



October 20th 2017

The Honourable Catherine McKenna
Minister of Environment and Climate Change

Mr. Ron Hallman, President, Canadian Environmental Assessment Agency
Federal Administrator, Section 22 assessment and review procedure

Subject: Comments pertaining to the review of Environmental Assessment Processes per the Government of Canada's Discussion Paper

Dear Minister and dear Sir:

The James Bay Advisory Committee on the Environment (JBACE) is mandated to act as the preferential and official advisory body to responsible governments concerning the formulation of laws and regulations that may affect the environmental and social protection regime set out in Section 22 of the James Bay and Northern Québec Agreement (JBNQA).

In this capacity, and true to its mandate, the JBACE has participated and provided formal comments during the Expert Panel's works regarding the review of the environmental assessment processes in relation to the *Canadian Environmental Assessment Act - 2012* (CEA Act - 2012). Since then, the JBACE has reviewed the *Discussion Paper* published by the Government of Canada in June of this year.

The JBACE thus hereby submits its comments regarding the CEA Act - 2012 in response to the said *Discussion Paper*. We also take this opportunity to confirm our intention to participate in the anticipated parliamentary process for the revision of federal environmental assessment processes, including those that may propose legislative changes to the CEA Act - 2012.

Overall, we hold that the *Discussion Paper* outlines valuable information regarding the federal government's intended courses of action. From a global perspective, we concur with much of its contents and have indeed espoused similar initiatives for some time. Having said this, we note that it is very general. It does not elaborate greatly on specific legislative changes to the CEA Act – 2012 or to its associated *Designated Projects Regulations* that may be entertained in the near future.

As a result of the general nature of the text, our comments and the table attached herewith retain a similarly general character. We intend to provide more specific input once we have the opportunity to participate in the anticipated parliamentary process.

1. We first reiterate that the JBNQA is a formal treaty that recognizes and affirms Aboriginal rights within the meaning of section 35 of the 1982 *Constitution Act*. The environmental and social protection regime set out in Section 22 of the JBNQA provides for, among many other things, protection of the rights and guarantees of the Cree people, Cree involvement in the regime and in its unique environmental and social impact assessment and review procedure for development projects.¹ Thus, as mentioned in our previous interventions on the matter, environmental laws and impact assessment procedures of general application that are to apply in the Eeyou Istchee James Bay Territory must be consistent with the provisions of Section 22 of the JBNQA.
2. We concur with the intention to move forward with the 'one-project, one assessment' approach. However, the JBACE requires more information regarding the intention to allow for "*more comprehensive cooperation with other jurisdictions*" in order to provide further detailed input.

Having said this, we wish to reiterate our recommendation that the Government of Canada – itself a party to the JBNQA – should consult with the Cree and provincial signatory parties to determine how best to facilitate such cooperation. We suggest that the discussions regarding this matter should include the consideration of directing all future federal assessments in the Territory through JBNQA structures. And, as a minimum, we can also reassert our opinion that joint public participation activities should be conducted whenever the Section 22 procedure and that per the CEA Act - 2012 are conducted for the same project.

3. Cree participation and representation in the assessment and review of development projects are the cornerstone of the Section 22 regime given that the Cree enjoy a special status of involvement "*...over and above that provided for in procedures involving the general public*" (Par. 22.2.2c of the JBNQA). We thus strongly encourage the federal government to follow through on its intentions to provide more opportunities for early public and Indigenous engagement and consultation during impact assessments, and to be more responsive to Indigenous rights. We welcome the intention to more-readily integrate Indigenous knowledge in impact assessment processes, and we concur with the federal government's intention to establish a more effective dialogue with Indigenous Peoples based on collaboration and involvement, via partnerships and co-management frameworks.

The JBACE would, however, require more information regarding how these intentions will translate into statutory amendments and/or changes in policy, in order to provide further insight.

