed to supporting the indigenous plant nursery at Moberly Lake owned by the West Moberly and Saulteau First Nations, and to using the nursery as a source for plant stock in reclamation work.

In February 2012, the Proponent secured a mandate from the Province to enter into impact benefit agreement (IBA) negotiations with the proposed Project Area First Nations. Three First Nations (Blueberry River First Nations, Saulteau First Nations, and McLeod Lake Indian Band) accepted the Proponent's offers to enter into discussions towards IBAs.

The Proponent also consulted with Fort Nelson First Nation, a signatory to Treaty 8, but whose traditional territory lies outside of the spatial boundaries selected by the Proponent for their EIS (according to a traditional territory map provided to the Proponent by Fort Nelson First Nation). The Proponent consulted actively with the Fort Nelson First Nation and a formal consultation agreement was completed in 2012. Under this agreement,

capacity funding was provided to support Fort Nelson's participation in the EA process, which was used by Fort Nelson to participate in the Working Group process and provide comments on the EIS Guidelines and the EIS.

Consultation with non-Treaty First Nations in BC (Kwadacha First Nation and Tsay Keh Dene First Nation)

The Proponent consulted with the Tsay Keh Dene First Nation and the Kwadacha First Nation to fulfill commitments in settlement agreements with those First Nations related to The Proponent's existing projects on the Peace River. Under those agreements, The Proponent committed to identifying opportunities associated with any new the Proponent projects within the area of the main stem of the Peace River between Peace Canyon Dam and the Alberta border.

The Proponent offered to enter formal consultation agreements with both Kwadacha First Nation and Tsay Keh Dene First Nation, and The Proponent and Kwadacha entered into a formal consultation agreement in November 2010 and a Letter of Understanding in August 2012. In 2012 and 2013, representatives of the Proponent and Kwadacha First Nation met a number of times to discuss proposed Project-related employment, contracting and trades training opportunities, and the Proponent met with representatives of a Tsay Keh Dene band-owned business to discuss potential contracting opportunities associated with the proposed Project.

Consultation with Aboriginal groups in Alberta and the Northwest Territories

The Proponent consulted with Aboriginal groups located downstream of the proposed Project, including First Nations and Métis groups in Alberta and the Northwest Territories in close proximity to the Peace River and along the Slave River.

In 2008 and 2009, the Proponent met with a number of downstream Aboriginal groups (including the Athabasca Chipewyan Beaver, Dene Tha', Deninu K'ue, Duncan's, Horse Lake, Little Red River Cree, Mikisew Cree, Salt River, Smith's Landing, and Tallcree First Nations, as well as the Fort Chipewyan Métis Association, Northwest Territory Métis Nation, and Paddle Prairie Métis Settlement) to seek early input regarding interests, issues, and concerns related to the proposed Project, particularly as they related to the Proponent's preliminary understandings regarding the potential changes to downstream conditions.

The Proponent negotiated formal consultation agreements with the following groups:

- Athabasca Chipewyan First Nation (Stage 3);
- Dene Tha' First Nation (Stages 2 and 3);
- Deninu K'ue First Nation (Stage 3);
- Duncan's First Nation (Stages 2 and 3);
- Horse Lake First Nation (Stages 2 and 3);
- Little Red River Cree First Nation (Stage 2);
- Mikisew Cree First Nation (Stage 3); and
- Tallcree First Nation (Stages 2 and 3).

Three of the downstream groups (Horse Lake First Nation, Duncan's First Nation, Dene Tha' First Nation) reported potential use of land by their members in BC in the vicinity of the proposed Project Area. Funding was provided to those groups to complete TLUS reports and related maps. In addition, funding was provided to Horse Lake First Nation and Duncan's First Nation to complete community baseline reports that contained social, economic, land use and human health baseline information specific to their communities, as well as a study of their members' consumption of country foods.

In 2011 and 2012, the Proponent took steps to share information and seek input on the results of its technical studies on predicted changes to the downstream environment. In March 2011, the Proponent provided Aboriginal groups with a summary of its preliminary report on potential downstream changes, and offered to meet to discuss the report. The Proponent also provided Aboriginal groups with summaries of completed and ongoing work in relation to the following topics: water levels and flows; flood forecasting; water temperature and ice; sediment transport; and, groundwater. The Proponent sought input from Aboriginal groups regarding the studies, and indicated that they could be changed or revised in scope or timing on the basis of input from the Aboriginal groups.

In May 2012, the Proponent provided Aboriginal groups with the final report on potential downstream changes and requested input on the results. The Proponent offered to schedule meetings at which the Proponent's subject matter expert in hydrology would explain the report's findings on predicted changes to the surface water regime, the thermal and ice regime, and geomorphology and sediment transport. Such meetings took place with the following groups in 2012: Athabasca Chipewyan First Nation, Beaver First Nation, Dene Tha' First Nation, Deninu K'ue First Nation, Duncan's First Nation, Horse Lake First Nation, Mikisew Cree First Nation, Smith's Landing First Nation, Kelly Lake Métis Settlement Society, Métis Nation of Alberta – Region 6, and Northwest Territory Métis Nation.

In consultations with the Proponent, representatives of the Athabasca Chipewyan and Mikisew Cree First Nations expressed concerns about the potential influence of the proposed Project on the hydrology of the Peace Athabasca Delta, and how potential changes in hydrology might affect their exercise of treaty rights in the Peace Athabasca Delta. Funding was provided to the Athabasca Chipewyan and Mikisew Cree First Nations to retain a consultant to review and provide feedback on the Proponent's report on potential downstream changes. The Proponent met with their consultant to discuss the report and underlying studies, and their consultant subsequently submitted a report to the Proponent in December 2012. The Proponent continued to meet and correspond with representatives of Athabasca Chipewyan and Mikisew Cree First Nations on these issues throughout the pre-hearing period. Funding was also provided to the Athabasca Chipewyan and Mikisew Cree First Nations to complete a desktop TLUS report and traditional knowledge studies.

In addition, funding was provided to the Deninu K'ue First Nation to retain consultants to complete a technical review of the Proponent's report on potential downstream changes, and to complete an ethno-history report which included information on their members' land use in the Slave River region.

Consultation with BC Métis groups

The Agency directed the Proponent to consult with select Métis organizations in BC. The Proponent engaged with the Kelly Lake Métis Settlement Society and MNBC. Engagement occurred with the Kelly Lake Métis Settlement Society in 2009 for the first time and then again beginning in 2011. The Proponent consulted with MNBC in 2012. In 2012, the Proponent conducted its consultation in accordance with the EIS Guidelines and direction from the Agency. The Proponent signed a letter of understanding with Kelly Lake Métis Settlement Society in April 2012 and MNBC in July 2012, which approved funding to Kelly Lake Métis Settlement Society to support their collection of TLUS information and MNBC to provide information on the exercise of their asserted rights. Kelly Lake Métis Settlement Society provided a traditional knowledge report in August 2012, which indicates use of the Peace River valley in a general sense but without the specificity required by the Proponent for conducting an assessment of their current use of lands and resources for traditional purposes for the exercise of asserted rights. The Proponent received MNBC's report in March 2013 which provided information about the use of land and resources by MNBC.

Consultation with Kelly Lake Cree Nation

The Kelly Lake Cree Nation is not one of the 29 Aboriginal groups that the Proponent was directed to consult with under the EIS Guidelines. Nonetheless, the Proponent met with the Kelly Lake Cree Nation and provided funding to them in July 2012 so they could conduct a social impact assessment of the proposed Project on their community and a report was received in November 2013.

3.2 Federal and Provincial Government Consultation

Crown-Aboriginal group consultations conducted by the federal and provincial governments were coordinated to the extent possible throughout the EA process. The process aspects of federal and provincial consultations that applied to all potentially impacted Aboriginal groups are summarized in this section. A consultation log was maintained to track consultations unique to individual groups, and summary-level information from this log is provided in this report. The Governments conducted Aboriginal consultation through a variety of means, including providing opportunities and support to enable Aboriginal groups to:

- Provide input to the draft Agreement and Panel Terms of Reference;
- Participate in a Pre-Panel Stage Working Group process to identify potential impacts to Aboriginal Interests and other interests through the development of the EIS Guidelines and the EIS;
- Participate in direct discussions with the Governments about procedural questions or concerns and potential impacts from the Project on Aboriginal Interests;

- Bring issues and information to the Panel and participate in the Panel hearings; and
- Review and comment on the Panel Report and key documents including this report, during the Post-Panel Stage.

The federal government adopted a whole-of-government approach to consulting with Aboriginal groups. The Agency’s Crown Consultation Coordinator led this effort, by integrating federal Crown-Aboriginal consultation throughout the EA process, including ensuring participation of federal departments and agencies in consultation activities with potentially impacted Aboriginal groups. The following federal departments and agencies provided expertise and advice during the EA and associated consultation activities: Fisheries and Oceans Canada, Transport Canada, Natural Resources Canada, Environment Canada, Health Canada, Parks Canada Agency, and Aboriginal Affairs and Northern Development Canada.

Below is a summary of the key procedural steps of consultation.

Table 3.2 Key Canadian Environmental Assessment Agency and Environmental Assessment Office consultation activities with Aboriginal groups

Timeframe	Consultation activity
EA Commencement	
May 17, 2011	Initial Site C Clean Energy Project Description received by the Governments
July 20, 2011	Notice issued of receipt of acceptable Project Description by the Agency
Pre-Panel Stage (August 2011 to August 2013)	
Throughout the EA process	The Crown requested Aboriginal groups to identify locations where Aboriginal Interests are exercised in relation to the proposed Project and to engage with the Crown in relation to the potential adverse impacts of the proposed Project on those rights. For Treaty 8 First Nations, the Crown sought information on the nature and scope of treaty rights as exercised by the Aboriginal groups.
August 2, 2011	Early notification and engagement letter advising of the start of the federal EA. The Governments announced that they would take a coordinated approach to consultation. Treaty 8 Aboriginal groups were contacted at the outset of the EA and invited to join the Working Group chaired by the Agency and EAO, comprised of Aboriginal groups and local, provincial, territorial and federal government agencies.
September 2, 2011	Invitation to attend introductory meeting of proposed Advisory Working Group
September 30, 2011	Notification of EA by independent review panel, notification of available participant funding and request for comments on the draft <i>Agreement to Conduct a Cooperative Environmental Assessment Including the Establishment of a Joint Review Panel, of the Site C Clean Energy Project between the Minister of Environment, Canada and the Minister of Environment, British Columbia</i> (the Agreement) and associated Joint Review Panel Terms of Reference (the Panel Terms of Reference). Aboriginal groups were provided with initial funding by EAO to support their review of the procedures and methods for conducting the EA as described in the Agreement.
October 5, 2011 – March 1 2012	Introductory meeting (Aboriginal groups invited to all subsequent Working Group meetings): October 5, 2011 meeting was attended by eight First Nations, including Dene Tha’, Driftpile, Kapawe’no, McLeod Lake, Prophet River, Saulteau, T8TA and West Moberly; March 1, 2012 meeting was attended by 14 First Nations, including Athabasca Chipewyan, Dene Tha’, Deninu Kue, Duncan’s, Fond du Lac, Fort Nelson, Kwadacha, Little Red River Cree, McLeod Lake Indian Band, Mikisew Cree, Smith’s Landing, Sucker Creek, Swan River and T8TA.
October – December 2011	Consultation on the draft Agreement and draft Panel Terms of Reference. The Governments met in person and via teleconference call directly with Aboriginal groups, including: Dene Tha’ First Nation, Driftpile, Kapawe’no, McLeod Lake Indian Band, Prophet River, Saulteau, T8TA, West Moberly, and Kelly Lake Cree First Nations.
October 21, 2011	Invitations sent by the Agency to apply for federal participant funding by December 7, 2011 (as

