34 ASSERTED OR ESTABLISHED ABORIGINAL AND TREATY RIGHTS, ABORIGINAL INTERESTS, AND INFORMATION REQUIREMENTS

BC Hydro's understanding of how the environment is valued by each potentially affected Aboriginal group for the current use of lands and resources for traditional purposes, including activities conducted in the exercise of asserted or established Aboriginal and treaty rights, and how that current use may be affected by the Project are presented in Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes.

34.1 Aboriginal Groups

Table 34.1 lists those Aboriginal groups, which in accordance with Section 20.1 of the EIS Guidelines, BC Hydro was instructed by the Executive Director of the BCEAO and the Federal Minister of Environment that it must consult, given the potential of these groups to be adversely affected by the Project.

Table 34.1 Aboriginal Groups Potentially Adversely Affected by the Project

Treaty 8 First Nation Signatories		
British Columbia	**Alberta**	**Northwest Territories**
• Blueberry River First Nations • Fort Nelson First Nation • McLeod Lake Indian Band • Saulteau First Nations • Treaty 8 Tribal Association (T8TA): o Doig River First Nation o Halfway River First Nation o Prophet River First Nation o West Moberly First Nations	• Athabasca Chipewyan First Nation • Beaver First Nation • Dene Tha' First Nation • Duncan's First Nation • Horse Lake First Nation • Little Red River Cree Nation • Mikisew Cree First Nation • Smith's Landing First Nation • Sturgeon Lake Cree Nation • Tallcree First Nation • Woodland Cree First Nation	• Deninu K'ue First Nation • Salt River First Nation
British Columbia First Nations		
• Kwadacha First Nation • Tsay Keh Dene First Nation		
Métis		
British Columbia	**Alberta**	**Northwest Territories**
• Métis Nation British Columbia (as directed by the CEA Agency) • Kelly Lake Métis Settlement Society (as directed by the CEA Agency)	• Métis Nation of Alberta – Region 6 • Paddle Prairie Métis Settlement Society • Fort Chipewyan Métis Local 125	• Northwest Territory Métis Nation

Please note that Section 20.1 of the EIS Guidelines refers to the Fort Chipewyan Métis Local 125 as the Fort Chipewyan Métis Association, to the McLeod Lake Indian Band as the McLeod Lake First Nation, and to the Métis Nation of Alberta – Region 6 as the Métis Nation of Alberta – Zone 6.

34.2 Aboriginal Groups Background Information

The Aboriginal groups whose asserted or established Aboriginal rights and treaty rights and Aboriginal interests may potentially be affected by the Project are identified in Table 34.1.

Information related to ethnography, language, land use setting and planning, governance, and economy for each Aboriginal group listed in Table 34.1, and where made available to BC Hydro, maps illustrating the Aboriginal group's traditional territory, are included in Volume 5 Appendix A Asserted or Established Aboriginal or Treaty Rights, Aboriginal Interests, and Information Requirements Supporting Documentation, Part 1 Community Summary for the 29 Aboriginal groups.

34.3 Asserted or Established Aboriginal and Treaty Rights

34.3.1 Past, Current, and Reasonably Anticipated Future Use of Lands and Resources

An assessment of the potential effects of the Project on the current and reasonably anticipated future use of lands and resources by Aboriginal groups for traditional purposes is provided in Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes.

With respect to the past use of lands and resources by Aboriginal groups, please see the Aboriginal Land and Resource Use Summaries for the 29 Aboriginal groups included in Part 3 of Volume 5 Appendix A Asserted or Established Aboriginal or Treaty Rights, Aboriginal Interests, and Information Requirements Supporting Documentation.

34.3.2 Asserted or Established Aboriginal Rights and Treaty Rights

As a result of the consultations carried out on the Project to date, and a review of existing case law, BC Hydro has prepared its understanding of the asserted or established Aboriginal rights and treaty rights for the groups identified in Table 34.1.

34.3.2.1 Treaty 8 Rights

The following Aboriginal groups listed in Table 34.1 are signatories or adherents to Treaty 8: Blueberry River First Nations, Fort Nelson First Nation, McLeod Lake Indian Band, Saulteau First Nations, Doig River First Nation, Halfway River First Nation, Prophet River First Nation, West Moberly First Nations, Athabasca Chipewyan First Nation, Beaver First Nation, Dene Tha' First Nation, Duncan's First Nation, Horse Lake First Nation, Little Red River Cree Nation, Mikisew Cree First Nation, Smith's Landing First Nation, Sturgeon Lake Cree Nation, Tallcree First Nation, Woodland Cree First Nation, Deninu K'ue First Nation, and Salt River First Nation.

Provisions of Treaty 8

Treaty 8 provides, in part:

> "AND WHEREAS, the said Commissioners have proceeded to negotiate a treaty with the Cree, Beaver, Chipewyan and other Indians, inhabiting the district hereinafter defined and described, and the same has been agreed upon and concluded by the respective bands at the dates mentioned hereunder, the said Indians DO HEREBY CEDE, RELEASE, SURRENDER AND YIELD UP to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors for ever, all their rights, titles and privileges whatsoever, to the lands included within the following limits, that is to say:
>
> Commencing at the source of the main branch of the Red Deer River in Alberta, thence due west to the central range of the Rocky Mountains, thence northwesterly along the said range to the point where it intersects the 60th parallel of north latitude, thence east along said parallel to the point where it intersects Hay River, thence northeasterly down said river to the south shore of Great Slave Lake, thence along the said shore northeasterly (and including such rights to the islands in said lakes as the Indians mentioned in the treaty may possess), and thence easterly and northeasterly along the south shores of Christie's Bay and McLeod's Bay to old Fort Reliance near the mouth of Lockhart's River, thence southeasterly in a straight line to and including Black Lake, thence southwesterly up the stream from Cree Lake, thence including said lake southwesterly along the height of land between the Athabasca and Churchill Rivers to where it intersects the northern boundary of Treaty Six, and along the said boundary easterly, northerly and southwesterly, to the place of commencement .
>
> AND ALSO the said Indian rights, titles and privileges whatsoever to all other lands wherever situated in the Northwest Territories, British Columbia, or in any other portion of the Dominion of Canada.
>
> TO HAVE AND TO HOLD the same to Her Majesty the Queen and Her successors forever. ...
>
> And Her Majesty the Queen HEREBY AGREES with the said Indians that they shall have right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes."

History and Interpretation of Treaty 8

As outlined by the Supreme Court of Canada in *R. v. Badger*, [1996] 1 SCR 771, at para. 39, Treaty 8 is one of numbered treaties concluded between the federal government and various First Nations between 1871 and 1923 in order to facilitate the settlement of the western half of the country. Treaty 8 was entered into on June 21, 1899, and involved the surrender of land covering what is now northwestern Saskatchewan, northern Alberta, northeastern British Columbia, and a southern part of the Northwest Territories.

In exchange for the surrender of the land, the Crown promised to provide the signatory First Nations with reserves, education, annuities, farm equipment, ammunition, and relief in times of famine or pestilence. The Crown also guaranteed the First Nations' rights to hunt, trap, and fish on the surrendered lands subject to certain government regulations and the right of the Crown to take up the land surrendered from time to time for settlement, mining, lumbering, trading, or other purposes.

In 1930, by authority of an amendment to the *British North America Act*, 1930, 20–21 George V, c. 26 (U.K). Canada and Alberta, and Canada and Saskatchewan entered into Natural Resources Transfer Agreements (NRTA) [*Saskatchewan Natural Resources Act*, 20–21 George V, c. 41 (Can.); *Alberta Natural Resources Act*, 20-21 George V, c. 3 (Can.)], which transferred control over natural resources to the provinces of Alberta and Saskatchewan. The Supreme Court of Canada in *R. v. Horseman*, [1990] 1 SCR 901, and affirmed in *Badger*, found that as a result of these agreements, the treaty protection of the right to hunt commercially was extinguished, but the geographic region in which First Nations could hunt for food was expanded to all unoccupied Crown land in the province and other land to which the First Nations' have a right to access. As well, the means and practices employed by First Nations to hunt, trap, and fish for food would be beyond provincial regulation (*Horseman*, at 933).

Thus, in Alberta and Saskatchewan (with some exceptions, such as Wood Buffalo National Park), the treaty rights to hunt, fish, and trap for food can be exercised throughout each of the provinces but the right to hunt, fish, and trap commercially is extinguished. In British Columbia and the Northwest Territories, treaty rights have not been similarly modified.

Scope of Treaty 8 Rights

In *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69, the Crown had argued that the "taking up" of a 23 square kilometre area for the construction of a winter road does not infringe a right to hunt across a territory that covers 840,000 square kilometres" (the Treaty 8 territory). However, the Supreme Court of Canada rejected this argument, observing a First Nation's "'meaningful right to hunt' is not ascertained on a treaty-wide basis (all 840,000 square kilometres of it) but in relation to the territories over which a First Nation traditionally hunted, fished and trapped, and continues to do so today" (*Mikisew*, at para. 48).

