



PETER BALLANTYNE CREE NATION

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August 25, 2021

Minister Jonathan Wilkinson
Minister of Environment and Climate Change Canada
House of Commons
Ottawa ON K1A 0A6

Sent via e-mail: ec.ministre-minister.ec@canada.ca / ceaa.information.acee@canada.ca

ATTENTION: THE HONOURABLE MINISTER OF ENVIRONMENT AND CLIMATE CHANGE CANADA

RE: REQUEST FOR DESIGNATION OF THE PROPOSED LAKE DIEFENBAKER IRRIGATION EXPANSION PROJECT UNDER THE *IMPACT ASSESSMENT ACT, 2019*

Dear Sir,

I am writing on behalf of the Peter Ballantyne Cree Nation to register our extreme concern regarding the Lake Diefenbaker Irrigation Expansion Project (the Project) and disappointment at the lack of information and meaningful consultation provided to First Nations in Saskatchewan by the provincial and federal Crowns regarding the Project.

The Project's construction is expected to occur over the next 10 years in three main phases at a cost estimated at \$4 billion. The Project will irreversibly alter the lands and waters within the Saskatchewan and Qu'Appelle River watersheds and irrigate up to 500,000 acres of land, more than doubling the total amount of irrigable land in Saskatchewan.

Our First Nations' relationship with the Crown of Canada and Saskatchewan is grounded in our Treaty relationship, honourable dealings, and as a beneficiary of both Crowns' fiduciary responsibility to our people. Our Treaty and the 1992 *Treaty Land Entitlement (TLE) Framework Agreement* requires the Crown to set aside lands for Reserve creation – including potential lands within areas impacted by the Project. Our Treaty relationship requires that we be fully informed about any undertaking by the Crown that may impact our inherent and Treaty Rights in order to assess related impacts, understand overall contributions to regional cumulative effects on our

Amisk Lake	Deschambault Lake	Kinoosao	Pelican Narrows	Prince Albert	Sandy Bay	Southend	Sturgeon Landing
P. 306-362-2185	P. 306-632-4608	P. 306-758-3030	P. 306-632-2 125	P. 306-953 -4400	P. 306-754-2213	P. 306-758 -2144	P. 306-688-45 10
F. 306-362-2186	F. 306-632-4488	F. 306-758-3030	F. 306-632-2275	F. 306-953-4420	F. 306-754-2255	F. 306-758-2188	F. 306-688-2993

First Nation's rights and interests, and ensure meaningful dialogue on how those potentially impacted rights and interests may be accommodated.

We therefore expect the Crown to fulfil its duty to consult and ensure that our First Nation is provided with the capacity to be fully consulted in order to inform meaningful participation in the Project to address our inherent and Treaty rights and interests, which may be adversely impacted by a project of this magnitude.

To date, the information provided by the Crown representatives has been scarce and reflects a disregard for our inherent rights and title to the waters located in our traditional lands and our constitutionally-protected Treaty rights. As emphasized in the Assembly of First Nations Water Declaration:

First Nations have the right to free, prior and informed consent to developments on our lands, waters and coastal seas. We have the right to govern ourselves, and the right to self-determination. We have the right to freely pursue our economic, social and cultural development. We continue to exercise our rights to ownership and control over our traditional lands, territories and natural resources. Our internationally recognized right to self-determination gives First Nations the power to make decisions, based upon our laws, customs, and traditional knowledge to sustain our waters, for all life and future generations.

Canada's Western Economic Development (WED) Prairie Prosperity Report explicitly acknowledges our First Nations as Indigenous rights-holders in relation to water management in the prairies, and states that "*Indigenous rights-holders need to be engaged in a meaningful way to have their perspectives and concerns addressed throughout the development of irrigation infrastructure and water management strategies.*" The Report further states that "[a]n important opportunity for Indigenous rights-holders and water stakeholders to raise both their concerns and the expected benefits of the projects is during the federal impact assessment process, which is expected to be a requirement for both of the projects under consideration".