Timeframe	Consultation activity
	extended from November 25, 2011)
Dec 2011 to Feb 2012	Comments on the Agreement were received from T8TA; Deninu K'ue, Blueberry River, Duncan's, Horse Lake, Saulteau, Athabasca Chipewyan, Dene Tha', Mikisew Cree, Smith's Landing, and Fort Nelson, and McLeod Lake. Comments were considered in the revisions made to the Agreement.
January – March 2012	Preliminary EIS Guidelines were provided by the Proponent to Governments and Aboriginal Groups. The Governments ensured that all Treaty 8 Aboriginal groups received a copy of the draft EIS Guidelines before the public comment period began.
February 13, 2012	Final Agreement and Panel Terms of Reference issued. Aboriginal groups who provided comments on the draft Agreement were provided with feedback on where and how their comments were incorporated, or reasons why their comments were not incorporated. An invitation was provided to meet and discuss comments received and the Governments met with T8TA on February 8, 2012 to discuss their comments
March - May 2012	EAO provided all Aboriginal groups with letters outlining its preliminary review of Treaty 8 rights, potential impacts and depth of consultation. Aboriginal groups were invited to provide EAO with comments and/or additional information related to the letter to ensure that it established the appropriate consultation approach with each Aboriginal group.
March – July 2012	Agency provided all Aboriginal groups with draft Consultation Plans informed by preliminary assessment of potential impacts of the proposed Project to Aboriginal Interests. Meetings held with Aboriginal groups to discuss draft Consultation Plans and preliminary assessment of impacts.
March 2012	Governments revise draft EIS Guidelines in consideration of preliminary comments received from Aboriginal groups.
April 17 – June 1, 2012	Consultation on draft EIS Guidelines. Written comments were received from Aboriginal groups on the draft EIS Guidelines and these comments were considered in the revisions made to the EIS Guidelines. An invitation was provided to meet and discuss comments on the draft EIS Guidelines. At the start of the process, Aboriginal groups negotiated to provide written comments on the draft EIS Guidelines 10 days after the public comment period closed.
June 26, 2012	Request for comments from Working Group on adequacy of the Proponent's responses to comments on draft EIS Guidelines
July – August 2012	Aboriginal group comments on the draft EIS Guidelines were considered in the revisions made to the draft EIS Guidelines
August 3, 2012	Notice of amended Agreement to reflect CEEA 2012
September 5, 2012	EIS Guidelines finalized and posted to Governments' websites
August – December 2012	Provision of Crown responses to comments from Aboriginal groups on draft EIS Guidelines
December 2012	Invitation to Aboriginal groups to nominate individuals for consideration as Panel members
January 28, 2013	Proponent submits EIS January 25, 2013 and consultation begins January 28, 2013 with invitation to Aboriginal groups to provide written comment on EIS
Feb 19, 2013	Working Group meeting on the EIS
May 2013	Invitation to Aboriginal groups to provide advice on sufficiency of Proponent responses to Aboriginal group's EIS comments
June 3-6, 2013	Working Group Technical meetings with Aboriginal groups. Aboriginal group comments on the EIS were received from 17 groups (Woodland Cree, Kwadacha, Deninu Kue, Dene Tha', Mikisew Cree, Athabasca Chipewyan, Fort Nelson, Fort Chipewyan Métis, McLeod Lake, MNBC, Saulteau, Smith's Landing, Salt River, and T8TA on behalf of Doig River, Halfway River, Prophet River and West Moberly). The Crown tracked all issues raised in the Issues Tracking Tables.
July 2013	Further input to the Governments was received after conclusion of the Working Group process but prior to the EIS amendments being finalized (August 1, 2013): Dene Tha' (July 7), Mikisew Cree, Athabasca Chipewyan (July 15) and McLeod Lake (July 15). Additional consultation meetings were held during July with Aboriginal groups who requested information on how their comments influenced direction to the Proponent to amend their EIS.
May-July 2013	Consultation on EIS comments received and feedback from the Agency on how Aboriginal comments and advice were being considered in directing the Proponent to amend the EIS
July 5, 2013	End of Working Group process
August 1, 2013	Governments determine amended EIS is satisfactory to proceed to Panel
Panel Review Stage (August 2013 – May 2014)	

Timeframe	Consultation activity
August 2, 2013	The Panel established
August – October 2013	Appointment of Panel and invitation to Aboriginal groups to provide input to Panel on sufficiency of EIS
October 2013	Updated consultation plans sent by the Agency to all 29 Aboriginal groups based on information received during the Pre-Panel Stage, including in the amended EIS, regarding the nature of Aboriginal Interests
November 7, 2013	Panel determines that EIS is sufficient to provide notice of hearing and issues request for written submissions
November – December 2013	The Agency hosts information sessions to assist Aboriginal groups in preparing for upcoming public hearing and initial discussion of Post Panel consultation process including government decision-making processes
December 9 - February 3, 2014	Public Hearing Sessions - Aboriginal groups provided opportunity to present views to the Panel on anything within the Panel's Terms of Reference. The Panel also held community meetings in Aboriginal communities to hear directly from members of the individual communities. Aboriginal groups provided opportunities to ask questions about any information (or identify a lack of information) that was provided by other parties to the Panel
February – May 2014	The Agency, EAO and the Proponent continue to consult with Aboriginal groups with respect to their views about the proposed Project and its potential impacts on Treaty 8 rights and asserted rights of other Aboriginal groups. On March 5, the Governments met with T8TA to review the proposed approach to Post-Panel Stage consultation, timelines and decision-making processes. Similar process meetings were offered to all 29 Aboriginal groups via Agency letters of March 14, 2014. The Governments responded to several requests for further information or clarification of process and timelines, including a meeting held with JFK Law on behalf of Dene Tha', Athabasca Chipewyan and Mikisew Cree First Nations on May 7, 2014.
March 14, 2014	Agency correspondence updating Consultation Plans for all 29 Aboriginal groups, providing information on the objectives and approach to forthcoming Post-Panel Stage consultation and inviting Aboriginal group funding for this stage. Meetings offered to discuss proposed Post-Panel Stage consultation and government decision-making processes.
May 1, 2014	Panel submits report to Governments
Post-Panel Stage (May 1 to October 22, 2014)	
May 6, 2014	Announcement of funding for Post Panel consultation
May 8, 2014	Public release of Panel report and commencement of Aboriginal consultation on the Panel report. The Governments distribute report and invite written comments by June 9, 2014.
May 8, 2014	Consultation meetings offered to Aboriginal groups by letter
June 10, 2014	The Governments distribute the draft Consultation Report and draft potential EA conditions, inviting comments by July 11, 2014
May – August 2014	Consultation on Panel Report, draft Consultation and Accommodation Report and draft potential conditions proposed for inclusion in federal EA decision statement and provincial EA certificate, should the Project proceed.
August 5, 2014	Aboriginal groups provided with revised draft Consultation and Accommodation Report for comment, and an invitation to provide separate submissions to EAO and the Agency by August 19, 2014, which will be provided to the respective provincial and federal decision makers.
August 19, 2014	Deadline for Aboriginal groups to submit separate submissions to be provided to provincial and federal decision makers on potential impacts to Aboriginal Interests as they relate to the Project, and on any other views deemed critical to the Aboriginal groups.
By September 7, 2014	Referral to federal and provincial Ministers for EA decision in respect of the proposed Project.
By October 22, 2014	Notification of federal and provincial decisions

Early EA Planning

During the EA planning stage, efforts were made to contact all potentially interested First Nations, Métis groups and tribal associations, starting with initial notifications when the Project was determined to be reviewable under the Act and subject to the former *Canadian Environmental Assessment Act*. Respecting BC's position regarding consulting with Métis communities in BC, Canada directed the Proponent to consult with Métis groups

in BC, and took responsibility to ensure that any correspondence or notifications from EAO were forwarded to the appropriate BC-based Métis organizations.

Between March and June 2012, the Governments proposed similar approaches to consultation with each potentially impacted Aboriginal group, through the respective federal “Draft Aboriginal Consultation Plan for the Environmental Assessment Process for the Proposed Site C Clean Energy Project” and provincial “Initial Review and Proposed Consultation Approach”. Updates to the Consultation Plans for each Aboriginal group were provided throughout the EA process. The Governments’ approaches to consultation were to integrate consultation into the EA process to the extent possible, and to conduct consultation in a complementary manner to the Panel process.

Consultation Plans and letters to individual Aboriginal groups noted the importance to the Crown of understanding the nature and scope of Aboriginal Interests, including how and where a right is exercised, by whom, how often, what time of year and what species is being hunted, fished or trapped and how the land is being used in support of the exercise of Aboriginal Interests. This information was necessary to inform the Crown’s understanding of potential impacts from the proposed Project to Aboriginal Interests. Largely through an exchange of correspondence during 2012, several Treaty 8 First Nations conveyed to the Crown their views of the nature and scope of the rights protected under the Treaty, and as described in detail in section 2.5.4, the Governments provided letters setting out the Crown’s view of the rights protected under Treaty 8.

Advisory Working Group

All potentially interested or affected Aboriginal groups and associations were considered to be members of the joint federal-provincial Advisory Working Group and were invited to all meetings during the Pre-Panel Stage. Aboriginal groups who declined to participate in Working Group meetings but requested to be kept informed were sent all communications throughout the EA process as if they were a member of the Working Group. The purpose of the Working Group was to provide advice to EAO and the Agency on issues related to the assessment of the proposed Project.

To ensure that the federal authorities were aware of Aboriginal issues and concerns early in the EA process, many federal departments and provincial agencies participated in the Working Group’s introductory meeting, as well as a series of consultation meetings held with potentially affected Aboriginal groups. The purpose of these meetings was to:

1. seek early input to the draft Agreement and Panel Terms of Reference;
2. seek comments on the proposed consultation approach; and
3. allow an exchange of information between the Aboriginal groups and Government representatives in order to gain a better understanding of each Aboriginal group’s Project-specific issues and concerns.

An electronic distribution list was maintained for the Advisory Working Group members including Aboriginal groups. Working Group communications to Aboriginal groups were sent via e-mail and followed by hard copies sent by registered mail courier, to ensure that

all communities, including those without reliable Internet access, received relevant information on the EA in a timely manner. Phone calls were used as follow-up whenever necessary.

Although the Working Group model can be an effective structure to raise and address Aboriginal groups issues and concerns regarding the proposed Project, Governments remained willing, during all stages of the EA process, to meet individually with Aboriginal groups on a government-to-government basis an Aboriginal group believed their Aboriginal Interests or concerns should be addressed outside of the Working Group structure. In addition, Aboriginal groups who did not engage directly in the Pre-Panel Stage were sent all communications and provided opportunities for comment.

Environmental Impact Statement Guidelines

Throughout the Pre-Panel Stage review of the draft EIS Guidelines, the Crown actively sought meetings with the most potentially impacted Aboriginal groups, responded to and offered solutions to address procedural or technical issues raised by Aboriginal groups that the Governments were prepared to address, and provided Aboriginal groups the opportunity to provide written input. Crown responses to all Aboriginal group comments received were provided in writing to provide a rationale for the issues that were, or could not be addressed at that stage of the process. These comments were posted to the respective provincial and federal public registry web sites.

Environmental Impact Statement

The Working Group facilitated input from Aboriginal groups and Government agencies on the EIS. All Aboriginal group comments received on the EIS were reviewed and considered by the Governments, and the Proponent was tasked with responding to each comment submitted. The Governments' compilation and initial review of EIS comments focused on whether the EIS adhered to the EIS Guidelines, and whether the information presented in the EIS met with the Governments' standard of technical merit.

The Governments reviewed the adequacy of all Proponent responses to comments including Technical Memos produced by the Proponent to address key themes of comments submitted. During the comment period for the EIS, the Proponent received and responded to approximately 2,600 public and Government agency Information Requests (IR), as well as approximately 1,500 IR from Aboriginal groups. The Proponent responses to Aboriginal groups were submitted on May 8, 2013 in accordance with a deadline extension of April 14, 2013 for Aboriginal groups to submit their information requests.

The Governments undertook to summarize the views and compile comments and advice from the Working Group on whether the Proponent adequately responded to EIS comments. The Governments also reviewed the Proponent's May 24, 2013 EIS addendum which included Aboriginal group information received and assessed since January 2013.

Working Group meetings, including Aboriginal groups, were held June 3-6, 2013 to discuss the EIS and specifically whether the effects have all been identified and whether there are any more proposed mitigation measures in addition to those proposed by the Proponent

for key VC such as fish and fish habitat, vegetation and ecological communities, current use of lands and resources for traditional purposes and harvest of fish and wildlife. The summaries of discussion from the workshops were used to inform final direction to the Proponent to amend the EIS. Given that a number of key Aboriginal Group concerns remained outstanding at this stage in the EA process, in particular issues related to the scope of the EA, the Governments undertook to meet with, discuss and provide a written rationale to Aboriginal groups whose comments did not result in the Governments directing the Proponent to amend the EIS. Final direction to the Proponent to amend the EIS, and acceptance that the EIS had been amended as directed was provided on August 1, 2013 and the Proponent was subsequently directed to submit its final EIS to the Panel.

The Governments communicated to the full Working Group on August 2, 2013 that the EIS had been deemed satisfactory and that the Pre-Panel Stage had concluded. Appointed Panel members were announced on August 2, 2013.

In the month following the conclusion of the Pre-Panel Stage, the results of the review of all Aboriginal group information from the Pre-Panel Stage helped to inform a revised assessment of potential impacts to Aboriginal Interests, which the Agency communicated to all 29 groups in October 2013. This communication was accompanied by an updated Aboriginal-Crown Consultation Plan reflecting comments received from Aboriginal groups on the consultation process received to that point in the process.

Panel Stage

In the period during which the Panel conducted its EIS sufficiency review, the Agency's Crown Consultation Coordinator undertook to organize information sessions for all 29 Aboriginal groups, to orient them to the forthcoming public hearing process. Through a series of teleconferences and written responses to questions about the process, these sessions provided the groups with information on the process to assist in their preparations to bring forward information to the Panel.