Mikisew also clarified that, while signatory First Nations may exercise their rights to hunt, fish, or trap throughout the "tract surrendered", the test of whether the Crown has infringed the treaty right by taking up so much land that no meaningful right remains is to be analyzed by reference to their respective traditional territories.

The importance of traditional territories and continuity in traditional patterns to the exercise of treaty rights was also referenced by the B.C. Court of Appeal in *West Moberly First Nations v. B.C. (Chief Inspector of Mines)*, 2011 BCCA 247, affirming 2010 BCSC 359 (leave to appeal to SCC dismissed, 2012 CanLII 8361). The chambers judge characterized the protected treaty right at issue as "the right to hunt caribou in the traditional seasonal round in the territory affected by the [proposed project]" (*West Moberly*, 2010 BCSC 359, at para. 63). The majority of the Court of Appeal concurred, noting that "while specific species and locations of hunting are not enumerated in Treaty 8, it guarantees continuity in traditional patterns of economic activity and respect for traditional patterns of activity and occupation" (*West Moberly*, at para. 137, per Finch C.J.B.C.).

The "continuity in traditional patterns" does not equate to a "continuity of nineteenth century patterns of land use" (*Mikisew*, at para. 32). The Court in *Mikisew* expressly noted the latter was not promised by the Treaty. The Supreme Court of Canada also commented that "the language of the treaty could not be clearer in foreshadowing change" (*Mikisew*, at para. 31) and that "none of the parties in 1899 expected that Treaty 8 constituted a finished land use blueprint. Treaty 8 signalled the advancing dawn of a period of transition" (*Mikisew*, at para. 27).

Incidental Rights Under the Treaty

In *Simon v. The Queen*, [1985] 2 SCR 387, in considering the Treaty of 1752, the Supreme Court of Canada noted that to be "effective", the right to hunt must "embody those activities reasonably incidental to the act of hunting itself" (*Simon*, at 403). The courts have recognized that Aboriginal rights, including treaty rights, are not "frozen-in-time" and therefore must be viewed flexibly to permit evolution over time (*R. v. Sundown*, [1999] 1 SCR 393, at para. 32). Such evolution is limited, however, and traditional practices cannot be transformed into modern rights (*Lax Kw'alaams Indian Band v. Canada (Attorney General)*, 2011 SCC 56, at para 51).

Geographic Limitations – The Crown's Right to Take Up Land

The rights to hunt, trap, and fish secured under Treaty 8 are different than other Aboriginal rights. Treaty 8 rights are limited by the Crown's right to "take up" lands and the Crown's actions do not have to be justified under the test set out in Sparrow except in the circumstances when the taking up means "no meaningful right to hunt", fish, or trap would remain over a signatory First Nation's traditional territory (*Mikisew*, at para. 48). The Supreme Court of Canada in *Mikisew* (at para. 31) said:

> "I agree with Rothstein J.A. that not every subsequent "taking up" by the Crown constituted an infringement of Treaty 8 that must be justified according to the test set out in *Sparrow*. In *Sparrow*, it will be remembered, the federal government's fisheries regulations infringed the aboriginal fishing right, and had to be strictly justified. This is not the same situation as we have here, where the aboriginal rights have been surrendered and extinguished, and the Treaty 8 rights are expressly limited to lands not "required or taken up <u>from time to time</u> for settlement, mining, lumbering, trading or other purposes" [emphasis added]. The language of the treaty

> could not be clearer in foreshadowing change. Nevertheless the Crown was and is expected to manage the change honourably."

In *Badger*, the Court also addressed what constitutes a "taking up" under Treaty 8. After considering both the oral promises made by the representatives of the Crown and the oral history of the Treaty 8 First Nations, the Court concluded that members of the First Nations "understood that land would be taken up and occupied in a way which precluded hunting when it was put to a visible use that was incompatible with hunting" (*Badger*, at para. 58). This has become known as the "visible, incompatible use" test.

The Duty to Consult

In *Mikisew*, the Supreme Court of Canada held that when exercising its right under Treaty 8 to take up lands, the Crown must act honourably and engage in meaningful consultation and, if necessary, seek a workable accommodation in relation to its proposed actions. The honour of the Crown places a positive obligation on the Crown to inform itself of the impact of the proposed project, communicate this to the signatory First Nations potentially affected by the project, and undergo meaningful consultation (*Mikisew*, at para. 57). The level of consultation will vary depending on the seriousness of impact on the exercise of a First Nation's treaty rights. Consultation, however, does not necessarily lead to accommodation, and accommodation may not lead to agreement (*Haida Nation v. British Columbia Minister of Forests*, 2004 SCC 73 at para. 10; *Mikisew*, at para. 66). Recently, In *Beckmann v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, the Supreme Court of Canada reaffirmed the fact that the duty to consult exists independent of treaties and also the fact that consultation is a procedural protection, distinct from the substantive right of accommodation (*Beckmann*, at para. 14).

<u>First Nations' Perspectives of Treaty 8 Rights</u>

BC Hydro's understanding of the rights provided by Treaty 8 is reflected in the sections above. However, in addition to its review of the Treaty and case law, BC Hydro has also been provided with submissions from some Treaty 8 First Nations that set out their perspectives of the rights provided to First Nations under Treaty 8 (Treaty 8 Tribal Association, Tribal Chief 2011a, pers. comm; Treaty 8 Tribal Association, Tribal Chief 2011b, pers. comm; Treaty 8 Tribal Association 2012, pers. comm; Devlin Gailus, legal counsel for Treaty 8 Tribal Association 2012, pers. comm; McLeod Lake Indian Band, legal counsel 2011, pers. comm; Mikisew Cree First Nation, GIR Director 2012, pers. comm; Athabasca Chipewyan First Nation, Consultation Coordinator 2012, pers. comm).

In those submissions, the First Nations assert that the rights guaranteed in Treaty 8 are "livelihood rights" and that the Crown promised continuity with respect to those rights. The First Nations also assert that there are important cultural, spiritual, social, and economic components to Treaty 8 rights, including the ability to transmit their distinct culture and traditional means of livelihood to future generations. One submission (Letter from Treaty 8 Tribal Association, dated February 24, 2012, at p. 15) included the following summary:

> "In summary, while Treaty 8 provides the Crown with the power to take up lands, the Treaty also affirms First Nations' retention of comprehensive land-based rights to a "livelihood", and rights to

> maintain control over First Nation peoples' occupation and use of these lands to support their "way of life" and "usual vocations" in accordance with their natural law, customs and traditions, according to what is known as their traditional seasonal round. The Treaty also establishes an ongoing Crown obligation to secure a continued supply of game and fish for the support and subsistence of the First Nations and this implies ongoing Crown duties to protect fish and wildlife populations within Crown lands traditionally used by Indian peoples as part of their seasonal round, and to protect and safeguard the habitat, including water resources, required to maintain a harvestable surplus of fish and wildlife within lands not taken up."

In addition, relying on Madam Justice Huddart's reasons in *Halfway River First Nation v. British Columbia (Ministry of Forests)*, 1999 BCCA 470, at para. 187, the T8TA says its treaty rights are site specific (Devlin Gailus, legal counsel for Treaty 8 Tribal Association 2012, pers. comm).

BC Hydro has been asked to provide its understanding of the asserted and established Aboriginal and treaty rights held by the Aboriginal groups identified in Table 34.1. BC Hydro has provided that understanding, based on the guidance that it has received from the Treaty and the case law. BC Hydro recognizes that there may be differences in interpretation between the Crown and First Nations with respect to the scope of treaty rights and with respect to whether, and to what extent, the Crown has an obligation to secure a continued supply of game and fish for the support and subsistence of the First Nations.

Accordingly, while the passages that precede this section provide BC Hydro's understanding of the treaty rights held by the Aboriginal groups that are signatories or adherents to Treaty 8, BC Hydro has endeavoured throughout the EIS to take the First Nations' perspective of the scope of treaty rights into account when assessing and measuring the potential effects of the Project.

34.3.2.2 Aboriginal Rights – Non-treaty First Nations

Kwadacha and Tsay Keh Dene First Nations have asserted Aboriginal rights as First Nations under Section 35(1) of the *Constitution Act, 1982*. In addition, various other First Nations listed in Table 34.1 who are signatory to Treaty 8 have asserted Aboriginal rights in addition to their treaty rights.

BC Hydro's understanding of the legal test for Aboriginal rights (including title) is set out below. Aboriginal rights that are specific to Métis groups are addressed in the following Subsection (34.2.3).

<u>Test for Aboriginal Rights</u>

The test for identifying Aboriginal rights in Section 35(1) of the *Constitution Act, 1982* was set out by the Supreme Court of Canada in *R. v. Van der Peet*, [1996] 2 SCR 507 at para. 46: "in order to be an aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of the aboriginal group claiming the right."

