

**PRESENTATION BY
BRITISH COLUMBIA MÉTIS FEDERATION**

**EXPERT PANEL REVIEW
MODERNIZATION OF NATIONAL ENERGY BOARD**

**February 9, 2017
Vancouver, British Columbia**

SPEAKING NOTES

Part 1: Background

BC Métis Federation

- The BC Métis Federation (BCMF) is a non-profit association that works with Métis communities across British Columbia.
- Founded in 2011, the mission of the BCMF is to ensure the well being of our members. We currently have 7,500 members across the Province.
- A large part of our work is building and maintaining relationships with governments, industry partners and service delivery organizations throughout British Columbia. We work with these organizations to advocate on behalf of our members to meet their needs, advance their concerns, and ensure that their voice is present.

Métis Rights

- Métis rights are constitutionally enshrined and protected.
- Our members have important knowledge about the social and economic landscape of the regions they live in, as well as about land and the natural environment.
- Our members value the integrity and beauty of the natural environment, and are committed to defending, protecting and advancing our rights.
- The BCMF is continually engaged in research with our members to ensure the protection and advancement of, and advocacy for, their rights.

Part 2: The Crown's Constitutional Obligations and Limitations of National Energy Board Processes

Consultation Activities

- The Crown has a constitutional obligation to consult the Métis people of BC with regard to proposed developments. This duty arises whenever a project has the potential to infringe our asserted or existing rights.
- There is great variety in the approach that institutions, agencies and proponents take with regard to consultation with our members. Generally speaking, consultation activities with the BCMF have been inadequate and superficial, resulting in no real value for governments or proponents, and providing little meaningful voice for our members.
- The voice of our members in regulatory processes is deliberately constrained.
- The BCMF established a consultation office in 2015 to collaborate with the Crown on issues and activities affecting our members.
- The BCMF works with the Crown to ensure that the duty to consult and accommodate our members in respect of any project that has the potential to affect the rights of our members is fulfilled, and that consultation activities are meaningful and have lasting value.
- Early involvement of the BCMF in consultation planning can maximize the value of dollars invested in consultation activities.

Limitations of NEB Processes

- Regulatory review processes, including those undertaken by the NEB, present a key opportunity for the Crown to engage in meaningful and valuable consultation activities with the BCMF.
- Each and every review that fails to include the voice and views of the BCMF is a forgone opportunity to engage in productive dialogue.
- Indigenous Knowledge, Rights and Use Studies, including Métis Knowledge Studies, are powerful and efficient vehicles for engaging in knowledge sharing and dialogue (i.e. consultation) as part of transparent, public, and well-documented regulatory processes.
- We are not against responsible development that is inclusive of our unique voice and perspective. Our members favour a balanced, responsible and inclusive

approach to development.

- We cannot support the practice of regulatory agencies, nor the enactment of regulatory processes and procedures, that constrain our voice, that do not incorporate our views, that put our rights and our livelihoods at risk.
- We wish to play an active role in the review and assessment of developments that have the potential to affect our rights, and ensure that our participation in these processes is valuable.
- Involving our communities in regulatory review processes is a necessary step in the reconciliation of our views respecting environmental issues, and in the mutual obligation of ensuring that our Métis rights are protected.
- However, the Crown's constitutional obligations to Métis people exist above and beyond regulatory review processes and should not be limited to such processes.
- Regulatory processes like those of the NEB are limited in their ability to meaningfully fulfill the Crown's constitutional obligations. In particular:
 - The NEB's limited jurisdiction does not include the mandate to undertake consultation with Indigenous peoples or to fully assess the potential impacts of a project on Aboriginal rights;
 - As a result, the NEB relies almost exclusively on project proponents to consult with Indigenous peoples;
 - In making its recommendation to the Minister about a proposed project, the NEB is required to consider matters of public interest. However, the potential infringement of Aboriginal rights by a project cannot be justified simply because it is in the public interest. Rather, the justification test that has been established by the Supreme Court of Canada for infringement of Aboriginal rights is much more onerous.

Part 3: Recommendations for Modernizing the National Energy Board

- Despite its limitations to meet the Crown's constitutional obligations to Métis people, we offer the following recommendations for modernizing existing NEB processes:

1. *Ensure that the direct participation of the BCMF occurs early on in regulatory review processes*

- Project managers, consultants, Aboriginal engagement and relations professionals, community coordinators and engineers struggle to advocate effectively for the inclusion of Métis voice. And they struggle to meaningfully engage with our members in knowledge sharing.
- For instance, the government of BC and the EAO, in particular, has found it challenging to engage meaningfully with the BCMF, and many opportunities for dialogue on developments in BC have been lost.
- This is a matter of grave concern for our members as these decisions have the potential to significantly affect the land and our rights. Our members cannot possibly help to ensure that their rights are protected in the course of resource development if the BCMF is excluded, and their voice constrained.
- The BCMF wishes to be directly involved in the assessment of projects that have the potential to affect the rights of our members. Our members have a unique perspective to offer, one which must be considered if there is any potential to affect Métis right.

2. *Ensure that the involvement of BCMF members in the monitoring and management of projects that the NEB has recommended for approval*

- Environmental monitoring and management present opportunities for BCMF members to be directly involved in adding value to development decisions through active observation, documentation and reporting of activities with regard to their rights.
- This involvement is all the more pressing given recent criticism of the NEB for its inadequacy in tracking companies' implementation of pipeline approval conditions and compliance with regulatory requirements.
- Métis involvement in monitoring and management is a natural and logical outcome of our meaningful involvement in the regulatory review process.

3. *Support meaningful participation in regulatory review processes with adequate funding*

- Meaningful consultation requires investment, but large amounts of money spent do not necessarily equate to value-added for communities, for members, for the Crown, the shareholder, nor for society. The BCMF consultation office provides support to maximize the value and the impact of dollars invested.

- BCMF is a non-profit organization, and we do not have enough resources to volunteer so that the Crown, the province and proponents can meet their duty to consult with members.
- An initial face-to-face meeting can set the tone for the whole consultation relationship, and the scope, scale and nature of consultation and participation in NEB processes can be determined based on mutual recognition and respect.