



Policy Briefing Paper

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Resistance to British Columbia's Site C Dam Gaining Momentum

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On June 10, 2016, KAIROS released an Open Letter to Prime Minister Justin Trudeau and British Columbia Premier Christy Clark urging them to suspend construction of the Site C dam on the Peace River until Indigenous peoples' rights have been respected and the B.C. Utilities Commission has conducted a thorough review.¹ This Briefing Paper will explain why KAIROS and other civil society organizations are taking action on this issue.

When the new federal cabinet was sworn in on November 4, 2015, the Prime Minister included this pledge in his mandate letters to every minister: "No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership."² The sincerity of this commitment is in doubt in light of his government's failure to revisit the permits for the Site C project issued by former Prime Minister Stephen Harper's government before last fall's federal election.

At stake is the government's promise to respect the *United Nations Declaration on the Rights of Indigenous Peoples*. Allowing permits enabling construction

of the Site C dam to proceed while the West Moberly and the Prophet River First Nations are in court contesting the project constitutes a failure to uphold their rights to free, prior and informed consent as set out in the *UN Declaration*.

The government's refusal to reconsider the project also ignores the findings of a joint federal-provincial review panel which identified 22 significant adverse environmental effects, the largest number since the enactment of the Canadian Environmental Assessment Act in 1992. According to the review, flooding an 83-kilometre section of the Peace River valley will negatively impact Indigenous fishing and hunting practices, traditional land use and physical and cultural heritage resources in ways that cannot be reversed.



The Peace River Valley before and after timber cutting and road construction for the Site C dam project. Photos by Garth Lenz.

Existing Peace River Dams Have Flooded Indigenous Lands

Two existing hydro dams have already flooded 70% of the Peace River valley. The W.A.C. Bennett dam built between 1961 and 1967 flooded 350,000 acres of forested land and resulted in the displacement of the Tsay Keh Dene First Nation. University of British Columbia historian Tina Loo has documented how the loss of the Tsay Keh Dene's ancestral land led to "isolation, alienation and 'social disorganization.'"³ The smaller Peace Canyon dam downstream from the W.A.C. Bennett was completed in 1980.

When the Site C dam project was first proposed in the early 1980s, it was referred to the B.C. Utilities Commission for a thorough, three-year review. After assessing B.C. Hydro's forecasts for electricity demand, the Commission recommended the project be deferred until it was clear that there was a need for new supplies of electricity. The Commission also recommended exploring alternative sources to determine if Site C was the best option for new sources of power. The government of the day accepted these recommendations, a prudent decision since the system-wide energy demand forecasted in 1981 by B.C. Hydro for 1992-1993 didn't materialize for another 24 years.

If built, the Site C dam would flood half of the remaining 30% of the Peace River valley. These include lands most used by Treaty Eight First Nations for hunting and fishing, and are the location of 78 Indigenous heritage sites, including burial grounds.

The dam would flood over 31,000 acres of agricultural lands including some of B.C.'s best farmland. According to agricultural economist Wendy Holm: "The land to be flooded is capable of providing an annual, local, sustainably produced supply of fresh vegetables to over a million people. Think of what that could mean for nutrition in northern communities."⁴

Joint Review Panel's Mandate Severely Limited

In February 2012, federal and provincial environment ministers established a Joint Review Panel (JRP) to conduct an environmental assessment of the Site C project. The JRP was instructed to "receive information regarding the manner in which the Project may adversely affect ... Aboriginal rights or treaty rights." At the same time, it was explicitly told not to draw

any conclusions or make any recommendations as to the strength of Indigenous peoples' rights including "whether the Crown had met its duty to consult Aboriginal groups" or "whether the Project is an infringement of Treaty No. 8."⁵

After tabling the JRP report its chair, Harry Swain, explained: "We were to catalogue the assertions of First Nations regarding treaty rights and aboriginal rights. But we were not to pass an opinion on them. We were not to say whether consultation had been adequate."⁶

