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FIRST NATIONS COMMERCIAL AND INDUSTRIAL DEVELOPMENT ACT  
DOMINION WATER POWER ACT

P.C. 2019-480 May 9, 2019

Whereas the Black Lake First Nation has requested by resolution of its council that the Minister of Indian Affairs and Northern Development recommend to the Governor in Council the making of the annexed Regulations and, in accordance with paragraph 5(1)(a) of the *First Nations Commercial and Industrial Development Act*, the Minister has received that resolution;

Whereas the Black Lake First Nation is a first nation within the meaning of the *First Nations Commercial and Industrial Development Act*;

Whereas the purpose of the annexed Regulations is to ensure that the laws set out in Schedule 2 to the annexed Regulations apply as federal law to the project, within the limits of federal constitutional authority;

Whereas the annexed Regulations specify provincial officials by whom, and provincial bodies by which, powers may be exercised or duties are to be performed;

And whereas, in accordance with paragraph 5(1)(b) of the *First Nations Commercial and Industrial Development Act*, an agreement has been concluded between the Minister of Indian Affairs and Northern Development, the Province of Saskatchewan and the council of the Black Lake First Nation for the administration and enforcement of the annexed Regulations by those provincial officials and bodies;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Indian Affairs and Northern Development, pursuant to section 3 of the *First Nations Commercial and Industrial Development Act* and paragraph 15(d) of the *Dominion Water Power Act*, makes the annexed *Black Lake First Nation Water Power Regulations*.

## **Black Lake First Nation Water Power Regulations**

### **Interpretation**

### **Definitions**

1 The following definitions apply in these Regulations.

- **incorporated laws** means the statutes and regulations of Saskatchewan, or the portions of them, that are set out in Schedule 2, as amended from time to time and as adapted by sections 13 to 34. (*texte législatif incorporé*)
- **project** means the construction, modification, operation, decommissioning, reclamation and abandonment of hydroelectric facilities on the project lands and the generation of electricity from the water power available within those lands. (*projet*)
- **project lands** means the lands of the Black Lake First Nation Chicken Reserve No. 224 that are set out in Schedule 1. (*terres du projet*)

### **Provincial – *The Interpretation Act, 1995***

**2** The incorporated laws are to be interpreted in accordance with the Saskatchewan statute *The Interpretation Act, 1995*, S.S. 1995, c. I-11.2, as amended from time to time, and, for that purpose, references to “enactment” in that Act are to be read to include the incorporated laws.

### **Other expressions**

**3** For greater certainty, the adaptations in sections 13 to 34 are to be interpreted to be part of the incorporated laws to which they apply.

### **Application of Laws**

#### **Incorporation by reference**

**4** Subject to section 5, the incorporated laws apply to the project.

#### **Restriction – laws in force**

**5 (1)** A provision of an incorporated law applies only if the provision of the law of Saskatchewan that it incorporates is in force.

#### **Restriction – limits of authority**

**(2)** For greater certainty, an incorporated law applies only to the extent that it is within the limits of federal constitutional authority.

### **Incorporation of procedural matters**

**6 (1)** Unless otherwise provided and subject to any adaptations set out in sections 13 to 34, the following are to conform to the laws of Saskatchewan, whether or not those laws have been set out in Schedule 2:

- **(a)** the enforcement of incorporated laws;
- **(b)** the prosecution of an offence, or any other proceedings, in relation to the contravention of an incorporated law;
- **(c)** the review or appeal of an action or decision taken, or of a failure to take an action that could have been taken, under an incorporated law; and
- **(d)** the delivery of notices or the service of documents in relation to an action to be taken under an incorporated law.

## **Related powers**

**(2)** For the purposes of subsection (1), a person or body that has a power, duty or function under a law of Saskatchewan has the same power, duty or function in respect of any actions taken under that subsection.

## **Offences and penalties**

**7 (1)** If contravention of a law of Saskatchewan that is incorporated in these Regulations is an offence under the laws of Saskatchewan, contravention of the incorporated law is also an offence and is subject to the same penalties as under the laws of Saskatchewan.

## **Violations and administrative monetary penalties**

**(2)** If contravention of a law of Saskatchewan that is incorporated in these Regulations is a violation under the laws of Saskatchewan, contravention of the incorporated law is also a violation and is subject to the same administrative monetary penalties as under the laws of Saskatchewan.

## **Financial requirements under lease**

**8** If the incorporated laws require a cash deposit or other financial security to be given, those requirements do not displace, but instead apply in addition to, the requirements of any lease of the project lands in relation to cash deposits or other financial security.

## **Inapplicable Federal Regulations**

### **Exclusion**

**9** The *Dominion Water Power Regulations*, the *Indian Reserve Waste Disposal Regulations* and the *Indian Timber Regulations* do not apply to the project.