Further, it must be a practice, tradition, or custom central to the Aboriginal society that existed in North America prior to contact with Europeans (*Van der Peet* at para. 44).

Claims to Aboriginal rights must be characterized in context, on a specific rather than general basis and must be founded upon an actual practice, custom or tradition of the particular group claiming the right. There is a necessary geographic element of site-specific hunting and fishing rights (*R. v. Sappier; R. v. Gray*, 2006 SCC 54 at paras. 21, 50-51).

<u>Test for Aboriginal Title</u>

Aboriginal title is a form of Aboriginal right arising where "the connection of a group with a piece of land 'was of a central significance to their distinctive culture.'" (*Delgamuukw v. British Columbia*, [1997] 3 SCR 1010 per Lamer C.J.C. (majority) at para. 137, citing *R. v. Adams*, [1996] 3 SCR 101 at para. 26).

The specific requirements to establish Aboriginal title were set out in *Delgamuukw*, at para. 143:

> "(i) The land over which title is claimed must have been occupied prior to sovereignty;
>
> (ii) If present occupation is relied on as proof of occupation pre-sovereignty, there must be a continuity between present and pre-sovereignty occupation; and
>
> (iii) At sovereignty, that occupation must have been exclusive."

The date of Crown sovereignty in British Columbia has been determined to be 1846, coinciding with the Oregon Boundary Treaty of 1846 (*Delgamuukw* at para. 145).

In *R. v. Marshall; R. v. Bernard*, 2003 SCC 43, at para. 54, the Supreme Court of Canada held that to found a claim in Aboriginal title, possession similar to that associated with title at common law must be demonstrated. In determining if occupation is sufficient to establish title "one must take into account the group's size, manner of life, material resources, and technological abilities, and the character of the lands claimed" (*Delgamuukw* at para. 149).

According to the British Columbia Court of Appeal's interpretation of the Supreme Court of Canada jurisprudence, Aboriginal title cannot be proven based on a limited presence in a broad territory: "[r]ather,…Aboriginal title must be proven on a site-specific basis…. Aboriginal title can only be proven over a definite tract of land the boundaries of which are reasonably capable of definition" (*William v. British Columbia*, 2012 BCCA 285, at para. 230).

<u>Application to Aboriginal Groups Listed in Table 34.1</u>

BC Hydro is unaware of any established Aboriginal rights or title held by Kwadacha First Nation, Tsay Keh Dene First Nation, or other Aboriginal groups listed in Table 34.1, outside of treaty rights.

BC Hydro has been consulting with Kwadacha and Tsay Keh Dene First Nations regarding the impact of the Project on their asserted Aboriginal rights (see the BC Hydro Consultation Summaries for these First Nations in Volume 5 Appendix A13, Part 2 and in

Volume 5 Appendix A27, Part 2). Neither First Nation has asserted that they exercise Aboriginal rights or hold Aboriginal title in the current use of lands and resources LAA (see Aboriginal Land and Resource Use Summaries in Volume 5 Appendix A13, Part 3 for Kwadacha First Nation, and in Volume 5 Appendix A27, Part 3 for Tsay Keh Dene First Nation.)

34.3.2.3 Aboriginal Rights – Métis Groups

Six of the Aboriginal groups listed in Table 34.1 are Métis groups: Métis Nation of Alberta – Region 6, Paddle Prairie Métis Settlement Society, Fort Chipewyan Métis Local 125, Northwest Territories Métis Nation, Métis Nation British Columbia, and Kelly Lake Métis Settlement Society.

<u>Test for Métis Rights</u>

Métis people hold Aboriginal rights under Section 35(1) of the *Constitution Act, 1982*, pursuant to Section 35(2). The legal test to determine Métis rights was set out by the Supreme Court of Canada in *R. v. Powley*, 2003 SCC 43. The Court laid out 10 steps in order to determine whether Métis rights exist and have been infringed, the first seven of which are relevant here (the final three relate to the determination of whether a right, once established, has been extinguished or infringed):

1) Characterization of the right
2) Identification of the historic rights-bearing community
3) Identification of the contemporary rights-bearing community
4) Verification of the claimant's membership in the relevant contemporary community
5) Identification of the relevant time frame
6) Determination of whether the practice is integral to the claimants' distinctive culture
7) Establishment of continuity between the historic practice and the contemporary right asserted

Métis rights, like all Aboriginal rights, are collectively held and, therefore, grounded in the existence of both a historic and contemporary rights-bearing community. The Supreme Court of Canada defined a Métis community as "a group of Métis with a distinctive collective identity living together in the same geographic area and sharing a common way of life" (*Powley*, at para. 12). A historic community can be identified through demographic evidence, proof of shared customs, traditions, and a collective identity. There must be some continuity and stability with the historic community in order to establish a contemporary rights-bearing community, although this criteria should be viewed with some flexibility.

A present-day Métis right must have been an existing practice at the time when "Europeans effectively established political and legal control" in the area (Powley, at paras. 12, 37).

Alberta Métis Groups listed in Table 34.1: Paddle Prairie Métis Settlement Society, Métis Nation of Alberta – Region 6, Fort Chipewyan Métis Local 125

Paddle Prairie Métis Settlement Society

The Paddle Prairie Métis Settlement is a recognized Alberta Métis Settlement under Section 2(1) of the Alberta *Métis Settlements Act*, RSA 2000, c M-14. In *R. v. Lizotte*, 2009 ABPC 287, the Alberta Provincial Court made the following observations regarding the Paddle Prairie Metis settlement (at para. 31):

> "... In the case of Paddle Prairie I have little evidence before the court but strongly suspect that the Settlement was created from sheer wilderness. Given the notoriety as a fact I judicially note that the major highway to, and through Paddle Prairie, the McKenzie Highway, was itself not completed until 1948. Until that point the Paddle Prairie Settlement would unquestionably have been the most remote and isolated of all of the newly created settlements. By its creation the Métis were given a new haven and doubtlessly migrated from many other locations where they likely did enjoy historic roots to the late 1800s. -

After *LIzotte* was decided, the Alberta Court of Appeal found that membership in a Metis Settlement created by the Act is not sufficient to establish Metis rights under Section 35 of the Constitution (*L'Hirondelle v. Alberta* (Sustainable Resource Development), 2013 ABCA12). The Alberta Court of Appeal reinforced the principle that the criteria laid out in *Powley* are the proper criteria to determine whether a Metis community is a rights-bearing community

For the purposes of this assessment, BC Hydro has considered Paddle Prairie Metis Settlement Society to be a rights bearing community under *Powley*.

Métis Nation of Alberta – Region 6

In the report prepared by Public History (Public History 2012), the authors noted evidence of historic Métis communities at Fort Dunvegan, Peace River Crossing and Fort Vermilion, along the Peace River. The report notes there is evidence that members of these communities have been exercising Métis rights for generations. The Métis Nation of Alberta – Region 6 has asserted to the BCEAO and CEAA that it represents the present members of those historic communities (Métis Nation of Alberta, Scientific Regulatory Advisor 2012, pers. comm).

Fort Chipewyan Métis Local 125

The Fort Chipewyan Métis Local 125 asserts rights as a Métis group centred around Fort Chipewyan since 1788 (Fraser, Fred. 2012. Letter to BCEAO and CEAA. August 8, 2012). 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 (AESRD 2010, at p. 2).

British Columbia Métis Groups listed in Table 34.1: Métis Nation British Columbia (MNBC) and Kelly Lake Métis Settlement Society (KLMSS)

At the time of filing the EIS, no Métis rights-bearing community in British Columbia has been recognized by a court. In *R v. Willison*, 2006 BCSC 985, the B.C. Supreme Court was unable to conclude there was a historic Métis community 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 British Columbia.

Northwest Territory Métis Groups Listed in Table 34.1: Northwest Territory Métis Nation

Members of the NWTMN 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. The NWTMN are currently in negotiations with Canada and to enter a land and resources agreement.

34.3.3 Assessment of Potential Impacts on the Exercise of Asserted or Established Aboriginal and Treaty Rights

The assessment of potential impacts on the exercise of asserted or established Aboriginal and treaty rights is based on BC Hydro's understanding of the asserted or established Aboriginal rights and treaty rights set out in Section 34.3.2. While the right to fish, hunt, and trap does not overlap precisely in time and space with the current use of lands and resources for traditional purposes, including fishing, hunting, and trapping, there is a close linkage between the rights discussed in this section and the current uses assessed in Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes.

