



July 10, 2020

Sent by email

Chief Casey Ratt
Mitchikanibikok Inik (Algonquins of Barriere Lake)

<contact information removed>

Dear Chief Ratt:

Thank you for your comments, sent on June 5, 2020, regarding the Canada-Quebec Cooperation Agreement (the Cooperation Agreement) for the proposed Gazoduq Project (the Project).

I would first like to express my appreciation for the candid discussion we had during our meeting of February 26, 2020, in Ottawa, during which you expressed your concerns related to the impact assessment (IA) process. The Agency values the relationship with the Mitchikanibikok Inik, and we are interested in exploring opportunities with you to participate meaningfully in the IA of the Project.

The Agency is still actively considering your comments on the agreement, however it is our view that most of your comments could be more appropriately addressed in the Indigenous Engagement and Partnership Plan (IEPP) and the Terms of Reference for the Integrated Review Panel. The Agency strongly encourages you to provide comments on the Review Panel's Terms of Reference to help inform this important document prior to its finalization.

In your comments, you refer to the proposed Indigenous Cooperation Regulations, which are not yet in place. However, the absence of the availability of such an agreement established by the regulations in no way prevents the Agency from working with you to conduct this assessment in a collaborative manner. We would like to collaborate to develop a consultation process for the Project that reflects your interests, while respecting the legislative requirements of the *Impact Assessment Act*. My team would be pleased to discuss the development of a collaborative consultation process for the Project with you, should this be of interest.

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In your letter, you also requested clarity on the respective consultation roles of the Quebec ministère de l'Environnement et de la Lutte contre les changements climatiques (MELCC), the Bureau d'audiences publiques sur l'environnement (BAPE) and the Integrated Review Panel. The Cooperation Agreement articulates how the province and federal government will coordinate to administer the impact assessment process while respecting each other's respective jurisdictions and requirements.

Specifically regarding the duty to consult, the IEPP is intended to include the overall objectives and obligations of the Government of Canada in this regard, and states that "the 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 MELCC and the Agency respectively." To the extent possible, the Agency and the MELCC will coordinate some engagement and consultation activities.

The Cooperation Agreement and the Review Panel's Terms of Reference need to respect the jurisdiction of the Bureau d'audiences publiques sur l'environnement du Québec (BAPE) and the Integrated Review Panel. As noted in section 2, the purpose of the Cooperation Agreement is to "*ensure compliance to each Party's jurisdiction, laws and regulations.*"

While the scope of assessment by the Integrated Review Panel includes the following (section 3.1c): "the impact that the Project may have on any Indigenous groups and any adverse impact that the Project may have on the rights of the Indigenous Peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*", the Integrated Review Panel's Terms of Reference also includes the following (section 4):

- 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).*



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Next steps

The Agency appreciates the opportunity for continued dialogue with the Mitchikanibikok Inik during the current social and health crisis situation. We are available by telephone, videoconferencing, or written correspondence, to further discuss any concerns or questions you may have regarding the process. We recognize that this comment period may pose certain difficulties in the current social and health context, and the Agency is sensitive to the fact that many communities have implemented emergency measures and protocols. We are open to different options that might facilitate your participation during this coronavirus (COVID-19) pandemic.

For transparency purposes, this letter will be published on the Canadian Impact Assessment Registry. Should you need more information regarding the Review Panel's Terms of Reference or the Cooperation Agreement, please do not hesitate to contact Mélanie Sanschagrín, Crown Consultation Lead for the Project, at <contact information removed> or by email at <email address removed>.

Sincerely,

<Original signed by>

Ian Ketcheson
Director General, Crown Consultation

c.c. : Katherine Hensel, Hensel Barristers
Kaelan Unrau, Hensel Barristers
Michael Benson, Canada Energy Regulator
Catherine Bailey-Jourdain, Impact Assessment Agency of Canada