## **Use and Occupation of Land**

### **Lease, permit or easement**

**10** The Minister of Indian Affairs and Northern Development may issue leases or permits or grant easements for the purpose of carrying out the project.

## **Water Rental**

### **Payment**

**11 (1)** The water rentals required to be paid in respect of the project under *The Water Power Rental Regulations*, as incorporated and adapted by these Regulations, are to be paid in the following proportions:

- **(a)** 50% to the Water Security Agency or its successor; and
- **(b)** 50% to Her Majesty in right of Canada.

## **Use and benefit**

(2) The water rentals paid to Her Majesty in right of Canada are to be for the use and benefit of the Black Lake First Nation.

## **Transitional Provision**

### **Survival of rights**

12 Any licences, permits, authorizations, orders or exemptions — including any amendments to them — issued by a provincial official in relation to the project before the day on which these Regulations come into force are to be considered to have been issued under these Regulations and to be valid for the purposes of these Regulations.

## **Adaptations Applicable to Incorporated Laws**

### **Statutes and regulations of Saskatchewan**

13 Unless otherwise indicated, the statutes and regulations referred to in sections 18 to 34 are statutes and regulations of Saskatchewan.

### **Reference to Crown**

14 For greater certainty, in the incorporated laws,

- (a) “Crown” does not include Her Majesty in right of Canada;
- (b) “Crown lands” and “Crown mineral lands” do not include the project lands; and
- (c) a “Crown disposition” does not include a disposition by Her Majesty in right of Canada.

### **Interpretation of incorporated laws**

15 (1) Incorporated laws are to be read without reference to any of the following:

- (a) spent provisions;
- (b) provisions appointing a person, providing for the remuneration of a person, or establishing or continuing a provincial body, program, fund or registry;
- (c) provisions relating to the internal management of a provincial body;
- (d) provisions requiring or authorizing money to be spent from the General Revenue Fund of Saskatchewan or from other funds administered by Saskatchewan;
- (e) provisions authorizing the Lieutenant-Governor in Council, a provincial Minister or a provincial body to make regulations of general application except to the extent required to make the regulations set out in Schedule 2;
- (f) provisions authorizing any person or provincial official or body to expropriate any interest in lands; and
- (g) provisions authorizing or imposing a tax or granting or authorizing a tax credit.

### **Interpretation of incorporated laws**

**(2)** Despite paragraph (1)(b),

- **(a)** a person appointed to a position under a law of Saskatchewan that has been incorporated by reference in these Regulations is considered to have been appointed to the same position for the purposes of these Regulations for as long as that person remains in that position under the law of Saskatchewan; and
- **(b)** a provincial body, program, fund or registry established or continued under a law of Saskatchewan that has been incorporated by reference in these Regulations is considered to have been established or continued for the purposes of these Regulations.

### **Specified persons, officials and bodies**

**(3)** For greater certainty, a person, provincial official or provincial body that has a power, duty or function under a law of Saskatchewan incorporated by reference in these Regulations has the same power, duty or function under these Regulations, subject to the adaptations set out in sections 18 to 34.

### **Interpretation of incorporated laws**

**(4)** For greater certainty, if a law of Saskatchewan is adapted by these Regulations, a reference to that law in an incorporated law, or in any notice, form, instrument or other document issued under an incorporated law, is to be read as a reference to that law as adapted by these Regulations.

### **Limitation on searches and inspections**

**16** A power to conduct searches or inspections under an incorporated law, including the power to enter a place, does not include a power to enter or search, or to inspect anything in, a federal government office, without the consent of the person who is or appears to be in charge of that office.

### **Limitation on production of documents**

**17** A power to seize, remove or compel the production of documents under an incorporated law does not include a power to seize, remove or compel the production of a document in the possession of the federal government, without the consent of the person in possession of the document.

### **Adaptations to Incorporated Laws**

#### **The Environmental Management and Protection Act, 2010**

##### **Adaptation to subsection 13(2)**

**18** In subsection 13(2) of *The Environmental Management and Protection Act, 2010*, a reference to “owner” is to be read as a reference to Her Majesty in right of Canada and the Black Lake First Nation.

##### **Adaptation to subsection 34(2)**

**19 (1)** Subsection 34(2) of the Act is to be read as follows:

**(2)** If the minister is satisfied that any sewage works will adversely affect any land other than the project lands, the minister shall provide a written request to the permit holder requiring the permit holder to:

- **(a)** in respect of lands other than reserve lands,
  - **(i)** obtain from the registered owner of the other land, an easement, in the prescribed form,
  - **(ii)** obtain from any other person having a registered interest in the land mentioned in subclause (i) a consent to the granting of the easement,
  - **(iii)** apply to the Registrar of Titles to register the easement against the titles to the affected lands; and
- **(b)** in respect of reserve lands situated outside the project lands, obtain an easement pursuant to the *Indian Act*.