In contrast to the JRP's limited scope, a review by the B.C. Utilities Commission would have a strikingly different mandate. The guidelines under the Utility Commissions Act would:

- a) ensure that a determination is made respecting the adequacy of Crown consultation by a quasi-judicial body independent from both the Crown and First Nations; and
- b) require information to be filed in the public domain respecting where the scope of the duty to consult falls on the spectrum established by the Supreme Court in its decision on the Haida case, including whether "the right and potential infringement is of high significance to the Aboriginal peoples, and the risk of noncompensable damage is high."⁷

The reference to the spectrum established by the Supreme Court in the Haida case is particularly relevant because it had determined: "The content of the duty [to consult] varied with the circumstances: from a minimum 'duty to discuss important decisions' where the 'breach is less serious or relatively minor;' through the 'significantly deeper than mere consultation' that is required in 'most cases;' to 'full consent of [the] aboriginal nation' on very serious issues" (quotes from *Delgamuukw v. British Columbia*, 1997).

A thorough examination of the scope of violations of Indigenous rights by the Site C project could very well conclude that the damage to Indigenous people would be very serious, requiring the full consent of the Treaty 8 First Nations before the project could continue. Indeed, despite a limited mandate that ruled

out drawing conclusions or making recommendations, the JRP still found: “The Project would likely cause a significant adverse effect on fishing opportunities and practices ... on hunting and on non-tenured trapping for the First Nations [and] on other traditional uses of the land for the First Nations.”⁸

The Impact of the Clean Energy Act

A more thorough review by the B.C. Utilities Commission has not occurred because the B.C. Clean Energy Act of 2010 exempts the Site C project from such a review. The JRP, however, recommended a review in part because the panelists were given only nine months to prepare their report, too tight a timeline for them to assess alternatives to the Site C project.

Although B.C. Hydro presented the panel with three alternatives for generating the same amount of power as forecast for the Site C project, other alternatives were never explored. A major constraint on the ability of B.C. Hydro to consider other options is a clause in the Clean Energy Act that requires B.C. to achieve electricity self-sufficiency by 2016. This restriction prevents B.C. Hydro from relying on imports, “Even though the cost of these imports is acknowledged by B.C. Hydro to be very low, very likely to remain low ... [at] much less than the unit energy cost of all of the available domestic supply-side resources, including the Site C Project.”⁹

The self-sufficiency requirement of the Clean Energy Act also precludes B.C. Hydro from relying on what is known as “the Canadian entitlement” under the Columbia River Treaty. Under that 1961 treaty, Canada can draw on half of the additional hydro power generated at plants along the Columbia River in the U.S. from dams located in B.C. This entitlement would allow B.C. to import an amount of power almost equivalent to what would be generated by the Site C project. JRP chair Harry Swain calls the failure to take the power under the entitlement “inexplicable.”¹⁰ An energy analyst hired by the Treaty 8 Tribal Association questioned building Site C to generate power at an estimated cost of \$83 per megawatt hour (MWh) while selling power

from the Canadian entitlement for \$25 to \$40 per MWh.¹¹

In a letter to the B.C. government in December 2014, the Treaty 8 Tribal Association noted that power from Site C would not be needed until 2031 or 2041 depending on how fast demand grows – unless electricity from Site C were used to power the Liquefied Natural Gas (LNG) industry. If that were the case, power from Site C would be needed by 2027 according to the scenarios explored by the Tribal Association.¹²

The Treaty 8 letter raises many questions about what it calls “implausible and dubious assumptions” in B.C. Hydro’s scenarios including:

- a forecast for high electricity demand;
- an assumption that there will be no further declines in the cost of wind power before 2041;
- a pessimistic forecast of savings through demand side management;
- an assumption that solar power will not be cost-effective in B.C. before 2041;
- an assumption that geothermal energy will not be developed in B.C.; and
- an assumption that there will be no construction cost overruns for Site C.¹³

These assumptions do not stand up to scrutiny. For example, B.C.-based Clean Energy Canada reports that the unsubsidized cost of wind energy fell by 61% between 2009 and 2015. Similarly, the cost of utility-scale solar photovoltaic electricity generation fell by 82% over the same period.¹⁴ Further declines in the costs of renewable power sources are anticipated.

