

Reg No. 1305

SEP 11 2016

Honourable Daryl Shiwak
Minister of Lands and Natural Resources
Nunatsiavut Government
25 Ikajuktauvik Road
PO Box 70
Nain NL A0P 1L0

Dear Minister Shiwak:

**Re: Appeal on Human Health Risk Assessment Plan (HHRAP)
Lower Churchill Hydroelectric Generation Project**

I write in reply to your appeal received on August 12, 2016 for the above plan.

The plan was approved on June 14, 2016 following consultation with Health Canada and Health and Community Services as well as consultation with Aboriginal groups. Approval of the plan was subject to a condition, as outlined in my letter to you dated June 21, 2016. Your appeal has been reviewed in consultation with Health Canada, Fisheries and Oceans Canada, Environment and Climate Change Canada, and the Department of Health and Community Services.

You have stated the four grounds for the appeal as follows:

- (a) the Decision fails to act on the new scientific information which shows that the Project will have significant impacts on methylmercury concentrations in the Lake Melville ecosystem and increased Inuit exposure to methylmercury;
- (b) the Project will impair or damage the Lake Melville environment and have adverse effects on Inuit, including Inuit health and culture;
- (c) the Decision fails to require measures that will ensure risks associated with methylmercury concentrations in the environment as a result of the Project are properly mitigated, monitored and managed; and
- (d) the Decision, by approving the HHRAP before the results of the Human Health Risk Assessment (HHRA) are complete and can be assessed and acted on, is premature and an error in law.

A response to the four grounds you have raised is outlined below. As context for our responses it is important to understand the scope and objective of the HHRAP. The purpose of the HHRAP is to outline key activities that will occur in conducting a baseline pre-flooding Human Health Risk Assessment (HHRA). The HHRAP is therefore essentially a framework, or workplan, intended to describe a process to ensure that the HHRA is conducted pre-flooding in a manner that includes the steps and considerations described within the HHRAP.

Regarding (a), the process and tasks outlined in the HHRAP are intended to guide the measurement of exposure to mercury, methylmercury or any other chemical/contaminant that could affect human population health downstream of the Muskrat Falls dam, and therefore, are not dependent on the level or change in conditions that would happen from flooding the reservoir. Notwithstanding this point, the Schartup et al study was discussed at the March workshop wherein the HHRAP was also discussed, and, as stated in my letter of June 21, 2016, this workshop was one of components informing my decision on the HHRAP. The processes outlined in the HHRAP for the preparation of a HHRA are not dependent on the extent to which methylmercury increases from predicted levels, as the measurement approach for baseline exposure remains the same, as does the need to consider data arising from other monitoring plans and the need to consult regulatory experts on mitigations.

Regarding (b), it was recognized throughout the environmental assessment that the project had the potential to create significant environmental impacts, and that methylmercury was one of those impacts. That is why the project was released subject to numerous conditions. The Nunatsiavut Government (NG) was consulted through the environmental assessment (EA) of the project and was funded to participate in the EA. Post EA release, the NG has been consulted on all provincial authorizations needed for the project, including the HHRAP, notwithstanding the finding in 2015 in *Nunatsiavut v. Newfoundland and Labrador* (Department of Environment and Conservation) that permitting consultation was not a requirement of the Labrador Inuit Land Claim Agreement. That case also indicated that permitting consultation was not a means to revisit the EA. Rather the focus of permitting consultation is on the activities which are the subject of the permit itself. Therefore, we must turn to the HHRAP itself to fully and fairly assess the views of the NG on the HHRAP. An objective of the HHRAP is to outline a process to ensure Inuit health protection. The HHRAP is designed to describe a process to determine pre-flooding conditions for the downstream area. Methylmercury levels are predicted to increase as a result of flooding the reservoir and then decrease over time (approx. 20-25 years) to background levels. The levels of increase would not change the processes and tasks for conducting the HHRA that are described within the HHRAP.

Regarding (c), this is outside the scope of a HHRAP. The role of the HHRAP in itself is not one of either mitigation or monitoring. It does, however, provide a process for conducting the HHRA, which will outline suitable remedies or mitigations based on consideration of its baseline and other monitoring activities associated with the project, in consultation with the appropriate regulatory agencies.

Regarding (d), the HHRAP describes how the HHRA is to be conducted and therefore must come first. Page 21 of the HHRAP clearly outlines the core tasks and activities that the HHRA will include. In approving the HHRAP, it is my expectation that the HHRA will be conducted in the manner outlined in the HHRAP.

In conclusion, the appeal by the NG does not contain any technical issues, concerns or criticisms of the HHRAP itself that would suggest the need to revise the original decision. It raises many arguments that are outside the scope of the HHRAP, and while they are arguments which government is currently considering in follow up to the August 4, 2016 Workshop, they

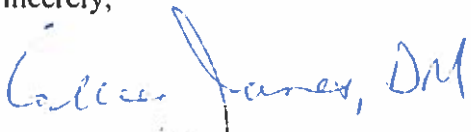
are not relevant to the decision to approve the HHRAP.

The detailed letter sent to you on June 21, 2016, explained, in the first 1.5 pages, the key elements which informed the decision to approve the HHRAP. I have attached a copy for your convenience. I have carefully considered the material filed by the NG in support of its August 12, 2016 appeal and wish to advise that my decision stands.

On the broader issues raised in your appeal letter please be advised that these are being examined as part of our ongoing assessment arising from the recently held scientific workshop.

If you have any questions concerning this appeal, please contact Mr. Bas Cleary, Director, Environmental Assessment Division, at (709)729-0673.