#### **Adaptation to subsection 34(4)**

**(2)** In subsection 34(4) of the Act, a reference to “subsection (2)” is to be read as a reference to “clause (2)(a)”.

#### **Adaptation to paragraph 50(1)(a)**

**20** Paragraph 50(1)(a) of the Act is to be read as follows:

- **(a)** on any land that is owned by another person or the Crown or on the project lands or any other Black Lake reserve lands; or

### **The Environmental Management and Protection (Saskatchewan Environmental Code Adoption) Regulations**

#### **Adaptation to paragraph 1-7(1)(a)**

**21 (1)** In paragraph 1-7(1)(a) of Chapter B.1.1 of the Appendix to *The Environmental Management and Protection (Saskatchewan Environmental Code Adoption) Regulations*, a reference to “owner” is to be read as a reference to Her Majesty in right of Canada and the Black Lake First Nation.

#### **Adaptation to paragraph 1-7(2)(a)**

**(2)** In paragraph 1-7(2)(a) of Chapter B.1.1 of the Appendix to the Regulations, a reference to “owner of adjacent land” is to be read as a reference to Her Majesty in right of Canada and the Black Lake First Nation.

#### **Adaptation to paragraph 1-8(2)(a)**

**22** In paragraph 1-8(2)(a) of Part 1 of Chapter B.1.2 of the Appendix to the Regulations, a reference to “owner” is to be read to include Her Majesty in right of Canada and the Black Lake First Nation.

### **Adaptation to paragraphs 3-2(a) and 3-3(b)**

**23** In paragraphs 3-2(a) and 3-3(b) of Part 3 of Chapter C.3.1 of the Appendix to the Regulations, a reference to “landowner” is to be read to include Her Majesty in right of Canada and the Black Lake First Nation.

### **The Ground Water Regulations**

#### **Adaptation to subsection 26(1)**

**24** In subsection 26(1) of *The Ground Water Regulations*, a reference to “landowner” is to be read to include Her Majesty in right of Canada.

### **The Hazardous Substances and Waste Dangerous Goods Regulations**

#### **Adaptation to subparagraph 15(1)(b)(i)**

**25** In subparagraph 15(1)(b)(i) of *The Hazardous Substances and Waste Dangerous Goods Regulations*, the reference to the “National Fire Code of Canada, 1990”, as revised, amended or substituted at the date of the coming into force of this subclause” is to be read as a reference to the “National Fire Code of Canada, 2010”, as amended from time to time”.

### **The Saskatchewan Employment Act**

#### **Adaptation to paragraph 3-1(1)(t)**

**26** The definition **owner** in paragraph 3-1(1)(t) of *The Saskatchewan Employment Act* is to be read as follows:

“**owner**” means:

- **(i)** any person to whom Her Majesty the Queen in right of Canada has granted a right in relation to the project, and includes any continuation of that person resulting from one or more amalgamations or reorganizations and any successor to that person; and
- **(ii)** any delegate, assignee, partnership, agent, sub-lessor, receiver, mortgagee or person who acts for or on behalf of a person mentioned in subclause (i).

### **The Uniform Building and Accessibility Standards Act**

#### **Adaptation to paragraph 2(1)(j.1)**

**27 (1)** The definition **land surveyor** in paragraph 2(1)(j.1) of *The Uniform Building and Accessibility Standards Act* is to be read as follows:

- **(j.1)** “**land surveyor**” means a Canada Lands Surveyor within the meaning of section 2 of the *Canada Lands Surveyors Act*;

#### **Adaptation to paragraph 2(1)(k)**

**(2)** The definition *local authority* in paragraph 2(1)(k) of the Act is to be read without reference to “or” at the end of subparagraph (ii), with reference to “or” at the end of subparagraph (iii) and with reference to the following after subparagraph (iii):

- **(iv)** the Black Lake First Nation;

#### **Adaptation to subsection 21(3)**

**28** Subsection 21(3) of the Act is to be read without reference to “and may be added to the tax payable on the property and collected in the same manner as taxes on the property”.

#### **The Uniform Building and Accessibility Standards Regulations**

##### **Adaptation to subsection 11(1)**

**29** Subsection 11(1) of *The Uniform Building and Accessibility Standards Regulations* is to be read without paragraph (c).

#### **The Water Power Regulations**

##### **Adaptation to section 11**

**30 (1)** Section 11 of *The Water Power Regulations* is to be read with the following after subsection (1):

- **(1.1)** The corporation shall provide a copy of the notice to Her Majesty in right of Canada.