Federal departments also continued to consider the Aboriginal issues that had been raised to date, prior to the public hearing, and took these considerations into account when preparing their technical and oral submissions to the Panel, as appropriate. For instance, federal officials reviewing the proposed Project considered available Aboriginal technical documents and traditional ecological knowledge and TLUS as part of their review of the proposed Project.

In respect of the Crown's contractual obligation under the 1986 Mikisew Cree First Nation Treaty Land Entitlement Agreement, the federal government met in November 2013 with Mikisew Cree First Nation and shared written Panel submissions as well as gathered input for an approach for oral presentations at the downstream effects topic-specific hearing. The federal submissions prepared for the Panel's public hearing considered and referenced Aboriginal group comments, considered the evidence from Aboriginal groups, and reflected the views of the federal experts on this evidence.

Public and Community Hearings

Agency officials representing the federal government's Crown Consultation team attended all public and community hearing sessions to take note of information provided by Aboriginal groups to the Panel, and to track any additional key issues not previously registered in the Pre-Panel Stage. Federal and provincial departments and agencies also participated actively in the public hearing in making written and oral submissions to the Panel, and both governments responded to undertakings and questions from the Panel as appropriate.

Post Panel Stage

The Post-Panel Stage of consultation commenced with the public release of the Panel Report on May 8, 2014. To prepare Aboriginal groups for the Post-Panel Stage, the Agency sent letters to all 29 Aboriginal groups on March 14, 2013 and offered meetings to all groups to discuss the ongoing consultation process; describe the approach to consultation proposed for the Post-Panel Stage; and explain what the Crown would be seeking from Aboriginal groups in terms of written comments on key documents and participation in meetings. Letters also included a detailed description of the decision-making process under CEAA 2012.

On May 8, 2014, the Agency, in collaboration with federal departments, and coordinated with EAO, initiated consultation on the Panel Report with all 29 Aboriginal groups for which the Governments identified a consultation duty.

The Governments sought written input on the Panel Report from Aboriginal groups on the following key questions:

1. Did the Panel appropriately characterize the concerns raised by Aboriginal groups, including potential impacts from the proposed Project to asserted or established Aboriginal or treaty rights?
2. Do the conclusions and recommendations made by the Panel adequately address the concerns of Aboriginal groups with respect to associated potential impacts?
3. Are there any outstanding concerns that are not addressed in the Panel Report? If so, do you have any recommendations on proposed mitigation measures to address them?

Consultation during the Post-Panel Stage focused on clarifying and seeking to address those impacts and concerns that potentially remained outstanding, taking into account the mitigation and accommodation proposed by the Proponent, recommended by the Panel, or being contemplated by the Governments.

Consultation on Draft Consultation and Accommodation Report

During June, July and August, the Governments provided two opportunities for Aboriginal groups to review and comment on the Consultation and Accommodation Report. The "draft Consultation Report" was distributed to Aboriginal groups on June 10, 2014 for initial comment by July 11, 2014. A revised "draft Consultation and Accommodation Report" was shared August 5, 2014 for final comments to be submitted by August 19, 2014.

Consultation on Draft Potential EA Conditions

Government-imposed mitigation measures and follow-up requirements to be implemented by the Proponent are in the form of potential conditions that may be included by the respective federal and provincial decision makers in the federal EA decision statement or the provincial EA certificate, should the proposed Project be authorized by the Governments to proceed. These potential conditions would make legally binding on the Proponent the implementation of mitigation measures required to avoid or reduce potentially significant adverse effects of the proposed Project, in a manner which would enable compliance verification and, as required, enforcement action by the Governments.

Written comments on the potential conditions were sought between June 10 and July 11, 2014, and discussed during meetings held with several of the Aboriginal groups for which the conditions may, in the view of the Governments, address impacts to their Aboriginal Interests or concerns. Dialogue was focused on suggestions for proposed revisions or additional conditions or other measures as appropriate, to further address outstanding impacts to Aboriginal Interests, issues or concerns.

Post-Panel Stage Consultation Meetings

During the written comment period on the Panel Report, a series of consultation meetings or teleconferences were offered to Aboriginal groups with whom the Governments were consulting at the moderate to deep end of the *Haida* spectrum (see section 2.5) as well as other groups who have actively participated in the consultation process throughout the EA.

Views provided in written comments by Aboriginal groups on the Panel Report were the focus of discussions during June 2014, whereas views provided in written comments on the draft Consultation Report and draft potential EA conditions were the focus of discussions during July and August 2014.

Along with the Agency and EAO, representatives from federal departments and provincial ministries with specific areas of expertise participated in consultation meetings during the Post-Panel Stage. The Proponent was not involved in Agency and EAO-led Aboriginal group consultation meetings during the Post-Panel Report Stage.

Input to Decision Making Process

In addition to providing an opportunity to review and comment on two previous versions of this report, Aboriginal groups were given an opportunity to provide a submission outlining any outstanding concerns, issues or fundamental views in respect of the proposed Project that would, along with this report, be provided directly to the respective provincial and federal decision makers.

Regulatory and Permitting Stage Consultation

Consultation Plans shared with all Aboriginal groups early on in the EA process explained the Governments' intent to rely on the EA process to the extent possible to understand potential Project impacts on Aboriginal Interests, but these plans also recognized that additional consultation would be required in the regulatory and permitting stage that could

potentially follow the EA decisions. Consultation Plans also noted that for certain matters that fall outside the review of the proposed Project, reconciliation efforts may need to continue through other appropriate Crown-led processes.

3.3 Participant funding

While funding is not mandatory to fulfill the Crown's duty to consult, it is good practice to provide financial assistance for Aboriginal groups to participate in an EA process with highly technical components.

Funding was offered to support Aboriginal group engagement during all stages of the EA, by the Proponent, EAO and the Agency. The Proponent's funding was delivered through consultation agreements negotiated with specific Aboriginal groups during three separate stages of engagement, two of which preceded the EA process (see section 3.1). EAO provided initial capacity funding for Aboriginal groups to review and comment on the draft Agreement. The Agency's Participant Funding Program supported Aboriginal group participation in consultation activities during the Pre-Panel, Panel and Post-Panel Stages.

Federal Funding

In September 2011, under the Agency's Participant Funding Program, an overall Aboriginal Funding amount was approved for all stages of the EA, and Aboriginal groups potentially impacted by the proposed Project were invited to apply. Funding levels were established for each Aboriginal group, based on the preliminary depth of consultation assessment. A funding review committee (FRC) was established by the Agency, independent of the EA. The FRC's purpose is to assess funding applications received, and to provide recommendations to the President of the Agency on whether funding should be provided, and if so, in what amount.

Twenty-six Aboriginal groups have been allocated funding totaling \$809,563.69 from the Participant Funding Program to support their participation in consultation activities related to the EA. Funding was initially made available to support Aboriginal participation in, and related consultation and community engagement activities related to:

- Phase I - review and comment on the draft EIS Guidelines;
- Phase II - review and comment on the Proponent's EIS in the Pre-Panel Stage; and
- Phase III - preparation for and participation in the Panel Stage.

Invitations to apply for funding in these 3 phases were sent out on September 30, 2011. The original deadline of November 7, 2011 to submit an application was extended to December 7, 2011. All applications were reviewed by the FRC. In April 2012, the Agency revised its scope of consultation to include the Kelly Lake Métis Settlement Society and this group was invited to participate in the EA and the consultation process. Its funding application was submitted on April 30 and on May 2, 2012, the FRC was reconvened to review the application.

For Phases I to III, a total of \$547,041 was approved for 24 applicants. By the end of the Panel Stage, the Agency had provided approximately \$366,500 to Aboriginal group participants, based on expenses submitted.

In February 2014, the Agency recommended that additional funding be made available to support Aboriginal group engagement in consultation-related activities during the Post-Panel Stage (Phase IV). All 29 potentially-impacted Aboriginal groups were invited to apply for funding by March 31, 2014. Twenty-six applications were received as of April 16, 2014 and all were considered. On May 6, 2014, in a Public Notice posted on its website, the Agency announced an allocation of \$262,522.69 among 26 Aboriginal group applicants to support their participation in consultation activities during the Post-Panel Stage of the EA process.

Provincial Funding

In the fall of 2011, EAO provided capacity funding (total of \$60,700) that was accepted by 11 Aboriginal Groups, intended to assist with costs associated with the participation of Aboriginal Groups in reviewing and commenting on the draft Agreement.

Proponent Capacity Funding

As of May 2014, the Proponent committed over \$13.4 million in capacity funding, including \$1.5 million to support traditional use studies for Aboriginal groups. TLUS Agreements were negotiated with T8TA, Duncan's First Nation, Saulteau First Nations, Blueberry River First Nations, Horse Lake First Nation, Dene Tha' First Nation and McLeod Lake Indian Band.

The Proponent has also funded and received existing traditional use information from the Kelly Lake Métis Settlement Society, Métis Nation BC, Athabasca Chipewyan First Nation, Mikisew Cree First Nation and Deninu K'ue First Nation..

During the EA, the Proponent entered into 17 capacity funding agreements representing 20 Aboriginal groups. These capacity agreements helped to establish the principles, process and scope for consultation between the Proponent and Aboriginal groups, as well as provide funding to support engagement in EIS Guidelines and EIS review activities.

3.4 Adjustments to EA Process and Timelines

Several Aboriginal groups identified process concerns during the EA, and made requests that Aboriginal groups be consulted in the design of the approach to consultation, be provided adequate funding and be offered timeline flexibility to facilitate their meaningful participation in the process.

In response, the Governments invited all potentially-affected Aboriginal groups to provide input into the proposed approach to consultation, and Aboriginal group objectives for consultation were considered and reflected back in several subsequent revisions of the Crown-Aboriginal Group Consultation Plans for the proposed Project. The Governments provided additional time for Aboriginal groups to provide input during several key stages

of the EA, including the submission of funding applications, comment periods on the EIS Guidelines, EIS, Panel Report and draft Consultation and Accommodation Report, and sought to facilitate a meaningful and responsive two-way dialogue between the Crown and Aboriginal groups throughout the process, within the overall timelines established by the Agreement.

The draft Agreement originally indicated 60 days for the post-Panel consultation process. This timeline was amended to 84 days in the final Agreement after consideration of comments received by Aboriginal groups, the public and local, provincial, territorial and federal government agencies giving an additional 24 days for consultation. Aboriginal groups were provided an additional 25 days from November 7, 2011 to December 2, 2011 to provide comments on the Agreement.

Regarding the consultation opportunities provided during the EA process, the Governments conducted a 60-day public comment period on the EIS (from February 3 to April 4, 2013). Aboriginal groups received the EIS before the public comment period and were provided an additional 10 days to provide written comments.

All Aboriginal groups were invited by the Governments to propose candidates to serve as Panel members, in response to concerns that Panel members should have an appreciation of Aboriginal culture and the constitutionally protected rights of Canada's Aboriginal peoples.

In response to concerns raised regarding timelines, timing and content of consultation for the Post-Panel consultation period, several process enhancements were made, including:

- Adjustments and flexibility in regard to timelines for submitting written comments;
- Agreeing to consult on proposed conditions with potentially-affected Aboriginal groups;
- Reduction of the 45 day hold off period for public release of the Panel Report to 6 days; and
- Offering consultation on the Crown's methodological approach, for example to undertaking preliminary assessment of potential impacts to Aboriginal Interests (informing any needed revisions to the depth of consultation). Through correspondence to various Aboriginal groups, the Governments explained their methodological approach and invited Aboriginal groups to provide their own concepts and thresholds to help inform the Crown's preliminary assessment.

4.0 Consideration of Aboriginal Interests and Concerns

This section considers the key Aboriginal Interests, issues and concerns of potentially affected Aboriginal groups, through the Crown's assessment of Panel findings and conclusions and whether residual effects of the proposed Project have the potential to impact Aboriginal Interests. As described in section 2.5.2, the Governments apply a methodology for assessing potential impacts of the Project to Aboriginal Interests that relies on the Panel's findings and conclusions but also considers potential conditions, other accommodation and the input of Aboriginal groups received during consultation.

4.1 Crown Consultation Record and Tracking of Key Issues

The Governments have kept track of all Aboriginal group comments, issues, interests and concerns raised in respect of the proposed Project during the EA process. The Crown's consultation process has been conducted in a complementary manner to the Panel process, and the consultation record includes issues identified in Government-Aboriginal group meetings, phone calls, letters, emails and reports, such as TLUS and Community Assessments, as well as issues identified during comment periods for the EIS Guidelines, the EIS, during the Panel hearing process and ongoing during the Post-Panel Stage of consultation.

