



June 16, 2020

By email

Jacynthe Ledoux  
Counsel for Mamo Aki  
Olthuis Kleer Townshend LLP

<contact information removed>

**RE: Mamo Aki comments on the Canada–Quebec Cooperation Agreement for the proposed Gazoduq Project**

Dear Ms. Ledoux:

Thank you for the comments from Mamo Aki, sent on June 4, 2020, regarding the Canada–Quebec Cooperation Agreement for the proposed Gazoduq Project.

We recognize that this comment period poses certain difficulties in the current social and health context and considering the emergency measures that have been implemented in many communities. We are open to different options that might facilitate your participation during this coronavirus (COVID-19) pandemic. Among other things, the Impact Assessment Agency of Canada (Agency) has extended the comment period on the Review Panel's Terms of Reference, and the deadline for completing the funding application to July 15, 2020. The planning phase is expected to end on July 18, 2020.

The Agency appreciates receiving your comments on the Cooperation Agreement. The Agreement sets out the ways in which the two levels of government will work together to improve the impact assessment process while respecting each other's respective jurisdictions. The Agency is carefully reviewing all the comments received for the Cooperation Agreement and will determine the most appropriate documents or products for incorporating the suggested changes. The purpose of this letter is to add some context and specify how your comments will be considered. The Agency feels that most of the comments from Mamo Aki would be better dealt with in the Indigenous Engagement and Partnership Plan (IEPP) and the Terms of Reference of the Integrated Review Panel. The Agency strongly encourages comments regarding the Review Panel's Terms of Reference to inform the document's finalization.

Some sections of the Panel's Terms of Reference, such as 3.1(c), 4.7 to 4.12, and 7, are specific examples that address Mamo Aki's comments. The IEPP includes overall objectives and obligations for the Agency and states that "the

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constitutional duty to consult and, where applicable, accommodate Indigenous groups is incumbent on the Government of Quebec and the Government of Canada, represented for this purpose by the Ministère de l'environnement et de la Lutte contre les changements climatiques du Québec (MELCC) and the Agency respectively." More specifically, the IEPP will specify that the Crown will keep Indigenous peoples abreast of the various activities related to the process, including the evolution of the decision-making process and amendments to or termination of the Cooperation Agreement.

The Cooperation Agreement and the Panel's Terms of Reference need to respect the jurisdiction of the Bureau d'audiences publiques sur l'environnement du Québec (BAPE) and the Federal Review Panel. Many of Mamo Aki's suggestions, including the reference to the principles of the *United Nations Declaration on the Rights of Indigenous Peoples*, would be better addressed in the IEPP, which applies to the Crown.

As noted in section 2, the purpose of the Cooperation Agreement is to "*ensure compliance to each Party's jurisdiction, laws and regulations.*" To clarify the distinction in roles, the following section 4 is included in the Panel's Terms of Reference:

*4.12. The Review Panel will not make any conclusions or recommendations as to:*

- a. the validity of Aboriginal or Treaty rights asserted by an Indigenous community or Nation or the strength of such claims;*
- b. the scope of the Crown's duty to consult an Indigenous community or Nation;*
- c. whether the Crown has met its respective duty to consult or accommodate in respect of rights recognized and affirmed by section 35 of the Constitution Act, 1982;*
- d. whether the project would be an infringement of Aboriginal or Treaty rights; and*
- e. any matter of Treaty interpretation (historic or modern).*

The Agency also confirms that the timelines (sections 7.3 and 7.9 of the Cooperation Agreement) are correct and undertakes to prepare one or more diagrams to better lay out the Panel's process once more details are known.

Section 6 of the Cooperation Agreement deals with the Agency and MELCC Agreement Management Committee. From the Agency's past experience, this type of administrative committee is fairly informal, and important issues will be shared with the Indigenous peoples through various other means as described in the IEPP.

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Finally, the Cooperation Agreement aims to include the general public, not just Indigenous peoples. I regret that “public” is being used as a general term to describe all the participants in the process and recognize that this can be interpreted as being too restrictive, but that is not our intention. The Agency is committed to better reflecting this nuance in its future products.

### **Next steps**

The Agency appreciates the opportunity for continued dialogue with Mamo Aki during the current social and health crisis situation, whether by telephone, correspondence or videoconferencing. Out of concern for transparency, this letter will be published on the Canadian Impact Assessment Registry.

I trust that this letter reaffirms for you the importance of your comments and will facilitate discussions for next steps, including appropriate participation funding and this period of comments on the Review Panel’s Terms of Reference.

If you have any questions or concerns, do not hesitate to contact Luc Desroches, Crown Consultation Lead for the Project, at <contact information removed> or by email at <email address removed>

Sincerely,

<Original signed by>

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