##### **Adaptation to subsection 11(3)**

**(2)** Subsection 11(3) of the Regulations is to be read as follows:

- **(3)** After considering the representations mentioned in subsection (1), the corporation shall issue a written decision, serve a copy of the decision on the applicant or licensee and provide a copy of the decision to Her Majesty in right of Canada.

##### **Adaptation to section 11**

**(3)** Section 11 of the Regulations is to be read with the following after subsection (5):

- **(6)** Nothing in this section shall be interpreted so as to limit the ability of Her Majesty in right of Canada to bring a proceeding or take any enforcement measures that Her Majesty in right of Canada is entitled to bring or to take under federal legislation.

#### **The Water Power Rental Regulations**

##### **Adaptation to subsection 3(1)**

**31 (1)** Subsection 3(1) of *The Water Power Rental Regulations* is to be read as follows:



- **3(1)** Every person who uses water for the purpose of producing water power using works, including persons who store water for the purpose of producing water power, shall pay the water rental calculated in accordance with these regulations of which 50% shall be paid to the corporation and 50% to Her Majesty in right of Canada.

#### **Adaptation to subsection 3(4)**

(2) Subsection 3(4) of the Regulations is to be read as follows:

- **(4)** Every licensee shall submit to the corporation and to Her Majesty in right of Canada all data required to calculate the water rental payable pursuant to these regulations.

#### **Adaptation to subsection 3(8)**

(3) The portion of subsection 3(8) of the Regulations before paragraph (a) is to be read as follows:

- **(8)** The corporation and Her Majesty in right of Canada may charge and collect interest on any water rental due to the corporation or Her Majesty in right of Canada, as the case may be, not paid in full by the date it is payable pursuant to these regulations at a rate equal to:

#### **Adaptation to subsection 3(9)**

(4) Subsection 3(9) of the Regulations is to be read as follows:

- **(9)** Any water rental not paid in full by the date on which it is payable, together with any interest payable pursuant to subsection (8), is a debt due and owing to the corporation or Her Majesty in right of Canada, as the case may be, by the persons from whom it is payable, and the corporation or Her Majesty in right of Canada, as the case may be, may recover that debt in any manner allowed by law for the recovery of debts due to the Crown and Her Majesty in right of Canada.

#### **Adaptation to section 3**

(5) Section 3 of the Regulations is to be read with the following after subsection (12):

- **(13)** All payments made to and interest collected by Her Majesty in right of Canada under this section shall be for the use and benefit of the Black Lake First Nation and shall be made payable and remitted to the Receiver General of Canada.

### **The Waterworks and Sewage Works Regulations**

#### **Adaptation to section 72**

**32** In section 72 of *The Waterworks and Sewage Works Regulations*, a reference to “clause 34(2)(a)” is to be read as a reference to “subclause 34(2)(a)(i)”.

#### **Coming into Force**

## **Registration**

**33 These Regulations come into force on the day on which they are registered.**

## **SCHEDULE 1**

(Section 1)

### **Project Lands**

All surface lands within Chicken Indian Reserve No. 224, Province of Saskatchewan, depicted as Surface Zone A on Administrative Area Plan 104899 filed in the Canada Lands Surveys Records.

## **SCHEDULE 2**

(Section 1, subsection 6(1) and paragraph 15(1)(e))

### **Incorporated Laws**

- *The Environmental Management and Protection Act, 2010*, S.S. 2010, c. E-10.22, other than subsections 13(3) and (4) and Division 1 of Part VI
- *The Environmental Management and Protection (General) Regulations*, R.R.S. c. E-10.22 Reg. 1, other than Part V
- *The Environmental Management and Protection (Saskatchewan Environmental Code Adoption) Regulations*, R.R.S. c. E-10.22 Reg. 2
- *The Fire Safety Act*, S.S. 2015, c. F-15.11, other than section 34
- *The Ground Water Regulations*, Sask. Reg. 172/66
- *The Hazardous Substances and Waste Dangerous Goods Regulations*, R.R.S. c. E-10.2 Reg. 3
- *The Occupational Health and Safety Regulations, 1996*, R.R.S. c. O-1.1 Reg. 1
- *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1, other than Parts II and V to VIII
- *The Uniform Building and Accessibility Standards Act*, S.S. 1983-84, c. U-1.2
- *The Uniform Building and Accessibility Standards Regulations*, R.R.S. c. U-1.2 Reg. 5
- *The Water Power Regulations*, R.R.S. c. W-6 Reg. 3
- *The Water Power Rental Regulations*, R.R.S. c. W-6 Reg. 2
- *The Water Security Agency Act*, S.S. 2005, c. W-8.1, other than sections 23 and 24, subsection 38(1), sections 39 to 42 and 64 to 66 and subsections 83(2) and (3)
- *The Water Security Agency Regulations*, R.R.S. c. W-8.1 Reg. 1
- *The Waterworks and Sewage Works Regulations*, R.R.S. c. E-10.22 Reg. 3
- *The Workers' Compensation Act, 2013*, S.S. 2013, c. W-17.11, other than section 157 and subsection 159(1)

## **REGULATORY IMPACT ANALYSIS STATEMENT**

(This statement is not part of the Regulations.)