Throughout the EA, the Crown has made use of Issues Tracking Tables in meetings and discussions with Aboriginal groups, to ensure that it has an accurate understanding of key Aboriginal Interests and concerns, and in particular, understands the views of Aboriginal groups on the potential impacts of the proposed Project to Aboriginal Interests. The Proponent also developed an issues tracking table (Volume 1: section 9, Appendix H of the EIS) that presents the key issues, concerns and interests identified by Aboriginal groups, as understood by the Proponent at the end of the Pre-Panel Stage (July 2013). The Proponent's issues tracking table and EIS Volume 5 appendices describe the issues, concerns and interests identified by Aboriginal groups in consultation with the Proponent between November 1, 2007 and July 8, 2013.

The Issues Tracking Tables are a tool to capture and organize the potential impacts to Aboriginal Interests, issues and concerns raised by Aboriginal groups during all stages of the EA, and serve as a resource for the Crown to identify responses to those impacts, indicating whether in the view of the Crown, issues have been addressed, partially addressed or not addressed by proposed accommodation. The Issues Tracking Tables have been summarized in the Aboriginal group-specific sections of this report (Appendices A1-A29).

These Appendices provide an overview of the Aboriginal Interests and concerns of each potentially affected Aboriginal group, their individual involvement in the EA and consultation process, views on potentially outstanding issues including potential Project-related impacts to Aboriginal Interests, Panel conclusions and recommendations in relation to the key interests and concerns of each individual Aboriginal Group, the Crown's

conclusions on the adequacy of consultation and status of accommodation and Aboriginal group positions on this report or any other aspect of the proposed Project or EA and consultation process.

4.2 Addressing Key Aboriginal Interests and Concerns

The key Aboriginal Interests and concerns regularly cited by the Aboriginal groups that participated in the EA process are summarized and discussed below; following an identification of accommodation for potential impacts on these Aboriginal Interests, including modification of proposed Project components, potential conditions that would be recommended to the decision makers should the proposed Project proceed, as well as other accommodation measures.

4.2.1 Project Modifications

In considering accommodation, it is important to note that during proposed Project planning, the Proponent implemented several design changes to minimize and mitigate potential effects to Aboriginal Interests. These include:

- Modified design for the proposed Project, allowing access across the dam and, as a result, removing need for a permanent bridge across the Peace River downstream of the dam site that would have enlarged the proposed Project footprint and increased activity on the south bank of the river in the Area of Critical Community Interest and Peace Moberly Tract, where various groups exercise Aboriginal Interests to hunt, trap and fish;
- Using the existing 138 kV transmission line right of way from the G.M. Shrum generating station to Fort St. John and Taylor for the two proposed 500kV transmission lines from the Site C substation to Peace Canyon substation. The 500 kV lines will be placed along and adjacent to the existing right of way and the 138 kV lines will be removed;
- Minimize the loss of wildlife habitat on the big island downstream of the dam through design of the dam, generating station and spillway;
- Relocate worker accommodation to minimize disruption of wetland habitat;
- Remove requirement to establish a temporary work force camp on Crown land on the south side of the Peace River at the proposed dam site; and
- Use existing access corridors, including existing roads, for the realignment of Highway 29.

Furthermore, table 34.2 in Volume 5 of the Proponent's EIS sets out mitigation applicable to the potential adverse effects of the proposed Project on Aboriginal Interests. Many of the mitigation measures proposed by the Proponent for VC may also help mitigate potential impacts on Aboriginal Interests and other concerns raised throughout the EA by Aboriginal groups, where the effects are mitigable. Table 39.1 of Volume 5 of the EIS lists all the measures identified by the Proponent that are to be implemented during construction and operation to mitigate potential adverse effects on VCs. These are additional to mitigation

measures that the Proponent has committed to implement as part of standard practice during proposed Project construction and operation in compliance with federal and provincial regulatory requirements, in compliance with existing Proponent policies and procedures and in accordance with the technically feasible, cost effective and environmentally sound management of large-scale hydroelectric and infrastructure projects.

4.2.2 Potential Federal and Provincial Conditions

The Panel recommended that, if the proposed Project is to proceed, all recommendations of the Panel directed to The Proponent and mitigation measures proposed by The Proponent become conditions of proposed Project approval. As a result, the Governments have proposed conditions that capture recommendations of the Panel directed to the Proponent, which would be included as conditions of proposed Project approval.

A review and comment period on the draft potential conditions was held from June 10 to July 11, 2014 and input provided by Aboriginal groups during this comment period, will inform the potential conditions that EAO and the Agency will propose to their respective EA decision-makers for inclusion in the EA Certificate and Decision Statement, respectively. Conditions would become legally binding on the Proponent if the Governments authorize the proposed Project to proceed.

These conditions, if the proposed Project is approved, would either directly or indirectly avoid or reduce some of the impacts and concerns raised by Aboriginal Groups. Proposed conditions that would mitigate impacts or otherwise address the key Aboriginal Interests and concerns are referenced in sections 4.2.4 to 4.2.7.

4.2.3 Other Accommodation Measures

The Proponent has provided, or is committed to providing economic benefits and to support capacity-building opportunities specific to Aboriginal people during activities prior to and during the construction phase of the proposed Project. Highlights of these opportunities include:

- building Aboriginal business capacity through the use of directed Aboriginal procurement activities, both prior to and during the EA of the proposed Project, such as set-asides, restricted tendering and single source negotiations. This directed procurement has been used on engineering investigations contractor work, and environmental baseline and effects assessment studies;
- using Aboriginal evaluation criteria in procurement packages to provide an incentive for primary contractors to establish working relationships with First Nations groups that increases the likelihood of Aboriginal participation in the construction contracts;
- using an Aboriginal Business Directory to promote partnerships between the Proponent and Aboriginal businesses in contract work;

- donating \$1 million to the Northern Lights College Foundation to support trades and skills training bursaries, with 50% of the funding for bursaries to be dedicated for Aboriginal students;
- entering, in 2011, into a three-year funding agreement with Northern Opportunities (a partnership of the school districts of Fort Nelson, Peace River North and Peace River South, Northern Lights College, local First Nations, industry, and local communities) to support academic, trades, apprenticeship and vocational training programs to be made available to Aboriginal and non-Aboriginal students; and
- contributing \$100,000 to the North East Native Advancing Society in support of advancing North East Aboriginal Trades Training participants into trades training not currently offered by Northern Lights College for those trades that are of interest to the Proponent for the proposed Project, such as heavy duty equipment operators. The funding would be used to defray tuition and related costs for those students who are pursuing trades training.

EAO and the Agency were made aware in April 2012, that the Proponent secured a mandate from the Province to enter into IBA negotiations with the Project Area First Nations. The Proponent advised the T8TA, Blueberry River First Nations, Sauleau First Nations and McLeod Lake Indian Band of its mandate in this regard in March 2012. Throughout the EA, the Proponent has kept the Governments informed as to the general status of these negotiations, both through the EIS, information provided during the public hearing, and updates communicated to EAO during the Post-Panel Stage, a summary of which is provided below.

Blueberry River First Nations, Sauleau First Nations, and McLeod Lake Indian Band accepted the Proponent's offer to enter into discussions towards IBAs in 2012.

An agreement on a term sheet for an IBA was reached with Blueberry River First Nations supported by a Band Council Resolution dated December 19, 2012, and an IBA and related agreements have been drafted. The agreements provide for cash payments, a payment stream over time, and transfers of the fee simple interest of provincial Crown land to the First Nation, land protection and directed procurement opportunities. A new council was elected for Blueberry River First Nations in December 2013, and they are reviewing the term sheet and related agreements.

The Proponent continues to pursue term sheet discussions with Sauleau First Nations and McLeod Lake Indian Band. Any agreements with these First Nations would include elements similar to the Blueberry River First Nations' agreement.

The Proponent made an IBA offer to Halfway River First Nation in June 2014 which included elements similar to that offered to Blueberry River First Nations. Halfway River First Nation's consultation interests are represented by the T8TA for the proposed Project.

Doig River First Nation's consultation interests for the proposed Project were being represented by the T8TA prior to the spring of 2014. Doig River is now having separate discussions with the Proponent who made an IBA offer in August 2014 that includes elements similar to the offer made to Blueberry River First Nations.

On July 22, 2014, the Proponent wrote to both West Moberly First Nations and Prophet River First Nation proposing measures to be provided by the Proponent and BC, and provided copies of these letters to the Governments. These measures include providing to the First Nations provincial Crown lands and/or land protection measures, financial contributions and other measures including access to a multi-million dollar compensation fund to address current use of lands and resources for traditional purposes. These letters state that in the Proponent's view, these measures would offset the residual effects of the proposed Project if it is authorized by Governments to proceed. The Proponent stated in the letters that it also continues to be interested in pursuing an IBA relating to procurement opportunities and other benefits with West Moberly First Nations and Prophet River First Nation.

On July 24, 2014, Chief Roland Willson of the West Moberly First Nations replied to the Proponent's letter of July 22 indicating that a Regional Strategic Environmental Assessment and a Cumulative Impact Assessment needs to be completed before entertaining the letter from the Proponent. In addition, West Moberly, Halfway River and Prophet River have each prepared separate submissions to decision makers stating:

While we continue to make ourselves available to meet with The Proponent to discuss "avoidance" of adverse effects through the consideration of alternative sources of electricity generation, we maintain our view that it is simply not possible to adequately compensate our community for the permanent destruction of the Peace River Valley.²⁷

The Governments understand that BC Hydro has been given instructions to negotiate capacity building agreements to provide accommodation in the form of funding to support training and cultural programs to Duncan's, Horse Lake and Dene Tha' First Nations and that these three First Nations would be eligible to apply to the Proponent's compensation fund for initiatives to address impacts to current use of lands and resources for traditional purposes.

The Governments also understand that the Proponent is prepared to engage with the MNBC and the Kelly Lake Metis Settlement Society with respect to the implementation of mitigation measures, in particular consultation on component plans to be developed as conditions of the proposed Project.

²⁷ T8TA, Final Draft Report: Post-Panel Stage Consultation, August 19, 2014, Adobe pp.222-233

4.2.4 Impacts to Hunting and Trapping

Aboriginal groups noted the importance of wildlife in the Peace River valley for sustenance and cultural and spiritual values. Concerns focused on maintaining the quality of wildlife for consumption, managing competition from non-Aboriginal hunters, and in relation to the difficulty of harvesting preferred species, such as moose and caribou, with ongoing development of land which supports these wildlife populations.

The following Aboriginal groups identified to the Panel hunting or non-tenured trapping sites in the LAA for the current use of lands and resources VC: Sauleau First Nations, Doig River First Nation, Halfway River First Nation, Prophet River First Nation, West Moberly First Nations, Blueberry River First Nations, McLeod Lake Indian Band, Dene Tha' First Nation, Horse Lake First Nation, Duncan's First Nation, Kelly Lake Métis Settlement Society and Métis Nation of British Columbia.

Specific concerns and potential effects to Aboriginal Interests as expressed by Aboriginal groups associated with hunting and trapping include the following:

- Aboriginal groups described the Peace River valley as being a unique landscape that provides for great hunting, trapping sites and an abundance of resources. West Moberly First Nations and Sauleau First Nations identified the Peace-Moberly Tract and the Area of Critical Community Interest as being important hunting and trapping areas;
- McLeod Lake Indian Band stated the proposed Project would have an impact on overall access to their preferred sites and preferred species. Further, the knowledge about associated hunting sites, methods and timing that has been passed on for generations would be rendered useless if the proposed Project disrupted the predictable patterns of wildlife populations in the Peace River valley;
- Several Aboriginal groups expressed concern about increased access for recreational pursuits by non-Aboriginal harvesters brought about by the proposed Project. In particular, Sauleau First Nations raised concerns with increased road access from the proposed Project to their preferred hunting and trapping areas by non-Aboriginal people with the risk of increased competition and reduced hunting success. They also noted that new roads would result in increased wildlife mortality, facilitation of prey movement and destruction and fragmentation of habitat;
- All Aboriginal groups using the LAA reported hunting moose, which most identified as the preferred species. Other species hunted or trapped in the LAA include elk, mule deer, white-tailed deer, beaver, marten, geese, duck and grouse;
- The Sauleau First Nations stated that moose was the “backbone” of their economy, a major component of their culture and tradition and involved their spirituality; the Blueberry River First Nations noted the importance of moose hide for making clothing and the Métis Nation of BC made the point that harvesting of country foods was critically important for Métis cultural continuity;
- Aboriginal groups also had concerns with the health condition of wildlife resources due to contaminants. Aboriginal hunters reported shooting moose that were found

to be diseased and smelling of hydrocarbons and were judged unfit for consumption;

- Concerns were raised that the proposed Project would lead to a disproportionate loss of calving grounds for moose elk, deer, caribou, bison, Stone Sheep and other ungulates, noting that some animals used the islands in the Peace River to calve;
- Blueberry River First Nations noted the declining woodland caribou population and attributed this to rapid oil and gas development, with almost 6000 active gas wells in its traditional territory. However, First Nations remain concerned about cumulative effects from the proposed Project with respect to caribou, which is a preferred species that groups want to see being the focus of recovery efforts. West Moberly Chief Willson noted that his First Nation members haven't been able to hunt caribou in many of their lifetimes and that they are losing elements of their cultural identity as a result of the decline in caribou populations in the region;
- Fort Nelson First Nation and Kwadacha First Nation expressed concern that despite their traditional territory being outside of the area of influence of the proposed Project, it will produce more hunting, fishing and trapping pressure in their core territories due to diminishing opportunities for these activities nearer the proposed Project area;
- Many concerns were raised about the potential impacts of the proposed Project on specific wildlife species, habitat, biodiversity, migration and movement. Potential effects of the proposed Project on migratory birds and migratory bird habitat were also expressed, including warblers, marsh birds, ducks, woodpeckers, red and blue listed neotropical migratory birds, Slave River area geese and water fowl. Concerns were also voiced about potential effects of the proposed Project on chickens (i.e., grouse and ptarmigan), raptors, including eagles and their habitat; and
- Loss of income from reduced wildlife harvesting opportunities.