Volume 3 Section 19 presents baseline information on the current use of lands and resources for traditional purposes for each of the Aboriginal Groups listed in Table 34.1. This includes a description of the nature and location of the use or activity (including fishing, hunting and trapping), the species targeted, as well as the traditional use of the harvested species. This information is the basis for the assessment of the potential effects of the Project on current use of lands and resources for traditional purposes, also provided in Volume 3 Section 19. That assessment includes the potential effects of the Project on what may be described as ancillary activities, such as opportunities to harvest berries, herbs and medicinal plants and the establishment of cabins. Some of these ancillary activities may be reasonably incidental to the exercise of the treaty rights to fish, hunt, and trap. ~~Consequently, the results of the assessment~~ As described in Volume 3 Section 19, ~~are drawn into the assessment of potential impacts on the exercise of asserted or established Aboriginal and treaty rights.~~ the potential residual effects of the project on the current use of lands and resources for traditional purposes, including hunting, fishing, trapping and other activities were assessed.in accordance with the criteria set out in Table 19.13 (Direction, Magnitude, Geographical extent, Frequency, Duration, Reversibility, Context, Level of Confidence and Probability). The conclusions reached are set out in Table 19.14. An assessment of significance was then made in accordance with thresholds set out in Volume3 Section 19.5.4.

Section 34 draws forward the results of the Section 19 analysis, including the characterization of residual effects set out in Volume 3 Table 19.14 and places those

results in the context of BC Hydro's understanding of asserted or established Aboriginal rights and treaty rights potentially impacted by the Project (described in Section 34.3.2).

No separate effects assessment criteria or thresholds are applied in Volume 5 Section 34 beyond those described in Volume 3 Section 19 and a consideration of the asserted or established Aboriginal and treaty rights described in Volume 5 Section 34.3.2. The analysis in Volume 5 Section 34 is descriptive and qualitative, and no determinations of significance are made or required.

This approach was guided by the Joint Review Panel (JRP) Terms of Reference set out in the Amended 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, which sets out a different mandate for the JRP with respect to its consideration of current use of lands and resources for traditional purposes than for its consideration of potential impacts on asserted or established Aboriginal or treaty rights.

The JRP is specifically prohibited (in Section 2.5) from making conclusions or recommendations as to:

a) the nature and scope of asserted Aboriginal rights or the strength of those asserted rights;
b) the scope of the Crown's duty to consult Aboriginal Groups;
c) whether the Crown has met its duty to consult Aboriginal Groups and, where appropriate, accommodate their interests in respect of the potential adverse effects of the Project on asserted or established Aboriginal rights or treaty rights;
d) whether the Project is an infringement of Treaty No. 8; and
e) any matter of treaty interpretation.

In its Report, the JRP's mandate with respect to asserted or established Aboriginal and treaty rights is confined to "describ[ing]" them, and "any impacts … as articulated by those Aboriginal Groups" (Section 2.6). The JRP's description is also based on information it "receives" from the proponent (Section 2.3), namely:

- Information regarding the manner in which the Project may adversely affect asserted or established Aboriginal rights and treaty rights
- Information provided by Aboriginal persons or groups regarding the location, extent and exercise of asserted or established Aboriginal rights and treaty rights that may be affected by the Project; and
- Information regarding any measures to avoid or mitigation potential adverse effects of the Project on asserted or established Aboriginal rights and treaty rights."

In contrast to the descriptive nature of the task that the JRP must undertake with respect to the potential impacts of the Project on the exercise of asserted and established Aboriginal and treaty rights, the JRP must, pursuant to Section 2.1 and 2.2 of its Terms of Reference, conduct an assessment of the Project effects, including current use of

lands and resources for traditional purposes by Aboriginal peoples. Section 2.1 of the JRP Terms of Reference requires the JRP to conduct an "assessment of the … effects of the Project". Section 2.2 of the Terms of Reference specifically requires that the JRP include in its assessment, consideration of "any change that the Project may cause in the environment on the current use of lands and resources for traditional purposes by aboriginal persons".

The JRP must use the information collected in Section 2.3 (regarding asserted or established rights) *and* the assessment made in accordance with Section 2.2 to "make recommendations which, if implemented, would avoid or minimize potential adverse effects of the Project on asserted or established Aboriginal rights and treaty rights" (Section 2.4).

This distinction between the JRP's treatment of current use and rights is reflected in the different requirements set out in Sections 15 and 20 of the EIS Guidelines, and is a reason for the different approaches to Sections 19 and 34 of the EIS. Where Section 19 contains an assessment of changes in the environment caused by the Project on the current use of lands and resources for traditional purposes and makes a determination of significance, the assessment contained in Section 34 describes the potential impacts of the Project on the exercise of asserted or established rights, which is sufficient to assist the JRP and the statutory decision-makers undertake their tasks.

Potential impacts on the exercise of treaty rights – Treaty 8 First Nations signatories

It is anticipated that the Project would have no impacts on the exercise of treaty rights of 11 of the 21 First Nations that are signatories to Treaty 8. These are:

- Athabasca Chipewyan First Nation
- Beaver First Nation
- Deninu K'ue First Nation

- Fort Nelson First Nation
- Little Red River Cree Nation
- Mikisew Cree First Nation
- Salt River First Nation
- Smith's Landing First Nation
- Sturgeon Lake Cree Nation
- Tallcree First Nation
- Woodland Cree First Nation

Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes concludes that the Project is not expected to have an effect on the current use of lands and resources for traditional purposes (including fishing, hunting and trapping, and ancillary activities) for these Aboriginal groups because there are no predicted interactions between Project activities and the use areas of these groups. Consequently, the Project is not expected to have an impact on the exercise of the treaty rights of these First Nations.

Should additional information regarding current and reasonably anticipated future use of lands and resources within the LAA be received from the First Nations listed above, BC Hydro will incorporate it into the EIS review phase, and consider its relevance to impacts on the exercise of treaty rights.

McLeod Lake Indian Band (MLIB)

Volume 3 Section 19 states that the Project is not expected to have an effect on the current use of or access to lands and resources for traditional purposes for MLIB. Consequently, the Project is not expected to have an impact on the MLIB's exercise of its treaty rights.

BC Hydro has provided funding for MLIB to undertake a TLUS. Should the TLUS contain additional information regarding current and reasonably anticipated future use of lands and resources within the LAA, BC Hydro will incorporate it into the EIS, as appropriate, during the review phase, and consider its relevance to impacts on the exercise of treaty rights.

The Project may have impacts on the exercise of treaty rights of the following First Nations:

- Blueberry River First Nations
- Dene Tha' First Nation
- Duncan's First Nation
- Horse Lake First Nation
- Saulteau First Nations
- Treaty 8 Tribal Association: Doig River First Nation, Halfway River First Nation, Prophet River First Nation, and West Moberly First Nations

Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes concluded that Project activities, including construction-related clearing and reservoir filling, would adversely affect the current use of lands and resources for traditional purposes, including hunting, fishing and trapping, of the above Treaty 8 First Nations. As a result, the Project also has the potential to impact the above Treaty 8 First Nations' exercise of their rights to fish, hunt, and trap on Treaty 8 territory. These potential impacts are assessed below. BC Hydro received general descriptions of the seasonal round practiced by some First Nations. The construction of the Project may affect First Nations ability to undertake activities at particular times during the seasonal round. BC Hydro will continue to consult with First Nations, including consultation on clearing plans and protocols, and will implement a communications plan, as described in Section 34.4.

Blueberry River First Nations (BRFN)

Right to fish

BRFN's treaty right to fish applies throughout Treaty 8 territory. The Project would reduce the ability of BRFN to exercise its treaty right to fish (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes) in the LAA, during both construction and operation. Opportunities for boat and shore-based river fishing along an 85-kilometre stretch of the Peace will be reduced. Several highly valued fishing areas, where streams and creeks join the Peace, will be inundated, although the confluences of those streams with the new reservoir may develop into good fishing areas. The impact of the creation of the dam will diminish as the reservoir begins to create a new fishery. However, it is not certain when these conditions may occur. As indicated in Volume 3 Section 19, other fishing areas currently used by BRFN would not be affected by the Project, and the reservoir would, in time, create compensatory fishing opportunities for BRFN. No cumulative effects of the Project were identified with respect to fishing for traditional purposes (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). BRFN members will continue to have the opportunity to exercise their right to fish within the fish and fish habitat LAA, within their traditional territory, and within the wider Treaty 8 territory.

Rights to hunt and trap

BRFN's treaty rights to hunt and trap apply throughout Treaty 8 territory. The Project would reduce the ability of BRFN to hunt and trap in the wildlife resources LAA during construction and operation (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). The construction of the Project would have temporary effects on the ability of harvesters to access some parts of the LAA for hunting and trapping via road or river navigation. New access will be created around the reservoir. Opportunities to harvest small game, waterfowl, furbearers, and ungulates will be reduced in the short term. Effects on BRFN hunting and trapping would be temporary and hunting and trapping areas outside the LAA would not be affected by the Project. Several highly valued locations for hunting, trapping and other harvesting (berries, wood, and medicine) will be inundated. No cumulative effects of the Project were identified with respect to hunting and trapping for traditional purposes (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). BRFN members will continue to have the

opportunity to exercise their rights to hunt and trap, within the LAA, within their traditional territory, and within the wider Treaty 8 territory.