## **Issues**

In June 2015, the Black Lake First Nation submitted a proposal to the Department of Indian Affairs and Northern Development requesting the development of regulations under the *First Nations Commercial and Industrial Development Act* to enable the development and operation of a diversion-type hydroelectric facility on the Black Lake First Nation reserve lands. Without the *Black Lake First Nation Water Power Regulations*, the construction of such a project could not proceed.

The *Black Lake First Nation Water Power Regulations*, made pursuant to the *First Nations Commercial and Industrial Development Act* and the *Dominion Water Power Act*, are necessary for two reasons. First, certain provincial regulations do not apply on First Nation lands, as they fall under the jurisdiction of the federal government in accordance with subsection 91(24) of the *Constitution Act, 1867*. This creates a regulatory gap on reserve. The same or similar project located off reserve would be subject to a robust regulatory regime, but in the absence of these regulations, the proposed project, which is on reserve, would not have such a regime as there are no equivalent federal regulations that apply. Second, water power is regulated both provincially by *The Water Power Act* and its associated regulations, and federally by the *Dominion Water Power Act* and its regulations. Because the Fond du Lac River flows through Black Lake First Nation reserve land, it was unclear whether the water power generated by a project would be regulated provincially or federally.

A lack of adequate regulations and/or uncertainty around which regulations apply for industrial and commercial development on federally regulated reserve land can discourage investment in large projects and hinder economic development.

## **Background**

Increasingly, First Nations across Canada are developing plans for complex commercial and industrial development projects on reserve. These projects have economic benefits such as employment and business opportunities for First Nation members, and create significant ongoing revenue for First Nation governments. Large-scale industrial projects contribute to the economy of the surrounding region, providing employment opportunities and generating tax revenues that benefit all Canadians.

In 2006, the *First Nations Commercial and Industrial Development Act* came into force to facilitate economic development on reserve. It enables the Government of Canada to create a regulatory regime for a specific project, on a specific piece of reserve land, by replicating or incorporating by reference relevant provincial laws and regulations. In practice, this means that projects under the *First Nations Commercial and Industrial Development Act* are required to meet standards that are substantially similar to those that apply in the rest of the province where the reserve is located. The use of the *First Nations Commercial and Industrial Development Act* removes legal uncertainty and risk, enhancing confidence for First Nation people, investors, developers and the public by ensuring that they are dealing with regulations and regulators that they know and understand.

The *First Nations Commercial and Industrial Development Act* requires that a tripartite agreement be entered into prior to the making of regulations. This tripartite agreement ensures that provincial officials can perform administrative, monitoring, compliance and enforcement activities with respect to a hydroelectric facility on specified reserve lands. As a result of the *Black Lake First Nation Water Power Regulations*, provincial departments and agencies will perform these activities as they do for similar projects located off reserve.

A tripartite agreement between Canada, Saskatchewan, and the First Nation, as required under the *First Nations Commercial and Industrial Development Act*, was developed and sets out the agreement between the parties for the administration and enforcement of the *Black Lake First Nation Water Power Regulations* by provincial officials and bodies.

The Saskatchewan Water Security Agency, as the organization representing the Government of Saskatchewan, has participated in the negotiations of the tripartite agreement between Canada, Saskatchewan, and the First Nation. The *Black Lake First Nation Water Power Regulations*, together with the tripartite agreement, create a comprehensive regulatory regime for a hydroelectric project on Black Lake First Nation reserve land. Enacting the *Black Lake First Nation Water Power Regulations* provides stability to private sector investors looking to build and operate a hydroelectric facility.

## **Objective**

The objectives of the *Black Lake First Nation Water Power Regulations* are to

- remove regulatory barriers to economic development on reserve to improve economic and social conditions for First Nation members;
- increase opportunities for partnership-based economic development projects;
- create positive and collaborative intergovernmental regulatory partnerships;
- ensure that environmental, health and safety, and other related impacts common to hydroelectric production projects are effectively managed; and
- ensure cooperation between the federal and provincial governments on issues related to the ownership of water and water rights associated with this project.

