

July 2, 2020

BY EMAIL

The Hon. Jonathan Wilkinson, P.C., M.P.
Minister of the Environment and Climate Change
200 Sacre-Coeur Boul., 2nd Floor
Gatineau, Quebec
K1A 0H3

Dear Minister:

**RE: PROPOSED GAZODUQ PROJECT – REQUESTED REGULATION TO ENABLE
AGREEMENT WITH KEBAOWEK FIRST NATION UNDER SECTION 114(1)(e)
OF THE *IMPACT ASSESSMENT ACT***

Please be advised that the Canadian Environmental Law Association (CELA) has been retained as counsel for Kebaowek First Nation in relation to the above-noted matter.

Chief Lance Haymond of Kebaowek First Nation has written to you (and your predecessor Minister McKenna) on several occasions in 2019 and 2020 to request the immediate passage of a regulation under section 109(d)(iii) of the *Impact Assessment Act (IAA)*.

As you know, the promulgation of this regulation is the necessary precondition for you to enter into an agreement under section 114(1)(e) of the *IAA* in order to designate Kebaowek First Nation as a “jurisdiction” within the meaning of the Act, and to authorize Kebaowek First Nation to exercise certain powers, duties or functions in relation to assessment of the Gazoduq Project’s potential impacts on the traditional territory of our client.

Unfortunately, your letter to Chief Haymond dated May 22, 2020 does not contain a clear commitment to pass this key regulation before the Gazoduq impact assessment proceeds any further. Similarly, your letter does not establish any firm timelines for passing the regulation. Instead, your letter merely invites Kebaowek First Nation to express its views about regulatory issues to the Impact Assessment Agency of Canada.

In fact, our client has already met and corresponded with Agency staff about this very matter, but to no avail. For example, in a letter to Chief Haymond dated June 4, 2020, the Director General of the Agency’s Crown Consultation Operations Division simply repeats the same non-committal statements contained in your May 22nd letter.

In any event, we find that your letter is unresponsive to the serious and time-sensitive concerns raised in Chief Haymond’s previous correspondence. Moreover, it appears to us that your government’s dilatory approach to developing the regulation is unreasonable and falls considerably short of fulfilling the Crown’s duty to meaningfully consult with our client.

Canadian Environmental Law Association

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In the continuing absence of the requested regulation, Kebaowek First Nation is, in effect, being treated by federal authorities as just another stakeholder that may make submissions on impact assessment documentation. However, it is beyond dispute that our client is an Indigenous community with legally enforceable rights that are recognized and affirmed under section 35 of the *Constitution Act, 1982*.

In our opinion, the constitutionally protected rights of Kebaowek First Nation are best advanced through an agreement executed under section 114(1)(e) of the *IAA*. We further note that such an agreement is consistent with the stated purposes of the *IAA*, which include promoting cooperation with Indigenous peoples of Canada with respect to impact assessments, and ensuring respect for section 35 rights when decisions are being made about impact assessments.

Accordingly, we have been instructed by our client to reiterate its urgent request for the expeditious passage of the regulation that authorizes agreements pursuant to section 114(1)(e) of the *IAA*.

If it is your government's intention to develop and consult upon generic "Indigenous Cooperation Regulations" that apply broadly across Canada, then we see no compelling reason why a project-specific regulation cannot be made in the interim to ensure that Kebaowek First Nation is promptly designated and empowered as a "jurisdiction" under the *IAA* before the planning phase has been completed in the Gazoduq impact assessment. From our client's perspective, time is of the essence since the impact assessment is proceeding with undue haste, and any further delay in making this overdue regulation is unjustifiable and unacceptable.

We look forward to your reply to our client's request at your earliest convenience. Please contact the undersigned if you require any further information about this matter.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Kerrie Blaise
Northern Services Counsel



Richard D. Lindgren
Counsel

- cc. Chief Lance Haymond, Kebaowek First Nation
Melanie Sanschagrín, Crown Consultation Lead
Ian Ketchensen, Director General IAAC
Whitney Punchak, Canadian Energy Regulator
Camille Vezina, Gazoduq
Grand Chief Verna Polson, Algonquin Nation Tribal Council
Chief Adrienne Jerome, Conseil de la Nation Anishnabe du Lac Simon
Chief David Kistabish, Conseil de la Première Nation Abitibiwinni
Chief Regis Penosway, Conseil des Anicinapek de Kitcisakik
Chief Sasha Wabie, Timiskaming First Nation

Chief Steeve Mathias, Long Point First Nation
Chief Casey Ratt, Algonquins of Barriere
Lake Chief Lisa Robinson, Wolf Lake First Nation
Councillor Frankie Cote, Kitigan Zibi Anishinabeg
Chief Wendy Jocko, Algonquins of Pikwakanagan First Nation
Deputy Chief, Dave Morris, Wahgoshig First Nation
Norm Odjick, Algonquin Nation Tribal Council
Crystal Lee Beausoleil, Algonquin Nation Tribal Council
Louis Bergeron, President, Gazoduq Inc.
Sue Chiblow, Co-Chair IAAC Indigenous Committee