Panel findings in respect of potential impacts to hunting and trapping:

The Panel concluded that the proposed Project would likely cause a significant effect on hunting and non-tenured trapping for the First Nations represented by T8TA and Sauleau First Nations, and these effects cannot be mitigated.

In its analysis of the potential for the proposed Project to affect hunting and trapping opportunities and practices of Aboriginal groups, the Panel made the following statements relevant to the impact of the proposed Project on asserted Aboriginal rights or treaty rights to hunt and trap:

- the assessment of effects on hunting and non-tenured trapping needs to take into account the effects on preferred harvested species, as well as the uniqueness and the value of the area potentially affected;
- hunting and trapping for traditional purposes is linked to specific sites and that intergenerational knowledge about practices would be lost if the proposed Project proceeds;
- First Nations including those represented by T8TA and Sauleau First Nations demonstrated high use of the LAA for hunting and non-tenured trapping and the

Panel considers the current use for these groups as severely undermined if the proposed Project were to proceed;

- the Panel noted the concerns of Aboriginal groups about increased competition due to additional access or fewer hunting sites, and concluded that more information is needed to assess the effects of the proposed Project on harvest of wildlife resulting from an influx of workers from outside the Peace region and the opening of the territory by the construction of new access roads and the improvement of the road system;
- hunting success may be affected because the proposed Project would reduce moose populations in the LAA and current populations would be displaced;
- The ability to traditionally hunt or trap could be adversely affected by hunters having to travel farther into unfamiliar or already-alienated territory as a result of prey displacement; and
- Hunting success of other wildlife resources is likely to be impacted by the proposed Project in the same way.

In Sections 6.2.3 and 6.4.3 of the Panel Report the Panel drew the following conclusions related to caribou and other ungulates relevant to the current discussion on hunting and trapping:

- The Panel concluded that the effects on caribou as a result of the proposed Project would not be significant; and
- The Panel concluded that the proposed Project would not likely cause significant adverse effects on moose, elk, white-tailed deer and mule deer.

Summary of Potential Conditions

The following potential conditions are being contemplated to address potential effects of the proposed Project on wildlife and wildlife habitat and would, in turn, contribute to addressing impacts of the proposed Project on Aboriginal group hunting and trapping, if the proposed Project is authorized by Governments to proceed:

- compensate for the residual effects of the proposed Project to wetland functions supporting migratory birds, species at risk, and the current use of lands and resources by Aboriginal groups through the development of a wetland compensation plan;
- protect wildlife species and sensitive habitats from adverse proposed Project effects during construction by implementing mitigation measures detailed in a Wildlife Management Plan;
- minimize disturbance to wildlife by scheduling construction activities in accordance with guidance indicated in the Peace River Selected Terrestrial and Aquatic Wildlife Least Risk Window;
- Implement monitoring measures detailed in a Wildlife Monitoring and Follow-up Program to determine whether measures implemented to manage harmful proposed Project effects on wildlife resources are effective;

- Conduct a study of suitable areas on Proponent-owned lands, or Crown lands, in the vicinity of the proposed Project with a view to maintaining suitable Proponent-owned lands for ungulate winter range if directed by the province; and
- consider community-based monitoring programs to monitor the productivity of identified wildlife or fish species where the effects and effectiveness of mitigation measures on hunting, fishing and trapping opportunities are uncertain, provided that the program proposals delineate sufficient indicators and outcomes to assess effectiveness.

4.2.5 Impacts to Fishing

Aboriginal groups expressed concerns reflecting the future availability of preferred fish species, the loss of spatially important intergenerational components for traditional knowledge, concerns with impeded or loss of access to fishing sites and impeded or loss of means of fishing.

The following Aboriginal groups identified fishing sites in the LAA, mainly in the Peace River and at the confluence of its tributaries: Sauleau First Nation, T8TA (Prophet River First Nation, Doig River First Nation, Halfway First Nation and West Moberly First Nation), Blueberry River First Nations, Kelly Lake Métis Settlement Society, Dene Tha' First Nation, McLeod Lake Indian Band, Horse Lake First Nation, Duncan's First Nation and Métis Nation of BC.

Specific concerns and potential effects on Aboriginal Interests as expressed by Aboriginal groups associated with fishing opportunities and practices include the following:

- Aboriginal Groups were concerned about the loss of species, including bull trout, Arctic grayling and mountain whitefish that had formed part of their preferred species for harvesting. Some Aboriginal groups objected to the predicted dominance of kokanee in the proposed Project reservoir as being less preferable than the current fishery;
- T8TA disagreed with the Proponent's approach of looking at harvestable species in general versus looking at the preferred species. They also had concerns with the risk of mitigation measures, such as the proposed trap and haul mitigation for bull trout. Sauleau First Nations also disagreed with the concept that total biomass may serve as a reliable measure of adverse effects because the Proponent did not take into account the preferred species of Aboriginal groups;
- Most Aboriginal groups said fishing by their members relied on specific places, species and means and that these places were critical for both the unique cultural and subsistence activity of their members. Many indicated that knowledge about fishing sites and fishing stories had been transferred for generations. For example, T8TA said preferred species are harvested in specific culturally known locations that are unique to the Peace River valley and qualified the Peace River as its "grocery store". It said the valley was a preferred area for harvesting generally for several reasons, including accessibility, deep cultural attachment, proximity to areas where members live, abundant wildlife and natural resources, and unique cultural and ecological value;

- The Halfway River First Nations said the Peace River was in many ways their last refuge, given the high level of development in the region and the McLeod Lake Indian Band said their traditional territory along the Peace River is highly valued because of the great animal and plant diversity, the abundance of natural resources and the context of past development within its traditional territory that replaced several fishing rivers with reservoirs;
- Saulteau First Nations said that debris that would be released by the proposed Project into the waterways used by the community members would impede access to fishing locations by boat whereas T8TA said that boats were rarely used and the preferred means of fishing was by rod and reel and net from the shore. They were concerned that these shore access points would be modified by the proposed Project; and
- Many members of Aboriginal groups feared changes in the quality of fish harvested in the reservoir because of MeHg contamination and that they would refrain from eating large amounts of fish and larger fish because of this issue.

Panel findings in relation to impacts to fishing

The Panel concluded that the proposed Project is likely to cause a significant adverse effect on fishing opportunities and practices for the First Nations represented by the T8TA, Saulteau First Nations and Blueberry River First Nations. The Panel also concluded that these effects cannot be mitigated.

In its analysis of the potential for the proposed Project to affect fishing opportunities and practices, the Panel made the following statements:

- The Proponent demonstrated that the proposed Project would likely have a significant effect on fish due to the loss of indigenous species. The Proponent's finding of significant effect on fish should have been translated into the assessment of fishing opportunities and practices for Aboriginal peoples;
- The Panel agrees with the Aboriginal groups that the changes in harvestable species and reduced biomass density would impede fishing for traditional purposes by Aboriginal groups;
- The Panel believes that Aboriginal groups demonstrated their strong attachment to the Peace River valley and that the area is high value for the sustenance of Aboriginal lifestyle;
- The Panel agrees with the Aboriginal groups that an alternate comparable natural setting cannot be found nearby;
- The Panel considers the current use for fishing for the following groups to be severely undermined if the Project were to proceed: Doig River First Nation, Halfway River First Nation, Prophet River First Nation, West Moberly First Nation, Saulteau First Nations and Blueberry River First Nations;
- Fishing locations and fishing practices would be impeded in some cases only during construction until the reservoir was stabilized but lost in other instances;
- Even if the Aboriginal groups would still be able to fish in the reservoir if the proposed Project proceeds, the Panel recognizes that knowledge of fishing sites, preferred species and cultural attachment to specific sites would be lost;

- The Panel believes that Aboriginal groups not being able to fish for two or three decades until MeHg levels return to current levels represents a significant temporal gap; and
- The Panel concluded that the capacity of Aboriginal groups to transfer their knowledge and culture to future generations would also be impeded.

The Panel concluded the following regarding the potential impacts of the proposed Project on fish:

- the proposed Project would cause significant adverse effects on fish and fish habitat; and
- the construction of the proposed Project would result in significant adverse cumulative effects to fish.

Summary of Potential Conditions

The following potential conditions are being contemplated to address potential effects of the proposed Project on fish, fish habitat and other valued components and would, in turn, contribute to addressing impacts of the Project on Aboriginal group fishing, if the proposed Project is authorized by Governments to proceed:

- manage harmful proposed Project effects on fish and fish habitats during the construction and operation phases by implementing mitigation measures detailed in a Fisheries and Aquatic Habitat Management Plan;
- for those mitigation measures that require design and analysis elements prior to implementation, the Proponent shall prepare and implement a fish and fish habitat management plan in advance of the proposed Project to address proposed Project specific effects on fish and fish habitat;
- develop a detailed offsetting plan, in consultation with Fisheries and Oceans Canada, to offset residual serious harm to fish and monitor the effectiveness of offsets;
- maintain at least the baseline level of genetic exchange between fish populations upstream and downstream of the dam by implementing mitigation measures, as detailed in a Fish Passage Management Plan;
- develop a Fisheries and Aquatic Habitat Monitoring and Follow-up Program to assess the effectiveness of measures to mitigate proposed Project effects on healthy fish populations in the Peace River and tributaries, and, as required, to assess the need to adjust those measures to adequately mitigate the proposed Project's effects;
- sample fish tissues and based on the results of Aboriginal dietary surveys, make available information on increased exposure to MeHg from fish relative to the Provisional Tolerable Daily Intake levels as defined by Health Canada;
- in collaboration with the Northern Health Authority, First Nations Health Authority²⁸ and Aboriginal groups, develop a MeHg monitoring plan that includes

²⁸ If requested by Northern Health Authority or the First Nations Health Authority, Health Canada would be available to review a future MeHg monitoring program and any resulting communications to Aboriginal communities.

involving local Aboriginal communities and the First Nations Health Authority in its design, implementation and management and in the interpretation and communication of results; and

- consider community-based monitoring programs to monitor the productivity of identified wildlife or fish species where the effects and effectiveness of mitigation measures on hunting, fishing and trapping opportunities are uncertain, provided that the program proposals delineate sufficient indicators and outcomes to assess effectiveness.

4.2.6 Impacts to Other Traditional Uses of the Land

In addition to hunting, trapping and fishing practices, Aboriginal groups expressed concerns about potential Project effects to other traditional uses of the land, including the cultural expression of rights incidental to those protected under Treaty 8.

The following Aboriginal groups identified other traditional uses of the land in the LAA, mainly in the Peace River and at the confluence of its tributaries: Saulneau First Nation, T8TA (Prophet River First Nation, Doig River First Nation, Halfway First Nation and West Moberly First Nation), Blueberry River First Nations, Kelly Lake Métis Settlement Society, Dene Tha' First Nation, McLeod Lake Indian Band, Horse Lake First Nation, Duncan's First Nation and Métis Nation of BC.