## **Description**

The *Black Lake First Nation Water Power Regulations* create site-specific regulations for the construction and operation of a hydroelectric project on the Chicken Indian Reserve No. 224 in Saskatchewan. The Regulations will also ensure that environmental, health and safety, and other related impacts common to hydroelectric production projects of this nature are effectively managed throughout the life of an on-reserve project.

The *Black Lake First Nation Water Power Regulations* provide a comprehensive regulatory regime through the incorporation by reference, with some minor adaptations, of the regulatory regime of the Province of Saskatchewan applicable to hydroelectric facilities located on provincial land. Minor adaptations are typically required in order to clarify that a project is taking place on-reserve land under the jurisdiction of the federal Crown rather than under the jurisdiction of the provincial Crown.

Some of the key areas that the *Black Lake First Nation Water Power Regulations* address include:

- **Environment and hazardous substances:** ensure the protection of the environment during the construction and operation of a facility, ensure the protection of critical species and habitat, and provide for the safe storage and movement of hazardous substances and waste.
- **Employment:** allow the protection of health and safety for Saskatchewan workers, ensure minimum standards of employment, improve compliance with regulatory standards, and ensure effective enforcement of labour laws, including workers' compensation.
- **Uniform building and accessibility standards:** set standards to ensure safety and accessibility for people of limited mobility in the construction and maintenance of buildings required for the construction and operation of a facility.
- **Regulatory licences and permits:** provide for the provincial bodies and mechanisms required for the licensing and permitting of the water power resources developed during the course of a facility.
- **Water rental:** allow the water rental collected in respect of such a project to be paid 50% to Canada for the use and benefit of the Black Lake First Nation and 50% to Saskatchewan.

## Regulatory development

### *Consultation*

The three parties to the tripartite agreement — Canada, Saskatchewan, and the Black Lake First Nation — have been involved throughout the planning, negotiation and drafting of the agreement and the *Black Lake First Nation Water Power Regulations*.

Black Lake First Nation community members provided their support by approving the project in a referendum held in November 2015. On May 4, 2017, in accordance with the *First Nations Commercial and Industrial Development Act*, the First Nation passed a Band Council Resolution requesting that the Minister of Indian Affairs and Northern Development recommends to the Governor in Council the making of the *Black Lake First Nation Water Power Regulations*.

Support from surrounding communities is expected to be high, given the auxiliary benefits a hydroelectric project will bring to the area. For example, the community of Stony Rapids, a hamlet of northern Saskatchewan, with a population of about 250 people, is located on the Fond du Lac River, 82 km south of the Northwest Territories border, and about 20 km north of the Black Lake First Nation. The construction and operation of a hydroelectric project will provide a bridge across the Fond du Lac River, and improved roads which will offer greater mobility in this area of the province moving north toward Uranium City. There may also be employment opportunities for residents of Stony Rapids during the construction phase of a Black Lake hydroelectric project.

Stony Rapids and other communities and local organizations were consulted as part of the federal environmental assessment for a project, over several stages between January 2013 and June 2015. The Canadian Environmental Assessment Agency conducted the assessment in accordance with the *Canadian Environmental Assessment Act, 2012*. The Agency assessed the potential for the proposed project to cause significant adverse effects on the following components:

- fish and fish habitat;
- migratory birds;
- terrestrial wildlife and vegetation;
- current use of lands and resources for traditional purposes;
- health and socioeconomic conditions of Aboriginal communities; and
- physical and cultural heritage and any structure, site or thing that is of historical, archeological, paleontological or architectural significance for Aboriginal communities.

As part of the assessment process, the Canadian Environmental Assessment Agency provided four separate opportunities for public comment, at different stages:

1. Project description summary
2. Draft environmental impact statement guidelines
3. Environmental impact statement summary
4. Draft environmental assessment report

In total, 11 comments were received by the Canadian Environmental Assessment Agency, from an individual, a fishing lodge (Camp Grayling), and three First Nations in the region, including the Black Lake Denesuline First Nation, the Hatchet Lake Denesuline First Nation, and the Fond du Lac Denesuline First Nation. The comments expressed concerns about fish and fish habitat, vegetation, wildlife, and the cumulative environmental impacts of the proposed project, among other areas. In response, over 40 mitigation and monitoring follow-up practices were proposed.

The Canadian Environmental Assessment Agency considered the input from the consultations, including the public comments and responses provided, and issued an environmental assessment report and a decision statement on July 31, 2015. The Agency supported the proposed project, concluding that it is not likely to cause significant adverse environmental effects if key mitigation measures are implemented. The [Environmental Assessment Report](#) is available online. No significant opposition to a hydroelectric project is expected on environmental or other grounds. A reconfirmation of the environmental assessment report may be required once a hydroelectric project is under way.