Dene Tha' First Nation (DTFN)

Right to fish

DTFN's treaty right to fish applies throughout Treaty 8 territory. The Project is not expected to affect DTFN's current use of lands and resources for fishing for traditional purposes. Consequently, no impact on the DTFN's treaty right to fish is expected.

Rights to hunt and trap

DTFN's treaty rights to hunt and trap apply throughout Treaty 8 territory. The Project would reduce the ability of DTFN to hunt and trap in the ~~w~~Wildlife ~~r~~Resources LAA (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). However, these impacts would be temporary and other areas available to DTFN both within the LAA and within the wider Treaty 8 territory that will not be affected by the Project. No cumulative effects of the Project were identified with respect to hunting and trapping for traditional purposes (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). DTFN members will continue to have the opportunity to exercise their rights to hunt and trap, within the LAA, within their traditional territory, and within the wider Treaty 8 territory.

Duncan's First Nation (DFN)

Right to fish

DFN's treaty right to fish applies throughout Treaty 8 territory. The Project would reduce the ability of DFN to engage in current use of lands and resources for fishing in the fish and fish habitat LAA (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes. Opportunities for boat and shore-based river fishing along an 85-kilometre stretch of the Peace will be reduced. Several highly valued fishing areas, where streams and creeks join the Peace, will be inundated, although the confluences of those streams with the new reservoir may develop into good fishing areas. The impact of the creation of the dam will diminish as the reservoir begins to create a new fishery. However, it is not certain when these conditions may occur. As indicated in Volume 3 Section 19, other fishing areas currently used by DFN would not be affected by the Project, and the Reservoir would, in time, create compensatory fishing opportunities for DFN. Downstream of the dam, in stretches of the Peace River favored by DFN, fishing opportunities will remain for the most part unchanged, except that cold water species will also be present. No cumulative effects of the Project were identified with respect to fishing for traditional purposes (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). DFN members will continue to have the opportunity to exercise their right to fish within the LAA, within their traditional territory, and within the wider Treaty 8 territory.

Rights to hunt and trap

DFN's treaty rights to hunt and trap apply throughout Treaty 8. The Project would reduce the ability of DFN to hunt and trap in the wildlife resources LAA during construction and operation (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). The construction of the Project will have temporary effects on the ability of

harvesters to access some parts of the LAA for hunting and trapping via road or river navigation. New access will be created around the reservoir. Opportunities to harvest small game, waterfowl, furbearers, and ungulates will be reduced in the short term. Effects on DFN hunting and trapping would be temporary and hunting and trapping areas outside the LAA would not be affected by the Project. No cumulative effects of the Project were identified with respect to hunting and trapping for traditional purposes (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). DFN members will continue to have the opportunity to exercise their rights to hunt and trap, within the LAA, within their traditional territory, and within the wider Treaty 8 territory.

Horse Lake First Nation (HLFN)

Right to fish

HLFN's treaty right to fish applies throughout Treaty 8 territory.The Project would reduce the ability of HLFN to engage in current use of lands and resources for fishing in the LAA for fish and fish habitat (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). Opportunities for boat and shore-based river fishing along an 85-kilometre stretch of the Peace will be reduced. Several highly valued fishing areas, where streams and creeks join the Peace, will be inundated. The impact of the creation of the dam will diminish as the reservoir begins to create a new fishery. However, it is not certain when these conditions may occur. Downstream of the dam, in stretches of the Peace River favoured by HLFN, fishing opportunities will remain for the most part unchanged, except that cold water species will also be present. No cumulative effects of the Project were identified with respect to fishing for traditional purposes (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). HLFN members will continue to have the opportunity to exercise their right to fish within the LAA, within their traditional territory, and within the wider Treaty 8 territory.

Rights to hunt and trap

HLFN's treaty rights to hunt and trap apply throughout Treaty 8 territory. The Project would reduce the ability of HLFN to hunt and trap in the wildlife resources LAA during construction and operation (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). The construction of the Project will have temporary effects on the ability of harvesters to access some parts of the LAA for hunting and trapping via road or river navigation. New access will be created around the reservoir. Opportunities to harvest small game, waterfowl, furbearers, and ungulates will be reduced in the short term. Effects on HLFN hunting and trapping would be temporary and hunting and trapping areas outside the LAA would not be affected by the Project. No cumulative effects of the Project were identified with respect to hunting and trapping for traditional purposes (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes).HLFN members will continue to have the opportunity to exercise their rights to hunt and trap within the LAA, within their traditional territory, and within the wider Treaty 8 territory.

Saulteau First Nations (SFN)

Right to fish

SFN's treaty right to fish applies throughout Treaty 8 territory. The Project would reduce the ability of SFN to exercise its treaty right to fish (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes) in the LAA, during both construction and operation. Opportunities for boat and shore-based river fishing along an 85-kilometre stretch of the Peace will be reduced. Several highly valued fishing areas, where streams and creeks join the Peace, will be inundated, although the confluences of those streams with the new reservoir may develop into good fishing areas. The impact of the creation of the dam will diminish as the reservoir begins to create a new fishery. However, it is not certain when these conditions may occur. As indicated in Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes, other fishing areas currently used by SFN would not be affected by the Project, and the Reservoir would, in time, create compensatory fishing opportunities for SFN. No cumulative effects of the Project were identified with respect to fishing for traditional purposes (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). SFN members would continue to have the opportunity to exercise their right to fish within the LAA, within their traditional territory and within the wider Treaty 8 territory.

Rights to hunt and trap

SFN's treaty rights to hunt apply throughout Treaty 8 territory. The Project would reduce the ability of SFN to hunt and trap in the wildlife resources LAA during construction and operation (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). The construction of the Project would have temporary effects on the ability of harvesters to access some parts of the LAA for hunting and trapping via road or river navigation. New access will be created around the reservoir. Opportunities to harvest small game, waterfowl, furbearers, and ungulates will be reduced in the short term. Effects on SFN hunting and trapping would be temporary and hunting and trapping areas outside the LAA would not be affected by the Project. Several highly valued locations for hunting, trapping and other harvesting (berries, wood, and medicine) would be inundated. No cumulative effects of the Project were identified with respect to hunting and trapping for traditional purposes (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). SFN members will continue to have the opportunity to exercise their rights to hunt and trap within the LAA, within their traditional territory, and within the wider Treaty 8 territory.

Treaty 8 Tribal Association: Doig River First Nation, Halfway River First Nation, Prophet River First Nation, and West Moberly First Nations (T8TA)

Right to fish

T8TA's treaty right to fish applies throughout Treaty 8 territory. The Project would reduce the ability of T8TA to exercise its treaty right to fish (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes) in the LAA, during both construction and operation. Opportunities for boat and shore-based river fishing along an 85-kilometre stretch of the Peace will be reduced. Several highly valued fishing areas, where streams and creeks join the Peace, will be inundated. The impact of the creation of the dam will diminish as the reservoir begins to create a new fishery. However, it is not certain when

these conditions may occur. As indicated in Volume 3 Section 19, other fishing areas currently used by T8TA would not be affected by the Project, and the Reservoir would, in time, create compensatory fishing opportunities for T8TA. No cumulative effects of the Project were identified with respect to fishing for traditional purposes (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). T8TA members would continue to have the opportunity to exercise their right to fish within the LAA, within their traditional territories, and within the wider Treaty 8 territory.

Rights to hunt and trap

T8TA's Treaty rights to hunt and trap apply throughout Treaty 8. The Project would reduce the ability of T8TA to hunt and trap in the Project wildlife resources LAA during construction and operation (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes). The construction of the Project will have temporary effects on the ability of harvesters to access some parts of the LAA for hunting and trapping via road or river navigation. New access will be created around the reservoir. Opportunities to harvest small game, waterfowl, furbearers, and ungulates will be reduced in the short term. Effects on T8TA hunting and trapping would be temporary, and hunting and trapping areas outside the LAA would not be affected by the Project. Several highly valued locations for hunting, trapping and other harvesting (berries, wood, and medicine) will be inundated. No cumulative effects of the Project were identified with respect to hunting and trapping for traditional purposes (Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes).T8TA members will continue to have the opportunity to exercise their rights to hunt and trap within the LAA, within their traditional territories (see Figures 7, 10-12, 14-18 of Volume 5 Appendix A06 Part 3), and within the wider Treaty 8 territory.

Potential impacts on the Exercise of Asserted Rights – Non-Treaty BC First Nations

It is anticipated that the Project would have no impacts on the asserted Aboriginal rights of the following BC First Nations:

- Kwadacha First Nation
- Tsay Keh Dene First Nation

As described in Section 34.3.2.2 neither Kwadacha nor Tsay Keh Dene First Nations has asserted that they exercise Aboriginal rights or hold Aboriginal title in the current use of lands and resources LAA (see Aboriginal Land and Resource Use Summaries in Volume 5 Appendix A13, Part 3 Kwadacha First Nation, and Volume 5 Appendix A27, Part 3 Tsay Keh Dene First Nation.)