Specific concerns and potential effects to Aboriginal Interests as expressed by Aboriginal groups associated with other traditional uses of the land include the following:

- Several members of the Halfway River First Nation told the Panel the land at the confluence of the Halfway and Cameron Rivers is the only place where they can keep their cattle and horses in the summer and these areas were used for camping, harvesting berry and medicinal plants, as well as hunting and fishing;
- Elder Margaret Dominic from Doig River First Nation told the Panel they have to go down to the Peace River to pick berries and huckleberries because they cannot find them around their communities;
- Saulneau First Nations said loss due to inundation would lead to the permanent loss of some vegetation communities and would impact access to plant harvesting sites;
- Elders from Saulneau First Nations said there is an abundance of rose hips, but not rat root and mint tea and that some medicinal plants, specifically a type of cactus and buffalo sage, would be lost forever if the proposed Project proceeds. They also told the Panel that healers believe that transplanting medicinal plants causes them to lose their potency;
- Saulneau First Nations Elders also explained that they pray using eagle feathers. They respect eagles as messengers, and their feathers are of great ceremonial importance. They raised concerns with the proposed Project's potential impacts to shorelines and nesting sites for species such as eagles and swans;
- McLeod Lake Indian Band said the Project would have an impact on traditionally utilized sites, navigation routes, landmarks and seasonal residences and reported

that several plants and berry harvesting sites would be eliminated or reduced by the Project;

- MNBC indicated having cultural and overnight sites as well as harvesting sites along the Peace River within the LAA and RAA as defined in the EIS for current uses of lands and resources. MNBC members also identified drinking water sources along the Halfway River and within the proposed dam construction area;
- Kelly Lake Métis Settlement Society members said that certain springs used as a source of drinking water are also sacred;
- Doig River First Nations told the Panel that access to spring water near Bear Flat is an important aspect of the exercise of rights under Treaty 8;
- T8TA noted the importance of south-facing slopes of the Peace River that support multiple species of rare or hard to find medicinal plants and that these unique ecosystems are the only places within the traditional lands of at least some of the Treaty 8 First Nations where these plants can be harvested.
- T8TA stated that culture is intricately connected with the exercise of treaty rights and that the Treaty promised that First Nations could continue their "mode and way of life" after signing the treaty, as if they had never entered into it. Effects of the proposed Project may involve the loss of cultural identity and destruction of traditional way of life. Further, there is a concern that loss of visual cultural referents in the form of the visual landscape used to communicate history, knowledge and elements of cultural identity may not be passed on to succeeding generations;
- Concerns were expressed by various groups that construction and operation of the proposed Project will damage or destroy archaeological, unidentified or non-archaeological (e.g. spiritual) heritage sites; Concerns were expressed by several First Nations who practice traditional use activities within the LAA, that the proposed Project effects could lead to intergenerational loss including youth empowerment and connection with the land and elders;
- T8TA reported that, based on a survey of its members, 796 sites of value were identified in the LAA; out of those, 368 sites or 46 percent would be within the inundation zones or proposed Project footprint and 42 sites of cultural or spiritual values would be inundated, including spiritual places, burials, medicine collection areas, teaching areas, ceremonial and prayer offering places, and locations associated with place names and oral histories. In addition, 77 habitation sites, temporary or permanent, used for hunting and gathering, including places that have been used for generations and are still being used, would also be inundated;
- T8TA also identified 30 sites as having transportation values, such as portions of trails, horse crossings, raft or boat crossings, and canoe and boat routes along the Peace River and adjacent tributaries;
- Duncan's First Nation raised concerns about the potential for the proposed Project, if it is constructed, to lead to changes to navigation on the Peace River downstream of the dam, impeding access to hunting, trapping or fishing sites due to low flows in the spring and fall; and
- Members of the Athabasca Chipewyan First Nation, Mikisew Cree First Nation, Fort Chipewyan Métis Local 125, Little Red River Cree Nation and Deninu K'ue First

Nations expressed concerns with potential changes from the proposed Project to the Peace-Athabasca Delta. As described by Fred (Jumbo) Fraser of the Fort Chipewyan Métis Local 125, “With existing water levels in our Delta at historically low levels, we have grave concerns regarding future access and navigability, additional impacts to water quantity and quality and to the fish, wildlife and birds that we harvest, and to the ability of future generations of Métis to sustain themselves and practice traditional activities.”²⁹ Issues of particular concern to Athabasca Chipewyan and Mikisew Cree First Nations included incremental impacts of flow changes in the Peace River to subsistence, habitation, transportation and cultural/spiritual values, and especially areas near Rocky Point and Peace Point on the Peace River.³⁰

Panel Findings in respect of potential impacts to other traditional uses of the land

The Panel concluded that the Project would likely cause a significant adverse effect on other traditional uses of the land for the First Nations represented by T8TA, Saulteau First Nations and Blueberry River First Nations, and that some of these effects cannot be mitigated.

In its analysis of the potential of the proposed Project to affect other traditional uses of the land, the Panel made the following statements:

- The Panel understands that for habitation sites that would likely be affected by the proposed Project, the Proponent would discuss appropriate mitigation with the owners and move affected habitations if possible;
- The Panel understands that loss of habitation sites may include compensation arrived at through a process of negotiation between parties similar to how trappers and outfitters are compensated. The Panel considers that the recommendation made regarding trapping and guide outfitting compensation in section 9.1.4.3 of their report (repeated below) would be appropriate in this instance;
- For berries, herbs and medicinal plants, the Panel notes that there was low confidence in the mitigation measures and their effectiveness and therefore the Panel could not conclude on effects of the proposed Project on plants of interest to Aboriginal groups, however it acknowledged that several sites identified by Aboriginal groups for the harvesting of plants would be lost, such as sites along the Moberly River, islands adjacent to the Halfway River confluence which were noted to contain medicinal plants, and some identified slopes possibly within the stability or erosion impact lines. The Panel concluded that there is no guarantee that the preferred or needed species sought by Aboriginal groups would be present or abundant in other sites in the LAA and that sites would be further afield and more costly to access;

²⁹ Letter from Fort Chipewyan Métis to Canadian Environmental Assessment Agency, May 28, 2012, pp.1-2. (CEAR# 276 available at: <http://www.ceaa-acee.gc.ca/050/documents/57054/57054E.pdf>)

³⁰ Craig Candler and the Firelight Group, September 20, 2013, “Athabasca Chipewyan First Nation and Mikisew Cree First Nation Peace River Knowledge and Use Reports for BC Hydro’s Proposed Site C Project” (September 23, 2013 letter to Panel regarding sufficiency of the Proponent’s EIS, available at CEAR #1611).

- The Panel also noted that the proposed Project would adversely affect several traditional trails and navigation routes, nesting areas of eagles, and spring water sources and that these sources are important to Aboriginal people when using the land for traditional purposes;
- The Panel concluded that mitigation is not possible in all cases because inundation as a result of the proposed Project would permanently remove these resources; and
- In regard to the effect of the proposed Project on visual resources, the Panel concluded that there would be a significant adverse effect.

In Addition the Panel made other conclusions in other sections of its report that may be relevant to this discussion:

- The Panel concluded that there would be significant adverse effects of the proposed Project on cultural heritage resources for both Aboriginal and non-Aboriginal people;
- In regard to changes to the ice regime, the Panel agreed with the Proponent's study results that indicate the downstream extent of Site C's influence on the ice regime would be approximately 550 km downstream of the dam site at Carcajou;
- Regarding water and groundwater quality pertaining to human health, the Panel concluded the proposed Project would result in localized adverse effects on groundwater that would not be significant, and that there may be a risk of acid generation and metal leaching from construction activities and reservoir creation, but that if Panel recommendation 3 is implemented, the effects would not be significant;
- The Panel concluded that the proposed Project would have adverse effects on navigation use of the Peace River but that they would not be significant because the river would still be navigable above and below the dam site. The Panel further concluded that the loss would be significant for the small number of people who traverse the dam site;
- In regard to concerns about seasonal low flows downstream of the proposed dam site, the Panel concluded that the proposed Project would make small changes to the hydrology of the Peace River, and such changes would be attenuated by the time the flows reach Peace River, Alberta; and
- The Panel concluded there would be no effects from the proposed Project on any aspect of the environment in the Peace Athabasca Delta.

Summary of Potential Conditions

The following potential conditions are being contemplated to address potential effects of the Project on Aboriginal group uses of the land for other traditional purposes, if the proposed Project is authorized by Governments to proceed:

- ensure that all phases of the proposed Project are undertaken in a manner that manages impacts to current use of lands and resources for traditional purposes and the physical and cultural heritage by engaging with affected Aboriginal groups to identify and develop mitigation measures for specific effects of the proposed

Project, where feasible, and to identify and implement initiatives that could address the loss of culturally important places and valued landscapes where traditional activities are being practiced;

- confirm the baseline of the current use of lands and resources for traditional purposes for each of the affected Aboriginal groups including fishing, hunting, trapping, gathering, cultural and ceremonial activities and land and resources supporting these current use activities including culturally important places and valued landscapes, plants of importance to Aboriginal groups, fish and wildlife;
- undertake an assessment of effects on traditional plants currently used by Aboriginal groups in collaboration with Aboriginal groups and the Ministry of Forests, Lands, Natural Resource Operations to inform compensation measures to accommodate adverse effects of the proposed Project on plants traditionally used by Aboriginal groups;
- make all reasonable efforts in advance of construction to consult with Aboriginal groups and the Ministry of Forests, Lands, Natural Resource Operations to identify the locations of structures used in Aboriginal traditional and current harvesting (e.g. cabins associated with tenured trap lines), including permanent, untenured structures, that will be inundated and establish measures to compensate for loss of such structures; and
- consider community-based monitoring programs to monitor the productivity of identified wildlife or fish species where the effects and effectiveness of mitigation measures on hunting, fishing and trapping opportunities are uncertain, provided that the program proposals delineate sufficient indicators and outcomes to assess effectiveness.

4.2.7 Socio-economic Concerns

Concerns of Aboriginal groups with respect social and economic issues include:

- Concern with the increased in-migration into the Peace River Regional District, especially around Fort St. John, of proposed Project workers and job seekers, overwhelmingly male, could lead to increased sexually transmitted infections, especially among vulnerable sub-populations (women, especially young Aboriginal women in urban environments);
- Concerns related to noise and vibration, including loss of quiet enjoyment due to increased noise;
- Loss of income from reduced fish and wildlife harvesting opportunities and guiding activities;
- Loss of skilled workforce to regional centers for employment opportunities;
- Increased pressure on social resources available to Aboriginal communities due to an influx of construction workers;
- Impacts to families due to out migration from communities;
- Need for financial support for on-reserve housing because of on-reserve housing conditions;
- Reduced cultural sensitivity of a construction work force towards Aboriginal communities;

- Increased cost of living and housing in Fort St. John and on reserves;
- Effects of overcrowding on homelessness and social and health services in Fort St. John;
- Impacts to emergency services in Doig River and Halfway River due to influx of workers and increased flow of money;
- Increased traffic and change in traffic patterns and attendant length of commute and risk of collisions; and
- Noise and disruption caused by noise.

In Doig River First Nation, Halfway River First Nation and West Moberly First Nations traditional lands:

- capacity of Aboriginal businesses to compete with non-Aboriginal businesses in accessing proposed Project contracting opportunities;
- difficulties in developing skills and sustaining lifestyles in a “boom and bust” cycle that the proposed Project creates;
- further transfer of wealth away from reserves as members go to live and work in Fort St. John; and
- due to the Site C Flood Reserve being in place since 1957, groups expressed concern with uncertainties associated with future development in the Peace Valley.

Panel Conclusions and Recommendations related to socio-economic concerns

Considering the mitigation commitments presented by the Proponent to address housing issues related to the proposed Project, the Panel was satisfied that there would not be significant adverse effects on housing solely as a result of the proposed Project.

The Panel concluded that the general stress on community infrastructure and services caused by the Project could be managed with sufficient resources. The Panel was confident that mitigation in the form of additional resources would be provided by the Proponent and appropriately managed by the communities (including municipalities) such that effects would not be significant.

Panel recommendations 19 and 27 in Appendix B relate to these issues.

The Panel concluded that the proposed Project would further tighten a labour market where the unemployment rate is only 3.6 percent, and that it is in everyone’s interest to ensure that local Aboriginal workers are as well-equipped as possible to compete in that market.

4.2.8 Assessment Methodology, Process and Consultation

Need for, Purpose of, the proposed Project

Throughout the EA process, concerns were raised by Aboriginal groups regarding hydroelectric development that pursues the maximization of the energy-producing potential of the Peace River, at the expense of reconciling a public need for reliable energy with Aboriginal Interests. T8TA asserted that the proposed Project is not needed because

other supply alternatives exist that could provide firm power on a scalable basis for competitive cost with fewer environmental and social impacts. Furthermore, T8TA expressed views that the role of demand-side management (DSM) in reducing the future need for the proposed Project had not been fully explored.