The Geological Survey of Canada notes that north-eastern B.C. has “the highest potential for immediate development of geothermal energy” in Canada.¹⁵ The Canadian Geothermal Energy Association (CanGEA) maintains that geothermal power can meet B.C.’s energy needs at a lower financial and environmental cost than Site C.

In a 2014 report, CanGEA estimated that geothermal power would cost \$73 per MWh, \$10 less than the cost projected by B.C. Hydro. The Association also says geothermal power plants could be built for less than half the cost of the Site C dam, and would pro-

vide about 2,000 permanent jobs at locations throughout the province, compared to only 150 at the Site C generating station once it is built.¹⁶

JRP chair Harry Swain points out: “Up in the Peace, in the very strata that are being drilled for natural gas, there’s a lot of hot water. Moreover, since the well logs of exploration and drilling companies are supposed to be deposited with the provincial government, there is a vast amount of information available. It was surprising to me that no attempt had been made to exploit that information.”¹⁷

Why is our government pushing so hard for Site C?

Ben Parfitt, a researcher at the B.C. office of the Canadian Centre for Policy Alternatives, argues that the real destination for Site C electricity is to power the Liquefied Natural Gas (LNG) industry. He writes: “Why is our government pushing so hard for Site C? The answer lies in the theoretical emergence of an LNG industry in the province, a premise on which Premier Clark has staked her political future. According to B.C. Hydro’s filings with the B.C. Utilities Commission, only with LNG plants coming online would hydro consumption begin to outstrip domestic supply.

“Despite the fact that LNG proponents like Shell and Petronas haven’t actually committed a cent to building any plants, the rush is on to supply ‘clean’ power for these theoretical projects, in order to offset some of the considerable emissions they would produce. In addition to Site C construction, B.C. Hydro is working on new transmission lines for the benefit of LNG proponents. Energy Minister Bill Bennett recently said that the government wants these [new] transmission line extensions exempt from review by the B.C. Utilities Commission, meaning that hydro rate-payers and taxpayers will never know whether the Commission considers either project to be justified.”¹⁸

Using hydro power to cool natural gas into its liquid form has been described as using a clean power source to produce a dirty one for export. While it is true that natural gas is only half as polluting as coal at the point of combustion, hydraulic fracturing (fracking) operations to recover gas from shale formations in northeastern B.C. release large amounts of methane, a greenhouse gas that is 86 to 105 times more potent than carbon dioxide over a 20-year period.¹⁹

A document prepared for B.C.’s Environment Minister warns that the pursuit of an LNG industry could double the province’s greenhouse gas emissions, imperiling its legislated targets for GHG reductions. The document, obtained under a freedom of information request, says that emissions would rise by a minimum of 16% to as high as 100%. It warns: “At the high end of that range B.C.’s natural gas sector emissions would be comparable to those from Alberta’s oil sands.”²⁰

Impacts on Women and the Land

KAIROS’ [Gendered Impacts of Resource Extraction](#) project has gathered testimony from Indigenous women showing a correlation between increased violence against women and girls and the arrival of large resource projects on their lands. A recurring theme is the relationship between Indigenous women and the land. If one is abused the other suffers.

On November 18, 2015, Amnesty International’s Secretary General wrote to Prime Minister Trudeau and Premier Clark raising several concerns about the Site C project including the impacts on women that so far have not been taken into account. The letter states in part:

“Many of the social strains created by the regional resource economy, such as the shortage of affordable housing and the large wage gap between women and men, are among the established risk factors for violence against women and girls. Studies in northern B.C. and elsewhere have also linked the presence of a very large, mostly male transient labour force, and the lifestyle often associated with long shifts in labour camps, with increased rates of domestic violence, sexual assault and other violence against women.