Sincerely,


PERRY TRIMPER, MHA
District of Lake Melville
Minister

Attachment

cc: Hon. Dwight Ball, Premier
Hon. Dominic LeBlanc, Minister of Fisheries and Oceans Canada
Mr. Stan Marshall, CEO Nalcor Energy
Mr. Todd Russell, President, NunatuKavut Community Council
Grand Chief Anastasia Qupee, Innu Nation

Assessment Committee

on April 18, 2016 and new report "Lake Melville: Avativut, Kanuittailinnivut (Our Environment, Our Health)", where you describe the NG's HHRA, including a Dietary Survey and Inuit Health Survey was considered as well.

Other important inputs into the decision making process included:

- Fisheries and Oceans Canada's Canadian Science Advisory Secretariat (CSAS) report titled: *Review of Mercury Bioaccumulation in the Biota of Lake Melville* which provided advice on the Schartup *et al.* (2015) study and on downstream methylmercury monitoring; and
- A scientific workshop undertaken on March 22, 2016 in St. John's to discuss the HHRAP specifically and methylmercury more generally, including the Schartup *et al.* (2015) study. The workshop participants included representatives of Environment and Conservation, Health and Community Services, Office of Public Engagement, Fisheries and Oceans Canada, Health Canada, Nalcor, Dillon Consulting, Reed Harris Environmental, with expertise in numerous fields including environmental health, food safety, ecological aquatic science, toxicology, health risk assessment, hydrology, environmental research, methylmercury modelling and fisheries. A summary of the scientific workshop report is attached.

Full and fair consideration was given to the input received from the NG in accepting the HHRAP.

I would also like to take this opportunity to reply to your four specific requests related to methylmercury and Muskrat Falls. Your requests and my response are outlined below.

1. Fully clear the future Muskrat Falls reservoir

Please be advised, the provincial government indicated on March 15, 2012, in its response to recommendation 4.5 of the Joint Review Panel (the "JRP"), that "*the Government supports partial harvesting of the flood zone.*" The partial clearing plan for the reservoir proposed by Nalcor will result in effectively the same reductions of methylmercury as the "full" clearing scenario which was studied by the JRP. Nalcor's clearing plan will see the removal of approximately 70 to 75 percent of vegetation. As regulator, I accept this clearing plan as the most practical and safe option.

With respect to the NG's request for clearing including soil please be advised this was assessed, and was discussed by experts at the March 2016 workshop. Our assessment determined that soil clearing is inappropriate based on the following factors:

- Environmental concerns (i.e. sedimentation, erosion);
- Loss of fish habitat due to sterile reservoir;
- Stripping 25cm of accessible soil on half of the flooded area = 5 million m³ would create additional environmental management challenges in terms of soil disposal.

In addition, even if such an extraordinary measure was taken, downstream monitoring for methylmercury in order to determine whether consumption advisories are needed as a result of the project would still be required.

2. Negotiate an Impact Management Agreement

The NG requested an Impact Management Agreement "*consistent with recommendation 13.9 of the Joint Review Panel*". The JRP recommendation referenced the need to engage with appropriate parties in the event of consumption advisories "*to reach agreement regarding further mitigation where possible and compensation measures, including financial redress if necessary.*" In 2012, the Government of Newfoundland and Labrador accepted the intent of recommendation 13.9 of the JRP, indicating that "*if consumption advisories are required as a result of the downstream mercury assessment, then Nalcor should consult with downstream resource users on further mitigation measures, including the potential for compensation.*"

The condition of my acceptance of the HHRAP addresses the intent of impact management and reflects the core elements of the JRP recommendation.

3. Establish an independent Expert Advisory Committee

The Government of Newfoundland and Labrador accepted the JRP's recommendation, that Nalcor establish an "Environmental Monitoring and Community Liaison Committee" to provide feedback on the effects of the Project.

In accordance with the *Lower Churchill Hydroelectric Generation Project Undertaking Order (18/12)*, an Environmental Monitoring and Community Liaison Committee has been established by Nalcor. I understand the NG were invited by Nalcor to be a member of the committee, but unfortunately declined to participate. The Provincial Government considers that this Committee would have and still does provide an opportunity for discussion of the NG's concerns on the downstream effects of the Project. I would encourage the NG to reconsider participation on this committee.

4. Grant Inuit joint decision-making authority over downstream environmental monitoring and management.

As you are aware the JRP considered the issue of downstream effects and did not direct a recommendation to the Government of Newfoundland and Labrador to establish joint decision-making with the NG or any other Aboriginal organization. Both the Federal and Provincial Governments issued their respective responses to the JRP's recommendations on March 12, 2013, after engaging the NG on that Report. The Provincial Government accepted the intent of JRP recommendations 13.9 to 13.13, which related to consumption advisories, human health and mercury monitoring, dietary surveys and country food.

The Provincial Government has consulted, and will continue to consult, the NG on permits and other authorizations required for the Project. The NG is welcome to seek whatever expertise it considers appropriate to inform its response to Government authorizations, as it has

done with the research from Harvard University (*Schartup et al. 2015*). The Provincial Government is committed to the full and fair consideration of all comments received during such consultations, including those of independent experts that provide advice to the NG and other Aboriginal governments and organizations. It is for that reason that I welcomed the NG's participation, with their expert researchers, at the recently held scientific workshop. As I have recently indicated to the NG and others, I remain committed to facilitating open dialogue amongst experts. If the NG and its researchers wish to participate in an expert discussion on methylmercury monitoring, mechanisms for exchanging and assessing information from such monitoring, processes for determining whether consumption advisories are required and their nature and extent, or other important aspects of the project related to methylmercury, I would be pleased to facilitate a further meeting of experts of the various agencies.

I trust this provides a comprehensive response and explanation of our decisions.

Sincerely,



PERRY TRIMPER, MHA
District of Lake Melville
Minister

cc: Honourable Dwight Ball, Premier
Labrador and Aboriginal Affairs Office