Panel Conclusions and Recommendations in relation to proposed Project Purpose

The Panel rejected, as a governing purpose, for the analysis of alternative means of carrying out the proposed Project, the maximization of the hydraulic potential of the Peace River. The Panel also observed that the Proponent evaluated the need for additional energy and capacity based on their 2012 Load Forecast prepared in accordance with the BC Utilities Commission methodology and provincial overview, and their existing resources. Existing resources includes the Proponent's DSM target and the potential contribution available from Independent Power Producers. Load growth is forecast to be 1% per annum for the next 20 years net of rate increases and the DSM target. The 2012 Load Forecast, together with an analysis of existing resources, demonstrated that there is a need for energy in Fiscal 2027 and capacity in fiscal 2019. The Panel concluded that the Proponent's forecasting techniques are sound, but uncertainties necessarily proliferate in long-term forecasts. The Panel could not conclude on the likely accuracy of proposed Project cost estimates because it did not have the information, time, or resources. This affects all further calculations of unit costs, revenue requirements, and rates

In terms of the Panel's overall analysis on the need for the proposed Project, the Panel concluded that BC will need new energy and new capacity at some point. The Panel concluded that the proposed Project would be the least expensive of the alternatives, and its cost advantages would increase with the passing decades as inflation makes alternatives more costly. However, the Panel concluded that the Proponent has not fully demonstrated the need for the proposed Project on the timetable set forth .and that under the Low Liquefied Natural Gas Case, potentially available resources such as a more aggressive DSM target could provide adequate energy and capacity until at least 2028. The Panel Report did however acknowledge that the "load resource balance was based on the 2012 load forecast with no LNG load: low LNG would bring the balance point for energy back to 2024 and for capacity to 2022."

Panel recommendations 46, 47, 49 and 50 in Appendix B relate to this key Aboriginal group concern.

Alternatives to the proposed Project

Many Aboriginal groups disagreed with the sufficiency of assessment of alternatives to the proposed Project and lack of consideration of other options evaluated and considered by the Proponent to establish that the proposed Project is the right solution for energy production. Concerns were voiced that British Columbia's *Clean Energy Act* limits the consideration or development of feasible alternatives to the proposed Project. Concerns were also expressed that the Proponent's Integrated Resource Plan excuses it from pursuing options other than the proposed Project.

Experts commissioned by T8TA provided evidence to the Panel concerning alternatives to the proposed Project such as capacity focussed DSM and a different hydroelectric development on the Peace River that would avoid significant adverse environmental effects, and would be available for a cost savings of at least several hundred million dollars over the 10 year period analyzed by T8TA's expert. Aboriginal groups also stated that in the Proponent's consideration of alternatives to the Project, reconciliation of Aboriginal rights and interests should have been factored in from the start of proposed Project planning, as a form of accommodation.

Panel Conclusions and Recommendation in relation to Alternatives to the proposed Project

The Panel concluded that the proposed Project must rest on its main claims – that it would supply electricity that BC customers need and would pay for, at a lower combination of cash and external costs than any alternative – and not on regional economic benefits. The Panel also concluded that a number of supply alternatives are competitive with the proposed Project on a standard financial analysis, although in the long term, the proposed Project would produce less expensive power than any alternative.

Alternative Means of Carrying Out the proposed Project

Various Aboriginal groups supported the Proponent's consideration of different design options for the proposed Project, including low weirs and options that do not impound water. However, there was concern as to why The Proponent did not consider alternatives that did not develop all the head between the proposed Project and Peace Canyon. This included the potential for lower head facilities at the proposed Project location or further upstream of Wilder Creek. An issue which was broadly discussed during the public hearing focused on the basis for needing to develop the entire head between Peace Canyon and the proposed Project. Concerns were also voiced that the Proponent completed the analysis of alternatives without adequate consideration of Aboriginal groups' values and land use including asserted or established hunting, fishing, trapping and gathering rights, and that the Panel never had the opportunity to review alternatives to the proposed Project that did not maximize the hydroelectric potential of the proposed Project flood reserve.

Location of 500 kV transmission line

T8TA expressed concern with expanding the 138 kV transmission line on the south side of the Peace River, which runs through the Peace Moberly Tract, an area of importance to Aboriginal groups. Saulneau First Nations and T8TA suggested a preference to pursue an alternate route for the transmission line, in particular a 500 kV corridor on the north side of the Peace River. Saulneau First Nations also suggested that a submarine cable replace the transmission line along the reservoir.

Panel and Proponent Response

The Panel noted that the Proponent considered the placement of a transmission line on the north side of the Peace River and dismissed it because of increased cost, acquisition challenges of establishing a new right of way through 135 parcels of land and the increase in environmental effects with a new right of way. The Proponent also noted that it looked at an alternative of using submarine cables along the reservoir bottom and dismissed it

because of the increased cost and difficulties in finding a suitable area to lay the cable on the bottom of the reservoir.

Consideration of a low head dam

T8TA and Smith's Landing First Nation suggested an alternative that did not develop all the head between the proposed Project and Peace Canyon, at a location upstream of Farrell Creek.

Panel and Proponent Response

The Panel noted that the Proponent stated its need to cost effectively maximize the development of the hydroelectric potential of the proposed Project Flood Reserve. The Proponent compared alternatives, including a single dam located at Wilder Creek upstream of the proposed Project location, using an evaluation that considered functionality, environmental effects and economic feasibility comparing the alternatives against the proposed Project base case. The evaluation also took into account potential effects of each alternative on Aboriginal group resources known to be utilized. The evaluation concluded that the proposed Project was the Proponent's preferred site for the dam.

Panel Conclusion

The Panel concluded that the Proponent's assessment of alternative means of carrying out the proposed Project was appropriate. However, the Panel rejected, as a governing purpose, the maximization of the hydraulic potential of the Peace River.

Disagreement over EA Methodology during the Pre-Panel Stage Review

During the Pre-Panel Stage, many Aboriginal groups voiced concern over the selection of VCs, the scoping of the factors to be assessed, and the Proponent's selection of spatial and temporal boundaries for the assessment. These methodological matters were seen by many groups to have not been adequately addressed by the Proponent prior to appointment of the Panel. The focus of concern was that spatial and temporal boundary selection may limit the ability of the assessment process to adequately consider the effects of the proposed Project in the context of past and reasonably foreseeable future projects and activities.

Aboriginal groups also voiced concern that baseline information on cultural, socio-economic and use of lands and resources for traditional purposes was not sufficiently characterized historically to account for past impacts of development. In the view of Aboriginal groups this reduced the reliability of the assessment, including potential impacts to Aboriginal Interests.

Panel Conclusion and Recommendation

The Panel agreed with Aboriginal groups who said that the Proponent's selection of current baseline did not provide substantive understanding of cumulative effects from other projects and activities within the RAA. While the Panel disagreed with the Proponent's methodology, it concluded that effects of the proposed Project would only directly affect users of lands and resources within the LAA, and that no cumulative effects of the proposed Project would result to users of lands and resources who do not use the LAA. Because of the

importance of cumulative effects assessment, the Panel concluded that there is a need to improve and standardize cumulative effects assessment methods.

Panel recommendation 44 in Appendix B relates to this Aboriginal group concern.

Cumulative Effects

Concerns were raised by many Aboriginal groups regarding the Project's potential contribution to the cumulative impacts of development in the region. Aboriginal groups and in particular T8TA members participated in a mapping exercise to identify the decreasing amount of land available for traditional uses in the Peace Valley Regional District as a result of the buildup of oil and gas development, mining, pipelines, roads, seismic lines, hydroelectric and wind development, logging and coal bed methane. A more detailed summary of these concerns is provided in section 2.5.³¹

Panel Observations, Conclusions and Recommendations

With respect to cumulative effects on the current use of lands and resources for traditional purposes and the current baseline level of impacts to Aboriginal Interests in the proposed Project area, the Panel observed in its report:

...that it is reasonable to assume that the current use of lands and resources for traditional purposes has been and is being impacted by past and existing projects, including the two existing dams, and will be by foreseeable future developments. The Panel ... concluded that the Project by itself is likely to cause a significant effect on current use of lands and resources for traditional purposes. Considering the extensive development in the region, the significant effects of the Project combined with the already significant cumulative effects of past and future projects can only be significant.³²

Effects on vegetation and ecological communities, namely the loss of riparian habitats due to the existing dams, are also undeniable. The Panel agrees that the cumulative effects on vegetation and ecological communities are likely already significant and are going to become more so with the planned development in the region. The maps provided by participants demonstrating the level of disturbance caused by gas wells, in particular, are striking. Their surface areas, attendant water requirements for fracking, associated service roads, gathering pipelines, straddle plants, and transmission lines may be constructed even before the in-service date of the Project. The Panel believes that the case of "already significantly impacted" is understated in the region³³.

The Panel concluded that, whether the proposed Project proceeds or not, there is a need for a government-led regional EA including a baseline study and the establishment of environmental thresholds for use in evaluating the effects of multiple, projects in a rapidly developing region.

³¹ For more regarding cumulative effects from an Aboriginal perspective, see Brody 1988:237-238 in "I Want to Eat Caribou Before I Die"

³² Report of the Joint Review Panel Site C Clean Energy Project (May 1, 2014) page 120

³³ *Ibid*, p.71

Panel recommendation 43 in Appendix B relates to this Aboriginal group concern.

Crown Response

The Crown is aware of the view of many Aboriginal groups that effects of development and currently operating hydro projects on the Peace River have not been addressed through compensation or other means, and their view that agreements in respect of mitigating these effects should be reached prior to a decision on the proposed Project. Further, Aboriginal groups have expressed concerns that the intensity of development within the proposed Project area (from a range of industrial activities) is causing significant impacts on wildlife populations and the habitats on which these animals depend, leading to an observed decrease in availability of wildlife, and lands for the meaningful exercise of hunting, trapping and fishing rights in the Peace River Valley.

The Government of BC has approved a cumulative effects framework for the province. Phase one of its implementation is starting this year with assessment of a small sub-set of natural resource values across northern BC and in the Thompson Okanagan and Cariboo regions.

In response to Panel Recommendation 20, the Province has and continues to be prepared to consider approaches to addressing individual Treaty 8 First Nation concerns respecting the Area of Critical Community Interest and the Peace Moberly Tract, through negotiation of ongoing government to government agreements outside of and separate from the proposed Project itself.

Regarding cumulative effects guidance as referenced in Panel Recommendation 44, the Agency is working toward updating its publicly available information in the near term.

Land Transfers

The issue of potential land transfers as potential accommodation for the effects of the proposed Project has also been raised as a concern throughout the EA, in the context that any transfer of lands pursuant to mitigation, offsetting or compensation agreements would further reduce the lands available for Aboriginal groups to exercise their hunting, trapping and fishing rights in the event that the proposed Project proceeds, and that consideration must also be given to ongoing Treaty Land Entitlement talks between the Crown and First Nations involving potential land transfers.³⁴

Crown Response

The Governments recognize that careful consideration, including additional consultation, would be needed for mitigation measures that involve the transfer and use of lands to offset adverse effects of the proposed Project, wherever these contemplated land transfers have the potential to adversely affect Aboriginal uses of those lands.

³⁴ T8TA comments on BC Hydro's EIS, April 12, 2013, and letter from T8TA to the Panel concerning the Sufficiency of the Amended EIS and Evidentiary Update - Advice and Supplemental Information Requests, September 23, 2013, p. G-48 (available at CEAR #1607).

4.3 Key Issues Raised by Aboriginal Groups during Post-Panel Stage Consultation

Through written comments received during Post-Panel Stage consultation activities, many Treaty 8 First Nations exercising rights in the area of the proposed reservoir and dam site restated their outstanding concerns, noting that even with proposed Crown conditions placed on the Proponent, the impacts of the proposed Project on their hunting, trapping and fishing rights would be severe. The following Aboriginal groups reaffirmed their fundamental opposition to the proposed Project during the Post Panel Stage: McLeod Lake Indian Band, Blueberry River First Nations, Sauleau First Nations, Doig River First Nation, Halfway River First Nation, Prophet River First Nation, West Moberly First Nations, Beaver First Nation and Metis Nation Alberta – Region 6.

Several Treaty 8 First Nations indicated that offers of compensation would not fully offset the potential impacts of the proposed Project on their exercise of treaty rights if the proposed Project was constructed, and further, that in their view, these impacts could not be justified given the alternatives available and the lack of an urgent need for the electricity that would be generated by the proposed Project. In expressing views regarding justifiability, many groups referenced *R. v. Sparrow*, [1990] 1 S.C.R. 1075. Many Aboriginal groups refused to provide detailed comments on potential conditions proposed by the Governments as they would only be applicable if the proposed Project were to proceed.

Aboriginal groups who do not exercise rights in the vicinity of the proposed Project similarly rearticulated their key concerns, many of which focused on aspects of the proposed Project that in their view, did not receive adequate assessment including in particular, downstream effects including cumulative effects.

Timeline constraints and timing of the Post Panel Stage of consultation as well as the capacity for Aboriginal groups to engage in consultation during the summer months were also raised as key concerns by many participants. More time to meet face-to-face with Aboriginal groups and respond to issues raised during the Post-Panel Stage would have been preferred by many participants. For a full presentation of Post-Panel Stage consultation issues and concerns, please see Appendices A1-A29.

5.0 Conclusions

5.1 Adequacy of Consultation

The Agency and EAO consider the consultation with Aboriginal groups during the EA process for the proposed Project, as documented in section 3, to be procedurally adequate to allow for informed decisions regarding potential impacts arising from contemplated Crown decision making to Aboriginal Interests.