¹ The JBACE's [brief](#) to the Expert Panel provides useful additional information on the Section 22 regime.

4. The JBACE endorses the approach of broadening the type of impacts being assessed as opposed to assessing strictly environmental impacts. We emphasize that, for nearly 40 years, the Section 22 regime has ensured that due consideration is given to environmental and social impacts – including the consideration of the Cree economy, Cree wildlife harvesting rights, Cree culture, and Cree health. New federal processes should work in this vein. We suggest that the Section 22 regime may provide valuable reference in this regard.
5. For many years, we have recommended the upstream conduct of regional and sectoral strategic environmental assessments, as well as the consideration of cumulative effects, before the assessment of individual project developments. The intentions outlined in the *Discussion Paper* are positive steps forward in this regard. The JBACE will surely provide additional insights regarding these intentions once details are made available.

However, and although the *Discussion Paper* does not elaborate greatly on exactly how these intentions will be manifest, we can presently assert our opinion that all such initiatives must respect the mandates of existing bodies such as those established by Section 22 of the JBNQA and the guiding principles set out therein. We remain concerned, for example, that a discretionary application of strategic environmental assessment without the implication of experienced institutions like those established by the JBNQA for the Eeyou Istchee James Bay Territory would jeopardize their added value.

As mentioned in our brief to the Expert Panel, the three responsible federal authorities under the CEA Act - 2012 have had little or no implication in assessment in the James Bay Territory. On the other hand, the Section 22 assessment and review bodies are intimately familiar with the Territory, its inhabitants and their concerns. Given that these bodies have also always included Cree representatives, they have a uniquely-honed and long-standing experience in adapting assessments and reviews in a manner that respects the will and intent of the JBNQA, the special status of the Cree, Cree wildlife harvesting rights, as well as the attribution of the Territory's local and regional governments. These bodies' familiarity with the Territory, coupled with their ability to adapt assessment and review activities in light of project specifics and public concerns (for example) are key elements that have built up the Section 22 regime's credibility in the Territory. It is a regime in which the inhabitants of the Territory trust, and in which they actively participate.

As such, in the context of federal regional and strategic assessments, we are concerned that the federal authorities that may conduct them in the Territory are not adequately familiar with the JBNQA, the Territory and its inhabitants. Because these federal authorities will need to seek means of respecting the JBNQA – including the provisions and guiding principles of Section 22 of the JBNQA - it will be important that a mechanism be devised to help them do so. We suggest that this mechanism should also provide guidance on how the said federal authorities may cooperate or seek out the insights of the Section 22

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assessment and review bodies to further assist in the conduct of regional and strategic assessments in a manner that respects the JBNQA.

Note that the attached table provides some of our additional observations, concerns and suggestions in relation to the *Discussion Paper*.

Given the mandate of the JBACE and the experience of its tri-partite membership composed of representatives appointed by the governments of Canada, Québec and the Cree Nation, the Government of Canada has everything to gain from considering the committee's recommendations during the design of policies, laws and regulations that may arise. As such, the JBACE expects to be given the opportunity to provide further detailed comments and recommendations once the anticipated parliamentary process commences and at any other opportunity offered to help define the future federal environmental assessment processes.

Yours truly,

A handwritten signature in blue ink, appearing to read 'M. Saganash', is placed on a light blue rectangular background.

Melissa Saganash
Chairperson

cc: Abel Bosum, Grand Chief, Grand Council of the Crees (Eeyou Istchee)
Isaac Voyageur, Director of Environment and Remedial Works, Cree Nation Government
Geneviève Bélanger, Executive Secretary, Federal Review Panel-South
Vanessa Chalifour, Executive Secretary, Evaluating Committee (COMEV) and Environmental and Social Impact Review Committee (COMEX)
Benjamin Patenaude, Executive Secretary, Kativik Environmental Advisory Committee
Miles Smart, Secretary-Treasurer, Hunting, Fishing and Trapping Coordinating Committee