Potential impacts on the Exercise of Asserted Rights – Métis Groups

<u>Métis Nation British Columbia</u>

MNBC asserts that it uses the Peace River valley and the LAA for current use activities including hunting, trapping, and fishing, but has not provided sufficient specific information to enable an effects assessment on current use or asserted rights.

<u>Kelly Lake Métis Settlement Society</u>

Kelly Lake Métis Settlement Society asserts that it uses the Peace River valley and the LAA for current use activities including hunting, trapping, and fishing, but has not

provided sufficient specific information to enable an effects assessment on current use or asserted rights.

Should additional information regarding current and reasonably anticipated future use of lands and resources within the LAA be received from the Métis groups listed above, BC Hydro will incorporate it into the EIS review phase, and consider its relevance to impacts on asserted ~~or treaty~~ rights.

Métis Nation of Alberta--Region 6, Paddle Prairie Métis Settlement Society, Fort Chipewyan Métis Local 125 and Northwest Territory Métis Nation

Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes states that the Project is not expected to have an effect on the current use of lands and resources for traditional purposes (including fishing, hunting and trapping, and ancillary activities) for these Métis groups because there are no predicted interactions between Project activities and the use areas of these groups. As the Project will not adversely affect the ability of these groups to fish, hunt and trap, and pursue ancillary activities, the Project is not expected to have an impact on any Métis harvesting rights that these groups may have.

34.4 Aboriginal Accommodation

34.4.1 Summary of Mitigation Measures for Potential Adverse Impacts on the Exercise of Asserted or Established Aboriginal and Treaty Rights

Table 34.2 sets out the mitigations applicable to the potential adverse impacts on the exercise of treaty rights identified in Section 34.3.3 and mitigations applicable to the potential adverse impacts on ancillary activities including those activities reasonably incidental to the exercise of the identified treaty rights.

These mitigations, in addition to others, are also found in the mitigations included in Volume 3 Section 19 Current Use of Lands and Resources for Traditional Purposes, and in the follow-up measures identified in Volume 5 Section 39 Complete Lists of Mitigation and Follow-Up Measures.

Table 34.2 Mitigation Measures for Potential Adverse Impacts on the Exercise of Treaty Rights

Impact on Exercise of Treaty Right	Mitigation Measures to Be Implemented
Hunting and Trapping	
	~~Consult with Aboriginal groups respecting the~~Consider developing~~ment of~~ wildlife habitat compensation projects that align with BC Hydro compensation programs.
	~~Seek input from Aboriginal groups respecting mitigation strategies, such as~~Develop mitigation measures ~~related~~intended to decrease impacts on First Nation trap lines in the Project activity zone.
	~~Continue to consult with Aboriginal groups on clearing plans and protocols.~~
	Develop a communications program to inform harvesters of planned or unplanned events related to construction activities that may affect hunting opportunities or access.
	BC Hydro will consider community-based monitoring programs, which may involve incorporation of local, community, or traditional knowledge, where potential effects and the effectiveness of mitigation measures on hunting and trapping opportunities are uncertain, provided a sound methodology with clear indicators and outcomes is delineated. BC Hydro is prepared to engage with Aboriginal groups to discuss potential community-based monitoring programs, such as programs intended to monitor the productivity and abundance of wildlife species.
Fishing	
	~~Consult with Aboriginal groups respecting the~~Consider developing~~ment of~~ fish habitat compensation projects that align with BC Hydro compensation programs.
	~~Seek input from Aboriginal groups respecting mitigation strategies.~~
	~~Continue to consult with Aboriginal groups on clearing plans and protocols.~~
	Develop a communications program to inform harvesters of planned or unplanned events related to construction activities that may affect fishing opportunities or access.
	Develop a communications program to inform harvesters of longer-term changes in fish community composition.
	BC Hydro will consider community-based monitoring programs, which may involve incorporation of local, community, or traditional knowledge, where potential effects and the effectiveness of mitigation measures on fishing opportunities are uncertain, provided a sound methodology with clear indicators and outcomes is delineated. BC Hydro is prepared to engage with Aboriginal groups to discuss potential community-based monitoring programs, such as programs intended to monitor the productivity and abundance of fish species.

Impact on Exercise of Treaty Right	Mitigation Measures to Be Implemented
Ancillary Activities	
	Work with Aboriginal groups to groundtruth traditional land use information for specific areas within the Project activity zone prior to commencing construction, e.g., when determining the exact location of an access road.
	~~Continue to consult with Aboriginal groups regarding clearing plans and protocols.~~
	Develop a communications program to inform harvesters of planned or unplanned events that may affect opportunities to harvest plants, berries, and other resources.
	~~Consult with Aboriginal groups respecting the~~Consider developing~~ment of~~ habitat compensation projects that align with BC Hydro compensation programs.
	Work with Aboriginal groups to identify permanent habitation structures used in the current use of lands and resources for traditional purposes that may be lost to inundation. Effects on cabins associated with tenured trap lines will be addressed as set out in Section 24.4.9.1 in Volume 3 Section 24 Harvest of Fish and Wildlife Resources. Where untenured cabins may be impacted by the Project, BC Hydro will work with Aboriginal individuals to determine appropriate measures that could be implemented.
	Work with Aboriginal groups to identify potential sites for relocation of medicinal and food plants to compensate for areas that will be inundated.
	Use only indigenous and/or non-invasive plants and grasses in revegetation programs associated with the Project.
	Engage with Aboriginal groups around any reclamation phase that may present opportunities to restore ecological communities that support species of high traditional use value.
	Be prepared to ~~P~~provide support for the indigenous plant nursery owned by West Moberly and Saulteau First Nations located at Moberly Lake. The First Nations have a business plan to support propagation of a wide range of indigenous plant species for use in reclamation work.

34.4.2 Summary of Mitigation Measures Suggested by Aboriginal Groups

As of the submission of the EIS, Aboriginal groups have provided BC Hydro with a few specific suggestions for measures to avoid, reduce, or otherwise mitigate the potential adverse impacts of the Project, which are set out below, along with BC Hydro's response to these suggestions.

- **Location of 500 kV transmission line:** Treaty 8 Tribal Association (Doig River, Halfway River, Prophet River, and West Moberly First Nations) and Saulteau First Nations 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 the First Nations. Saulteau First Nations and Treaty 8 Tribal Association 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. Saulteau First Nations also suggested that the transmission line be run by submarine cable

along the length of the reservoir. The alternatives considered for connecting the Project substation to the Peace Canyon substation are discussed in Section 4.3.3.2 Transmission Line Alternatives Considered in Volume 1 Section 4 Project Description.

- **Alternative means:** Treaty 8 Tribal Association (Doig River, Halfway River, Prophet River, and West Moberly First Nations) and Smith's Landing First Nation expressed an interest in alternatives that did not develop all the head between the Project and Peace Canyon, including the potential for lower head facilities at the Project location or further upstream of Wilder Creek. Interest was also expressed by these groups regarding the determination of the constraint to develop the entire head between Peace Canyon and the Project. BC Hydro's considerations for alternative means of carrying out the Project are set out in Volume 1 Section 6 Alternative Means of Carrying out the Project and in Volume 1 Appendix E Dam Alternative Means Report. Section 5.3 Purpose of the Project in Volume 1 Section 5 Need for, Purpose of, and Alternatives to the Project includes a discussion of the objective to cost-effectively maximize the development of the hydroelectric potential of the Site C Flood Reserve.
- The historic dam design had included a proposal to construct an operations and maintenance bridge across the Peace River about 4 km downstream of the dam site. The upgraded design set out in the EIS provides the opportunity to access the generating station from across the dam and, as a result, there is no longer the need for a permanent bridge. Some Aboriginal groups had expressed concern that public access over the bridge would enlarge the project footprint and increase activity on the south bank of the river where they exercise their treaty rights to hunt and trap. The decision not to build the bridge in effect mitigated concerns expressed by those Aboriginal groups respecting increased public access to the south bank that could result from the permanent crossing.

Consultation with Aboriginal groups is ongoing throughout the environmental assessment process. Where consultation agreements have been reached, the agreements include a mutual commitment to identify and consider strategies or measures to mitigate the impacts of the Project.

In its Culture and Traditions Study Public Report (see Volume 5 Appendix A23 Part 5), Saulteau First Nations indicated an interest in working cooperatively with BC Hydro to explore options for mitigation. BC Hydro is committed to continuing consultation with all interested Aboriginal groups potentially affected by the Project to cooperatively explore options for mitigation. Suggestions made to BC Hydro through this Aboriginal consultation process will be incorporated into the EIS prior to the submission of the EIS to the Joint Review Panel.