Throughout the EA, Aboriginal Interests (asserted or established Aboriginal rights or Treaty 8 rights) and other interests were considered – both in terms of assessing potential impacts from the proposed Project on those rights and in seeking measures to mitigate and accommodate, as appropriate, the potential impacts to those rights and other interests.

Individual Crown-Aboriginal group Consultation Plans were communicated early, adapted and refined to reflect the feedback provided by Aboriginal groups. During the course of the EA process, the consultation process also evolved to:

- incorporate lessons learned and best practices from other consultation processes;
- reflect changes resulting from *CEAA 2012* which came into force on July 6, 2012; and
- keep pace with case law and evolving government policy direction informing the conduct of Crown-Aboriginal consultation processes.

Throughout the EA process, Aboriginal groups were provided with opportunities to describe their views of the nature and scope of potential impacts of the proposed Project on their rights and interests and on mitigation or accommodations measures that could be applied to address those potential impacts. The Governments communicated their understanding and responses to the Aboriginal group concerns that could be addressed, at the time the views were shared.

Direct government-to-government consultation meetings and Working Group communications, meetings and topic-specific workshops were held prior to initiation of the Panel Stage and consultation continued complementary to the public hearing process as appropriate, to encourage groups to bring relevant information forward to the Panel to assist it in fulfilling its mandate. During the Post-Panel Stage, consultation focused on clarifying and seeking to address those impacts and concerns that potentially remained outstanding, taking into account accommodation, including mitigation proposed by the Proponent, recommended by the Panel, or being contemplated by the Governments as potential EA conditions. In total, 24 out of 29 Aboriginal groups participated in the Post-Panel Stage of consultation through provision of written comments on key documents or participation in consultation meetings with Government representatives.

The consultation process undertaken with each Aboriginal group has been commensurate with the depth of consultation, and was responsive to new information. Through the potential EA conditions and regulatory and permitting stage, the Governments recognize

that consultation in respect of the proposed Project, if it proceeds, will need to continue with many Aboriginal groups who exercise rights in areas where adverse effects are likely to occur.

This report summarizes the Governments' understanding and currently available responses to the information and views presented by the Aboriginal groups throughout the EA process. It will be provided to federal and provincial decision makers in support of their respective EA decisions. The Governments' understanding and responses were presented in the first and second drafts of this report which were provided to the Aboriginal groups for review and feedback to ensure that their concerns about potential Project impacts were accurately characterized, as well as through consultation on draft potential conditions, where those conditions were pertinent to the issues raised by Aboriginal groups. The Governments also informed Aboriginal groups that they could provide a separate submission to outline their outstanding concerns, issues or fundamental views in respect of the proposed Project, and that this submission would be provided to the respective provincial and federal decision makers along with this Consultation and Accommodation Report.

Conclusion

Having regard to the overall process of consultation, as part of the EA for the proposed Project, the Agency and EAO conclude that consultation has been carried out in good faith and that the process was appropriate and reasonable in the circumstances.

5.2 Status of Accommodation

The Proponent and the Panel have described how the proposed Project may affect the Aboriginal Interests of Aboriginal groups. To address potential impacts on Aboriginal Interests, various accommodations have been proposed, including proposed Project modifications, Proponent commitments, proposals for federal and provincial conditions to be included as legally binding to any proposed Project approval, Impact Benefit Agreement offers from the Proponent, and offers from the Proponent and the Province regarding lands/land protection measures, financial contributions, and compensation funds as described in section 4 and below.

Weighing Impacts to Aboriginal Interests with Other Interests

The Crown has a duty to weigh impacts on Aboriginal Interests with other society interests, including the potential social, environmental and economic costs and benefits of the proposed Project. In weighing the proposed Project costs and benefits with the impacts on Aboriginal Interests, the following factors regarding the proposed Project are relevant to consider:

- Potential economic contribution of the proposed Project to the region;
- Potential contribution of the proposed Project to the local and regional community and to the Province;
- Economic viability of the proposed Project;
- Resources or values that will no longer be available for future generations; and

- Benefits and costs of the proposed Project to potentially affected Aboriginal communities.

Potential economic contribution of the proposed Project to the region

In Table 13 of the Panel Report, the Panel provided a summary of proposed Project-related benefits to local communities. The proposed Project's estimated capital cost is approximately \$7.9 billion. A preliminary forecast of anticipated annual operating costs for the planning life of the proposed Project is \$59.6 million, including costs of water rentals, Grants-in-Lieu and School Taxes, Operations and Maintenance Costs, and Annualized Sustaining Capital.

During the eight year construction period, the proposed Project would result in a total of \$40 million in tax revenues to local governments and, once in operation, \$2 million in revenue from grants-in-lieu and school taxes.

Construction activities would result in approximately \$176 million in provincial revenues, and approximately \$270 million in tax and other revenue for the federal government. The Province would receive annual water rentals amounting to over \$35 million per year, as well as a regulated return on equity that would be approximately \$220 million in the first year of operations.

A Regional Legacy Benefits Agreement between the Proponent and the Peace River Regional District (PRRD) would provide \$2.4 million annually to the PRRD and its member communities for a period of 70 years, starting when the proposed Project is operational. The annual funding would be indexed to inflation. Under the PRRD's allocation formula for these funds, the City of Fort St. John would receive approximately \$830,000 in year one of operations and a total of approximately \$58 million over 70 years (in real 2013 dollars, excluding inflation). The Proponent has also offered a Community Agreement to the City of Fort St. John that provides benefits to the community valued at approximately \$48 million over the period of construction, and includes a direct financial contribution to the City of \$1 million per year during the eight years of construction. The Proponent stated that it is willing to enter into a Community Agreement with the District of Hudson's Hope to address the specific concerns of the District.

Construction of the proposed Project would create approximately 10,000 person-years of direct employment during the eight year construction period, and approximately 33,000 total jobs through all stages of development and construction. The Panel concluded that there would be excellent opportunities for new and existing jobs and businesses during the construction phase. The proposed Project would provide 25 permanent direct jobs during operations. However, the Panel views "the more general alleviation of regional unemployment as a non-issue in a booming area with exceptionally low unemployment rates". Because of the extensive industrial development already underway and planned in the Peace region, the Panel duly notes that "most of the construction workforce would have to be imported from other parts of BC and Canada". In that context, the Panel determined that the proposed Project would entail a number of local and regional economic benefits, though many of these would be transfers from other parts of the province or country.

Among them would be opportunities for jobs and small businesses of all kinds, including those accruing to Aboriginal people.

In consideration of the portfolio of specific Project-related benefits, as well as those offered by the Proponent in its Regional Legacy Benefits Agreement and Community Agreements, the Panel concluded that “the Project must rest on its main claims - that it would supply electricity that BC customers need and would pay for, at a lower combination of cash and external costs than any alternative - and not on regional economic benefits”.

Potential contribution of the proposed Project to the local and regional community and to the Province

The Proponent concluded that while the proposed Project could cause some significant residual effects, they are justified by (1) the public interest in long-term, reliable electricity to meet growing demand, (2) the employment, economic development, ratepayer, taxpayer, and community benefits that would result, (3) the ability of the proposed Project to meet this need for electricity with lower Greenhouse Gas impact than other resource options, (4) the limited footprint of the proposed Project, given its generation capability, using water already stored in the upstream reservoirs to generate over 35 percent of the energy from the Proponent’s largest facility with only 5 percent of the reservoir area; and (5), the honorable process of engagement with Aboriginal groups and the potential for accommodation of their Interests.

The Panel concluded “that the Proponent has not fully demonstrated the need for the Project on the timetables set forth.” However, the Panel also concluded that “B.C. will need new energy and new capacity at some point. The proposed Project would be the least expensive of the alternatives, and its cost advantages would increase with the passing decades as inflation makes alternatives more costly.” With respect to impacts on future generations, the Panel also noted that the proposed Project “would provide a large and long-term increment of firm energy and capacity at a price that would benefit future generations”.

The Panel’s conclusion regarding the long-term economic benefits to the province came with a caveat for decision-makers:

After considering environmental and social costs, the judgment hinges on time preferences, and on the degree to which present consumers should pre-pay the benefits to future generations. The important debate about intergenerational equity was not raised in the EIS process, although it was raised in BC Hydro’s closing submission to the Panel, but is fundamental to a government decision about Site C.

The Panel notes in its report that “the Project, after an initial burst of expenditure, would lock in low rates for many decades, and would produce fewer greenhouse gas emissions per unit of energy than any source save nuclear”³⁵. As outlined in its closing submission for

³⁵ Report of the Site C Joint Review Panel, p.308

the Public Hearing, the Proponent notes that the proposed Project will support both provincial and federal Greenhouse Gas reduction strategies.

Economic viability of the proposed Project

The Proponent's assessment concluded that the Project is lower cost than all three alternative portfolios of electricity generation options. Because the Proponent has not built a project of the scale of the proposed Project for many years, the Panel felt that there is little corporate experience to draw on in assessing the accuracy of its costing estimates. When asked by the Panel for its recent experience with smaller capital projects, the Proponent noted that its average cost overrun on recent projects of more than \$50 million was 3.3 percent, and for generation projects, was -0.3 percent. The Panel stated that it is encouraged by these results. Moreover, the Panel highlighted that the Proponent has been working on the proposed Project off and on for 35 years, the technology is mature, the financial analysis work has been done to the standards of a Class 3 (-15 percent to +30 percent) estimate of the Association for the Advancement of Cost Engineering, and that the work has been reviewed independently.

Experts commissioned by the T8TA conducted their own analysis of the economic viability of the proposed Project compared to alternatives, and presented their evidence to the Panel, disagreeing with the Proponent's assessment. The First Nations' experts concluded that "the superiority of Site C in relation to the alternatives has not been demonstrated," and that "for every one of the scenarios reviewed, both alternate scenarios displayed present value costs significantly lower than the Site C portfolios proposed by BC Hydro."³⁶

Based on the information it received, the Panel was "not able to conclude on the likely accuracy of proposed Project cost estimates because it did not have the information, time, or resources. This affects all further calculations of unit costs, revenue requirements, and rates."

Resources or values that will no longer be available for future generations

The Panel notes that the Peace River region has been, and is currently undergoing enormous stress from resource development. In this context, the Panel has determined that the proposed Project, "combined with past, present and reasonably foreseeable future projects would result in significant cumulative effects on fish, vegetation and ecological communities, wildlife, current use of lands and resources for traditional purposes by Aboriginal people, and heritage resources. In some cases, these effects are already significant, even without the Project". Based on the Panel's findings in its assessment, the following values will be significantly and adversely affected by the proposed Project: fish and fish habitat, current/traditional uses of Aboriginal people, heritage resources, wildlife habitat, species at risk, rare plants and ecological communities that are unique to the Peace River Valley, agricultural lifestyle and sense of place. Some or all these values may be important to future generations.

³⁶ Report of the Site C Joint Review Panel, p.295

Benefits and costs of the proposed Project to potentially affected Aboriginal communities

As discussed in section 4.2.3, there are a number of economic benefits that have been offered to potentially affected Aboriginal groups, as well as additional financial and other compensation measures offered by the Proponent and BC to those Treaty 8 First Nations who may be more seriously impacted by the proposed Project. Costs of the proposed Project to potentially affected Aboriginal communities have been considered by the Province of BC and the Proponent in designing offers of compensation and other benefits, where appropriate.

Conclusion

The Agency and EAO are of the view that there has been meaningful consultation with the potentially affected Aboriginal groups, to understand the potential impacts of the proposed Project on Aboriginal Interests, and to develop substantive accommodation measures that are intended to reduce, mitigate or offset these impacts.

The EA process has documented that the proposed Project will have both considerable potential benefits and significant adverse impacts. Some of the benefits will accrue to Aboriginal communities. The proposed Project's significant adverse effects will also be experienced by some of those Aboriginal communities.

The Crown's assessment is that without additional mitigation or accommodation beyond what can be accomplished through mitigation measures identified in the EA process, the potential adverse effects of the proposed Project as determined by the Panel, may cause impacts ranging from moderate to serious on the exercise of treaty rights of Prophet River First Nation, McLeod Lake Indian Band, Doig River First Nation, Blueberry River First Nations, Halfway River First Nation, West Moberly First Nations and Sauteau First Nations in the proposed Project activity zone. To address the residual effects of the proposed Project to those Treaty 8 First Nations who the Governments have determined would be more seriously impacted by the proposed Project, financial and other benefits have been offered by the Proponent and BC.

The Crown has also assessed that members of the Duncan's First Nation, Horse Lake First Nation, Dene Tha' First Nation, and Métis Nation BC may experience lower levels of impact on their Aboriginal Interests in the proposed Project activity zone and the area immediately downstream of the proposed Project. The Proponent's commitment to engage the three Alberta-based First Nations in capacity building funding negotiations to support training and cultural programs and to engage the BC-based Metis groups with respect to the implementation of mitigation measures would help to address these impacts.