### ***Prepublication***

The proposed *Black Lake First Nation Water Power Regulations* were prepublished in both the *Canada Gazette*, Part I, and in the *First Nations Gazette*, Part I, on December 1, 2018, for a 30-day comment period. No comments were received.

### ***Modern treaty obligations and Indigenous engagement and consultation***

The initial assessment examined the geographical scope and subject matter of the initiative in relation to modern treaties in effect and did not identify any potential modern treaty implications, as the initiative is intended to take effect outside of any modern treaty area.

### ***Instrument choice***

The Government of Canada has committed to supporting stronger indigenous communities, economic development, appropriate regulatory oversight, and credible environmental assessments. The reserve lands of many First Nations have the potential to be used in large-scale commercial and industrial projects, such as hydroelectric projects.

The *First Nations Commercial and Industrial Development Act* enables a First Nation that has decided to pursue a commercial or industrial on-reserve project to ask the Government of Canada to develop regulations that apply to a specific project on a specific piece of reserve land. The *First Nations Commercial and Industrial Development Act* works by incorporating by reference the provincial rules and regulations that apply to similar commercial or industrial activities off reserve and applying them to a specific on-reserve project.

The use of incorporation by reference is the instrument of choice, as it ensures that on- and off-reserve projects are subject to similar regulatory regimes, and increases certainty for investors, developers and the public while minimizing costs. Ensuring that the appropriate regulations are in place will support First Nations economic development.

This regulatory approach of incorporation by reference is significantly more cost effective than developing a new federal regulatory regime that could run the risk of introducing ineffective or unmanageable compliance and enforcement mechanisms. With the provincial government administering and monitoring hydroelectric operations, the proponent will be required to report to the provincial authority with a few exceptions, thereby alleviating administrative reporting burden, which in turn will generate cost savings for the Government of Canada. Provincial officials will administer and monitor much of the activity of the hydroelectric operations using the standards and practices for hydroelectric facilities off-reserve land. As a result, the proponent will not carry more administrative burden than what would be expected if the on-reserve project was located off reserve. Employing the existing provincial resources will generate secondary cost savings for the Government of Canada because the existing provincial infrastructure will be used to administer and monitor the hydroelectric facility as is done on provincial lands.

## **Regulatory analysis**

The *Black Lake First Nation Water Power Regulations* facilitate the development of a hydroelectric project by creating certainty as to which regulations apply on the project lands. The Regulations accomplish this goal by allowing the Government of Canada and the Government of Saskatchewan to set aside the outstanding jurisdictional question regarding ownership of the water and water power without having to undertake a potentially long and costly court process to resolve the issue. Despite ambiguity over who owns the water and water power, both the province and the federal government agree that the benefits of the Regulations and the development of a hydroelectric project are significant. The solution agreed to by the parties in respect of this jurisdictional question is set out in the tripartite agreement.

The Black Lake First Nation has about 1 500 members living on reserve. According to the 2011 Census, the population has a 28.6% employment rate and a median age of 22.5 years. It was estimated that a hydroelectric project could create close to 250 jobs during the construction phase and 8 permanent positions to operate the facility. Jobs and training in engineering, heavy equipment operation, masonry, bridge building, and electricity provided to First Nation members by a hydroelectric project will provide much-needed opportunities in northern Saskatchewan, a geographic area where there are currently very few opportunities. Some trades training has already taken place through an agreement between the First Nation, the

Saskatchewan Power Corporation, and Northlands College, thus positioning members in the community to fill many jobs required during the construction phase.

The revenues that will flow to the Black Lake First Nation from a hydroelectric project could also allow the community to pursue other projects of its own choosing, which will further allow First Nation members to make use of the training they would receive as part of a hydroelectric project. Jobs will also be open to residents of surrounding communities, thereby providing benefits not only to those individuals, but also to the provincial and federal governments through an increased tax base.

This hydroelectric facility will provide the Black Lake First Nation, and to a lesser extent the surrounding communities, with significant economic and social benefits in the form of employment, business development opportunities, and a reliable source of electricity, which will help to reduce the reliance on less environmentally friendly energy products such as fossil fuels.

The *Black Lake First Nation Water Power Regulations* incorporate by reference essential elements of the provincial regime, creating regulatory compatibility between similar projects on and off reserve, thus ensuring that a hydroelectric project will be adequately regulated in areas such as environmental management and protection, the handling of hazardous substances, employment, and the application of uniform building and accessibility standards. The resulting regulatory regime will benefit the Government of Saskatchewan by providing clean and reliable energy to remote northern communities, businesses, and households. It also provides assurance to the general public that the hydroelectric development would be adequately regulated on the basis of industry-wide standards and long-held best practices, and that risk to citizens and to the environment, on and off reserve, will be minimized.