34.4.3 Summary of Environmental Mitigation Measures that Serve to Mitigate Impacts on the Exercise of Asserted or Established Aboriginal or Treaty Rights

Many of the mitigation measures proposed for environmental VCs can also serve to mitigate potential impacts on the exercise of asserted or established Aboriginal or treaty rights and mitigations applicable to the potential adverse impacts on ancillary activities

including those activities reasonably incidental to the exercise of the identified treaty rights.

These mitigations include the following:

- For impacts to the exercise of the treaty right to fish, implementation of all mitigation measures set out in Volume 2 Section 12 Fish and Fish Habitat, measures supporting the development of 3 boat launches along the Site C reservoir accessible via Highway 29 to support navigability and navigable use, and the re-establishment of recreational sites on the Site C reservoir and downstream, and to re-establish and create new use patterns and access, as set out in Volume 3 Section 26 Navigation.
- For impacts to the exercise of the treaty rights to hunt and trap, implementation of all mitigation measures set out in Volume 2 Section 14 Wildlife Resources, and all mitigation measures set out in Volume 3 Section 24 Harvest of Fish and Wildlife Resources pertaining to trapping.
- For impacts related to the impacts to other activities, implement all mitigation measures set out in Volume 2 Section 13 Vegetation and Ecological Communities.

34.4.4 Other Accommodations

As discussed in Section 34.7.1, Volume 5 Asserted or Established Aboriginal Rights and Treaty Rights, Aboriginal Interests and Information Requirements, the Project may impact the exercise of treaty rights to hunt, fish and trap. BC Hydro is prepared to address and accommodate the potential for the Project to do so by entering into arrangements set out in ~~I~~impact ~~B~~benefit ~~A~~agreements. Those agreements may provide for lump sum cash payments, payment streams over time, the transfer of Crown lands to the affected Aboriginal groups in fee simple, potential land protection measures or the establishment of special management zone designations. BC Hydro has offered to enter into initial discussions with Aboriginal groups that are likely to be impacted by the Project and to date, three Aboriginal groups have accepted BC Hydro's offer to enter into discussions. Those arrangements, if entered into, could, in addition to accommodating the potential impact on the exercise of treaty rights, further avoid, reduce, or compensate for the potential residual adverse effects of the Project on the current use of lands and resources for traditional purposes.

34.5 Outstanding Aboriginal Issues

The potential adverse impacts on the exercise of Treaty 8 rights have been identified and assessed in Section 34.3.3. Section 34.4 contains a description of proposed mitigations and accommodations for these potential adverse impacts, including BC Hydro's willingness to continue to consult and enter into impact benefit agreement (IBA) negotiations with First Nations that, in BC Hydro's view, are likely to be adversely impacted by the Project and where BC Hydro considers that accommodation beyond the other mitigations listed in the EIS is warranted. BC Hydro anticipates that after these mitigation and accommodation measures are applied, adverse impacts to Treaty 8 rights would be mitigated or accommodated. No other potential adverse impacts on asserted or established Aboriginal and treaty Rights have been identified.

34.6 Other Interests of Aboriginal Groups

34.6.1 Aboriginal Interests: Social, Economic, Health, Physical, and Cultural Heritage Effects of the Project

An Aboriginal Issues, Concerns, and Interests Tracking Table is included in Volume 1 Appendix H Aboriginal Information Distribution and Consultation Supporting Documentation. The table presents, in summary form, a high-level description of the issues, concerns, and interests identified by Aboriginal groups in consultation activities with BC Hydro between November 1, 2007 and November 30, 2012, including those identified in meetings, phone calls, letters, emails, and reports (e.g., Traditional Land Use Studies, Community Assessments), as well as those identified during the comment periods for the EIS Guidelines. The table specifies which Aboriginal groups(s) identified each issue, concern, or interest, and outlines BC Hydro's consideration or response to each issue, concern, or interest, or provides a reference to where the issue, concern, or interest is considered or responded to in the EIS.

34.6.2 Consideration of Effects on Identified Interests in Assessment of Potential Effects on VCs or Otherwise

The issues described in Volume 1 Appendix H Aboriginal Information Distribution and Consultation Supporting Documentation were provided to technical staff for consideration in their effects assessment. Many of the issues identified in the table are included in the VC-specific key issues tables in Volumes 2, 3 and 4 in Sections 12 through 33 of the EIS.

Additionally, and as described in Section 9.2 in Volume 1 Section 9 Information Distribution and Consultation, formal agreements to complete TLUS reports were concluded with: Treaty 8 Tribal Association (representing Doig River, Halfway River, Prophet River, and West Moberly First Nations), Duncan's First Nation, Saulteau First Nations, Blueberry River First Nations, Horse Lake First Nation, and Dene Tha' First Nation. As of the filing of the EIS, all of the TLUS reports referenced above have been completed and shared with BC Hydro, including technical staff responsible for conducting the wildlife resources, vegetation and ecological communities, fish and fish habitat, and heritage resources effects assessments.

Volume 3 Appendix B First Nations Community Baseline Reports, Part 1 Approach to Gathering and Integrating Community Baseline Information describes how BC Hydro approached the use of information collected in First Nation community baseline reports, and how the information was integrated into the social effects assessment for the EIS.

Consultation with respect to the Project is ongoing, and BC Hydro will continue to track new issues, concerns, or interests identified by Aboriginal groups. As these are identified, BC Hydro will continue to make the information available to its technical staff for consideration in the EIS review phase and prior to submission of the EIS to the Joint Review Panel.

34.6.3 Proponent's Approach to Building Capacity

The following sets out BC Hydro's approach to building capacity among Aboriginal groups that may be affected by the Project.

34.6.3.1 BC Hydro Aboriginal Procurement Policy

BC Hydro is committed to increasing Aboriginal participation in providing goods and services to the organization. In order to achieve this objective, BC Hydro has adopted an Aboriginal Contract and Procurement Policy.

BC Hydro's Aboriginal Contract and Procurement Policy defines the criteria for being considered an Aboriginal Business.

An Aboriginal Business is a business that meets the following criteria:

a) If the business is a sole proprietorship, it must be wholly owned by an Aboriginal person

b) If the business is a corporation, it must have at least 51% of the equity (including any common or voting shares) owned by one or more Aboriginal Businesses or Aboriginal People

c) If the business is a partnership or joint venture, it must have at least 51% of the ownership rights (including any voting rights) directly held by one or more Aboriginal Businesses or Aboriginal People

d) As determined by the Owner in its sole discretion from time to time, any other business with a substantial amount of ownership rights held by one or more Aboriginal Businesses or Aboriginal Peoples

BC Hydro's Aboriginal Contract and Procurement Policy also identifies several procurement tools that enable increased Aboriginal participation. The procurement tools contemplated under the Aboriginal Contract and Procurement Policy may include set-asides, direct awards, select tenders, and the inclusion of Aboriginal content as an evaluation criterion in bidding documents. The use of these tools is balanced against BC Hydro's mandate to provide value for its ratepayers.

34.6.3.2 Capacity Building

The Site C team has sought to support capacity building opportunities for Aboriginal people in the planning and construction phases of the Project through the directed procurement, support for education and training, and business outreach activities described below.

Directed Procurement for Stage 3 General Contractor Work

Since 2010 and in accordance with BC Hydro's Aboriginal Contract and Procurement Policy, BC Hydro has sought to engage Aboriginal businesses in work on the Project.

To support the field investigation work on the Project, BC Hydro issued an RFP for general contractor support that included a requirement for at least one of the selected contractors to be an Aboriginal business. As a result of the process, two Aboriginal businesses were successful in receiving contracts: Renegade Construction Inc. (owned

by a Doig River First Nation member), and Dunne-za Ventures (a West Moberly First Nations company).

During this RFP process, BC Hydro awarded additional contracts to carry out early season work in advance of the award of contracts under the RFP to two Aboriginal businesses: Blueberry River Enterprises (a Blueberry River First Nations company), and 4 Evergreen Resources (a Saulteau First Nations company).

All four companies provided general contractor support for the engineering field investigation program throughout the Project area. Some of the components of work included:

- Tree clearing and mulching, general labour
- First aid
- Provision of jet boat
- Heavy equipment operation, road construction
- Support to drilling investigation

Northern Lights College Bursary

On September 20, 2012, the Honourable Rich Coleman, Minister of Energy, Mines and Natural Gas announced that BC Hydro would contribute $1 million in funding to support trades and skills training bursaries at Northern Lights College. The funding will be disbursed over a five-year period to support the development of skilled workers in the north, targeting those students who may not otherwise have access to post-secondary education. Fifty per cent of the funding for bursaries will be dedicated to Aboriginal students, and applications will start being accepted in early 2013, with bursaries being awarded for the fall 2013 school year. The bursaries would be available to students pursuing the following programs:

- Aircraft Maintenance Engineering
- Automotive Service Technician Foundation and Apprenticeship
- Carpentry Foundation (Residential Construction) and Apprenticeship
- Commercial Transport Technician Apprenticeship
- Cook Training
- Electrician Foundation and Apprenticeship
- Heavy Duty Equipment Technician Apprenticeship
- Heavy Duty/Commercial Transport Technician Foundation
- Industrial Instrumentation Mechanic Foundation and Apprenticeship
- Millwright Foundation and Apprenticeship
- Plumber Foundation and Apprenticeship
- Practical Nursing Diploma

- Welding Level C, B, A and Apprenticeship

These programs are offered at Northern Lights College's campuses in northeast B.C.