Despite the Report's assertion that an impact assessment process is necessary, we are informed that the Impact Assessment Agency has yet to declare this \$4 billion water diversion project a "designated Project", which is a necessary step for First Nations to take part in Project planning and to conduct an assessment of the Project's contribution to regional cumulative effects and potential adverse effects on the environment and our rights.

An impact assessment of the Project would enable:

1. An assessment of the Project's potential adverse impacts on sacred sites as well as sites of cultural value, ongoing use of lands and resources, and the associated impacts to the health, social, and economic conditions of our Nation,
2. The Project's contribution to regional cumulative effects to lands and waters,

3. Impacts to our First Nation/Crown Treaty relationship and the opportunity to create Reserves through TLE with access to water for development of a Reserve and agricultural economy, and
4. The accommodation of potential impacts to our inherent and Treaty rights and First Nations sovereignty over water rights.

Our First Nation fully supports the Federation of Sovereign Indigenous Nations (FSIN) Resolution (enclosed), which directed FSIN to request that the Minister of Environment and Climate Change Canada designate the Project for an impact assessment. Our First Nation is of the view that should the Project receive federal funds to enable its development, the resulting physical activities may cause adverse and irreparable impacts to our First Nation and therefore such warrants an impact assessment.

As a result of having been excluded from any Project planning, our First Nation must be provided with an opportunity to fully participate in a process that enables full disclosure of all Project-related information about the Project and associated financial resources to ensure we have the capacity to participate in meaningful consultation, complete a rigorous assessment of the Project on our rights and interests, and an opportunity to inform needed accommodation measures.

To reconcile our inherent and Treaty rights and interests with those of the Crown and to be fully informed through meaningful participation in the proposed Project, including its planning and development, we immediately require the following:

1. Clarity on timelines associated with the Project's designation process given that the Minister received this request from the FSIN on June 16, 2021, the federal election on September 20, 2021, and resulting impacts of the Caretaker Convention on the Minister's 90 day decision which was anticipated to be rendered on September 16, 2021.
2. In the absence of a ministerial decision designating the Project, postponement of all Project planning processes currently being advanced by the province of Saskatchewan through its agent Clifton and Associates, and others, for a reasonable period of time in order to allow meaningful Crown consultation and information exchange so that our Nation can develop a position in respect of the Project in its totality including Phases 1, 2 and 3, and the preliminary identification of any potential adverse effects caused the Project on our Nation including its health, social and economic conditions and our constitutionally-protected rights;
3. Full disclosure, past and present, of any Federal and Provincial funding arrangements for the Project and the terms and conditions by which the funding of approximately \$4 billion is committed and in particular, the amount committed to consultation and accommodation of First Nation interests;

4. Full disclosure to the extent possible of the scope of the Project and the physical work required, timeline planned, and procurement opportunities;
5. Full disclosure of the Agreement between Saskatchewan and its Water Agency and Clifton and Associates, including the Terms of Reference and Scope of Work by which Clifton and Associates will be guided; and
6. Access to reasonable financial resources to support our First Nation's capacity to retain experts to provide independent studies and assessments of the potential issues and cumulative impacts of the Project on our First Nation in order to better understand the impacts and answer the questions and views being sought during an Impact Assessment process.

Once we have received the above, our First Nation will be more informed and better able to engage in meaningful dialogue about consultation and accommodation of our legal rights and interests.

Failing the Crowns' willingness to cooperate, provide the above information and postpone any Ministerial decision related to the designation process until we can meaningfully participate, our First Nation is prepared to seek recourse through whatever legal means are necessary to ensure that our rights and interests are fully protected, and that the obligations of the Crown, including its fiduciary responsibility to our First Nation, is reasonably satisfied.

We therefore look forward to hearing from you within the next fourteen (14) days.

Yours truly,

<Original signed by>

Chief Karen Bird
Peter Ballantyne Cree Nation

Enclosure

cc: FSIN Executive
Premier Scott Moe, Saskatchewan
Minister Carolyn Bennett, CIRNA
Minister Marc Miller, ISC
Minister Jonathan Wilkinson, Environment and Climate Change Canada
Mr. Rob Harvey, Saskatchewan Regional Director General
Mr. Ian Martin, Team Lead, Prairie and Northern Regional Office,
Impact Assessment Agency Canada