Creating the *Black Lake First Nation Water Power Regulations* contributes to the Government of Canada's strategic outcome of facilitating the sustainable use of First Nation lands and resources. The Regulations allow for the adoption of a modern, robust regulatory regime that closes the regulatory gap for this diversion type hydroelectric development as it exists between federal and provincial lands.

To date, the Black Lake First Nation, the Province of Saskatchewan and the Government of Canada have invested significant time and resources into the development of the *Black Lake First Nation Water Power Regulations* and the tripartite agreement. As with previous regulatory submissions under the *First Nations Commercial and Industrial Development Act*, a band council resolution is required before the *Black Lake First Nation Water Power Regulations* are implemented. Each regulatory project under the *First Nations Commercial and Industrial Development Act* also requires a tripartite agreement between the First Nation, the province where the First Nation is located, and the federal government.

Non-regulatory options were not considered, as they would not support the effective management of a project of this nature on reserve, including the provision of an appropriate framework for compliance and enforcement.

### ***Costs and benefits***

The making of the *Black Lake First Nation Water Power Regulations* does not necessitate that a project moves forward; rather, it enables a project to proceed on



the Black Lake First Nation lands. Therefore, there would only be secondary costs and economic benefits for the Province of Saskatchewan once a hydroelectric project comes to fruition. The Regulations are site-based and will facilitate a particular type of project; therefore, there are no direct costs to the federal government, to Canadians or to industry at large. In addition, capital and operating costs of the actual hydroelectric operations have not been included, as there are no costs resulting from the creation of the *Black Lake First Nation Water Power Regulations*.

### ***Small business lens***

The *Black Lake First Nation Water Power Regulations* only apply to a hydroelectric project on the site-specific lands, which will facilitate business development opportunities, rather than impose new burdens or costs on existing small businesses. Existing small businesses could benefit from increased commercial activity once the project becomes operational. As a result, the small business lens does not apply to this proposal.

### ***“One-for-One” Rule***

The “One-for-One” Rule does not apply, as the *Black Lake First Nation Water Power Regulations* do not impose new administrative burden on business.

The Regulations facilitate the operation of this complex economic activity by incorporating the existing provincial regulatory regime. The costs to the proponent of complying with the Regulations will be equal to costs to proponents incurred if the project was located on lands subject to provincial jurisdiction.

### ***Regulatory cooperation and alignment***

The *Black Lake First Nation Water Power Regulations* reproduce, with some minor adaptations, the regulatory regime of the Province of Saskatchewan applicable to hydroelectric facilities located on provincial land. The result is an alignment with provincial regulations and practices off reserve, and minimizes regulatory gaps.

### ***Strategic environmental assessment***

The preliminary scan completed for the strategic environmental assessment for the *Black Lake First Nation Water Power Regulations* determined that the environmental effects associated with the Regulations will be positive in nature. The Regulations incorporate modern and high environmental standards and will address any potentially negative impacts associated with the hydroelectric project. The environmental impacts associated with the project have been assessed by the Canadian Environmental Assessment Agency under the *Canadian Environmental Assessment Act* (reference number 80031).

### ***Gender-based analysis plus***

No gender-based analysis plus (GBA+) impacts have been identified for this proposal.

### **Implementation, compliance and enforcement, and service standards**

The *Black Lake First Nation Water Power Regulations* came into force on the day on which they were registered.

The Regulations establish a full range of regulatory compliance and enforcement mechanisms equivalent to those for hydroelectric power generation facilities off reserve in the Province of Saskatchewan. The Regulations include the following mechanisms for encouraging compliance and for detecting and enforcing compliance measures:

- requirements for the proponent to obtain various licences and approvals;
- requirements for the proponent to keep records, make reports, and provide information on request;
- authority for government officials to inspect, investigate, search and seize;
- authority for government officials and bodies to issue directives and orders; and
- fines and other financial penalties for non-compliance and offences.

Compliance and enforcement provisions replicate provisions in the regulatory regime of the Province of Saskatchewan that apply to similar projects off reserve.

To summarize, the *Black Lake First Nation Water Power Regulations* replicate, with minor adaptations, the provincial regime, and give provincial officials the authority to administer, monitor and enforce the regulatory regime.

Under the tripartite agreement associated with these Regulations, a management committee composed of representatives of the Government of Canada, the Province of Saskatchewan and the Black Lake First Nation is established to monitor performance, address potential issues, and propose changes as required.

The service standards applicable to the regulation of hydroelectric projects conducted off reserve in the Province of Saskatchewan will be equivalent under the *Black Lake First Nation Water Power Regulations*.

## **Contact**

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