Northern Opportunities

In July 2011, BC Hydro entered into a three-year funding agreement with Northern Opportunities, a partnership of the school districts of Fort Nelson (SD #81), Peace River North (SD #60), and Peace River South (SD #59), Northern Lights College, local First Nations, industry, and local communities, with an objective of providing young people with a seamless learning pathway from secondary school to post-secondary training, leading to career success. A dual-credit program offered in the Peace Region combines high school, college studies, and work-based training, enabling students to earn both a high school diploma and advanced credit in post-secondary and/or industry certification at the same time. The program covers academic, trades and apprenticeship, and vocational programs, and is open to both Aboriginal and non-Aboriginal students. Between 2006 and 2010 and across all three school districts, 784 students participated in the dual-credit and apprenticeship programs supported by Northern Opportunities, of which 614 graduated (Northern Opportunities 2011). Aboriginal students represented 121 participants, and 83 graduates. For Aboriginal students, this participation represents an overall graduation rate of 75.8% of those participating in the dual-credit program, versus 53.4% for those participating in traditional high school programs. As a Northern Opportunities Partner, BC Hydro sits as a member of the Northern Opportunities' Community Learning Council.

Partnerships with the North East Native Advancing Society (NENAS)

Working in partnership with the NENAS, BC Hydro assisted in developing a proposal to secure funding from the Industry Training Authority (ITA) that would support an essential skills and pre-trades training program, North East Aboriginal Trades Training (NEATT). NENAS was successful in securing funding from the ITA for a two-year program, which began its first intake in the spring of 2012. NEATT offers two key streams: an eight-week Essential Skills for Apprenticeship program that is tailored to an individual learner's needs, and an eight-week Pre-Apprenticeship Exploration program that prepares individuals to enter into formal trades training.

In December 2012, BC Hydro announced that it would contribute $100,000 over two years to NENAS in support of advancing NEATT participants into trades training not currently offered by Northern Lights College for those trades that are of interest to BC Hydro for the Site C 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.

In 2011 and 2012, BC Hydro contributed funding to the annual Go Karts for Girls event in Fort St. John. This event is organized by NENAS and aims to promote the interest and involvement of Aboriginal girls in science, engineering, and trades as career options.

Heritage Program

As described in the Volume 4 Appendix C Heritage Resource Assessment Report, the heritage program for the Site C Project provided employment and capacity building opportunities for 163 Aboriginal people during the 2010–2012 field seasons.

34.6.3.3 Engagement with Aboriginal Businesses

BC Hydro has actively pursued opportunities to engage directly with the Aboriginal business community, in the Peace Region and beyond:

- In February 2012, BC Hydro sponsored and participated in the inaugural Aboriginal Business Match Conference in Prince George. This event aims to bring together top business and economic development decision-makers from more than 150 First Nations and Tribal Councils with businesses, investors, customers, and suppliers looking to do business in First Nation communities. With the unique conference format, representatives from the Site C team were able to have one-on-one meetings with Aboriginal businesses and to build an awareness of regional First Nation suppliers and promote potential upcoming opportunities arising from the Site C project. BC Hydro and the Site C team will sponsor and attend this event again in February 2013.
- As outlined in Section 3.3 of Volume 1 Appendix F Project Benefits Supporting Documentation, BC Hydro held business information sessions targeted at the contracting and business community in several communities in the Northeast Development Region. The First Nations Engagement team notified First Nation groups and several Aboriginal businesses of the sessions. Notification was also provided to those businesses registered with the BC Hydro Aboriginal business directory. The presentation included information about BC Hydro's Aboriginal Procurement Policy and related processes.
- On request from Aboriginal groups, BC Hydro's procurement and Aboriginal Business staff have attended consultation and community meetings to review BC Hydro's Aboriginal Contact and Procurement Policy, and assist Aboriginal businesses with registration with the BC Hydro/Site C Aboriginal Business Directory. Additionally, regular check-in meetings were held with Aboriginal businesses doing work on the project to understand their capacity and interests with respect to ongoing work for the Project, should it proceed to construction.

34.7 Aboriginal Consultation and Engagement

34.7.1 Impact Benefit Agreements

In early March 2012, BC Hydro secured a mandate to enter into impact benefit agreement (IBA) negotiations with First Nations that, in BC Hydro's view, are likely to be adversely affected or impacted by the Project and where BC Hydro considers that accommodation beyond the mitigations listed in the EIS is warranted.

Between March 19, 2012 and April 27, 2012, BC Hydro advised seven First Nations that it had secured a mandate to negotiate an IBA, and that it was prepared to engage in initial discussions with those First Nations that were interested.

In advising First Nations of the mandate, BC Hydro outlined potential elements that could be included in an IBA, including:

- Lump sum cash payments
- Payment streams over time

- Cash equivalents – e.g., commitments to investments in community infrastructure
- Special purpose funds – set aside amounts designed for initiatives such as education, training, heritage, or cultural projects
- Environmental mitigation measures
- The inclusion of provincial Crown lands

With respect to the process for inclusion of provincial Crown lands, BC Hydro provided the following information:

- Crown lands would be negotiated in collaboration with B.C.
- Crown lands could be transferred to First Nations in fee simple
- Sub-surface resources would not be included in any land transfers
- Any third-party interests on those lands would have to remain in place
- In collaboration with B.C., BC Hydro would be prepared to engage in discussions respecting potential land protection and special management zone designations

In describing the potential elements of an IBA available under its mandate instructions, BC Hydro noted that two topics could not be included in a potential IBA. The first was that the resolution of any historical grievances regarding previous projects could not be included in an IBA for the Project. BC Hydro explained that any historical grievances would need to be raised with the Aboriginal Relations and Negotiations group within BC Hydro, which is responsible for the management of historic grievances related to prior BC Hydro projects. The second topic that could not be included in an IBA was an option of equity in the Project. BC Hydro explained that such an option was not available given the provisions prohibiting the sale of “heritage assets” included in the *Clean Energy Act*. Under the *Act*, a “heritage asset” includes a generation or storage asset included in Schedule 1 to the Act. The Project is one of the generation and storage assets named in Schedule 1.

Three First Nations (Blueberry River First Nations, Saulteau First Nations, and McLeod Lake Indian Band) accepted BC Hydro’s offer to enter into initial discussions toward an IBA. As of the filing of the EIS, impact benefit agreement offers have been made to the three First Nations. BC Hydro remains prepared to enter into discussions with the four remaining First Nations.

34.7.2 Consultation and Engagement Methods

This information has been provided in Section 9.2 Aboriginal Group Information Distribution and Consultation in Volume 1 Section 9 Information Distribution and Consultation. An issues tracking table is included in Volume 1 Appendix H Aboriginal Information Distribution and Consultation Supporting Documentation. Consultation summaries respecting BC Hydro’s engagement with each Aboriginal group identified in Table 34.1 are included, by Aboriginal group, in Part 2 of Volume 5 Appendix A Asserted or Established Aboriginal or Treaty Rights, Aboriginal Interests, and Information Requirements Supporting Documentation.

34.8 Aboriginal Summary

Pursuant to the direction included in Section 20.8 of the EIS Guidelines, BC Hydro has prepared an Aboriginal Summary for each of the 29 Aboriginal groups identified in Table 34.1. These Aboriginal Summaries are included in Volume 5 Appendix A Asserted or Established Aboriginal or Treaty Rights, Aboriginal Interests, and Information Requirements Supporting Documentation, as Part 4 of that Appendix for each Aboriginal group. BC Hydro sent a copy of the Aboriginal Summary to each of the Aboriginal groups identified in Table 34.1 on January 25, 2013.

The summaries identify the Aboriginal group and provide BC Hydro's understanding of the following:

- The asserted Aboriginal or treaty rights of that Aboriginal group
- The concerns with respect to the Project identified by that Aboriginal group
- The potential adverse effects of the Project on the exercise of asserted or established Aboriginal rights, treaty rights, and interests. This information is informed by the assessment carried out pursuant to Sections 19 and 34.3.3. Where adverse effects have been identified, the summary will also include information with respect to potential mitigation options, and any residual effects.

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Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11Métis Settlements Act, RSA 2000, c M-14

Saskatchewan Natural Resources Act, 20-21 George V, c. 41 (Can)

Treaty No. 8 (1899)