“A local Indigenous women’s organization, the Fort St. John Women Warriors, is working to draw particular attention to the large numbers of missing and murdered Indigenous women from the community. States have a responsibility to take every reasonable effort to prevent such violence. This includes understanding factors putting women and girls at risk and taking effective responses to prevent such violence in every aspect of state decision-making and policy. In this instance, however, there is no indication that the specific impacts of the construction of the Site C dam on women’s and

girls' lives and safety was considered at any point in the decision-making process."²¹

KAIROS' research into the gendered impacts of resource extraction projects has found that women who play a key role in the defense of collective rights and the environment are often among those who are persecuted and criminalized. A case in point is the civil suit launched by B.C. Hydro against several women who camped for two months at the historic Rocky Mountain Fort site in an attempt to dissuade B.C. Hydro from logging an area that would be flooded by the dam.

Helen Knott, a social worker from the Prophet River First Nation, Yvonne Tupper, a health worker from the Saulteau First Nation, along with farmers Ken and Arlene Boon, were accused of "conspiracy, intimidation, trespass, creating a public and a private nuisance and 'intentional interference with economic relations by unlawful means.'"²² The case has all the hallmarks of a SLAPP suit (Strategic Lawsuit Against Public Participation). It seeks financial damages for B.C. Hydro which could lead to the loss of their homes as well as other assets.

Even though the camp was promptly dismantled once it was declared illegal, B.C. Hydro has not withdrawn the suit. Instead it has increased the pressure on the Boon family by asking them to vacate their farm by the end of 2016 even though the dam would not flood their land until 2024.

The pretext for asking them to move is that B.C. Hydro wants to realign Highway 29 across their land away from the flood zone. It appears they are being singled out because Ken Boon is the outspoken president of the Peace Valley Landowners Association which has also launched a court case against the project.²³

Royal Society of Canada Intervenes

The Royal Society of Canada was established by an Act of Parliament in 1883 as "the senior collegium of distinguished scholars, artists and scientists in the country."²⁴ The Society seldom intervenes in public debates unless urged to do so by its members. On May 19, 2016, in an intervention virtually without precedent, the Royal Society wrote to the prime minister and issued a statement signed by 250 scientists and academics expressing deep concern about "significant

gaps and inadequacies in the regulatory review and environmental assessment process for the Site C Project ... [which] did not accord with the commitments of both the provincial and federal governments to reconciliation with and legal obligations to First Nations, protection of the environment, and evidence-based decision-making with scientific integrity."²⁵

Unfortunately the Society's public statement failed to illicit a positive response. According to a report in *The Globe and Mail* the federal government has no intention of revisiting the Site C approval.²⁶

Growing Concern Being Expressed by Canadians

Several other civil society groups are campaigning for a halt to construction of the Site C dam. [An online petition](#) has been started by Leadnow.ca calling on the prime minister not to sign construction permits.

Amnesty International has launched [an online campaign](#) urging the prime minister to honour promises made to Indigenous peoples and to respect Treaties with Indigenous peoples. The web page for this campaign contains a three-minute video featuring an interview with KAIROS partner Helen Knott. Amnesty International is also encouraging Canadians to [contact their members of parliament](#) to halt the Site C project.

The KAIROS open letter is part of this growing movement to defend Indigenous rights and the ecological integrity of the Peace River valley. These initiatives by Leadnow.ca and Amnesty International offer concerned Canadians an opportunity to become engaged with so many others in these vital issues of national concern.²⁷

KAIROS thanks Sister Anne O'Brien, GSIC, for her ongoing and invaluable contribution in editing this publication.

End Notes:

- ¹ See “KAIROS calls on Prime Minister Trudeau and Premier Clark to suspend construction of Site C dam.” www.kairoscanada.org/kairos-calls-on-prime-minister-to-suspend-construction-of-sitec-dam
- ² See Ministerial mandate letters at <http://pm.gc.ca/eng/ministerial-mandate-letters>
- ³ Tina Loo, cited in the Wikipedia entry on the W.A.C. Bennett Dam. *"Disturbing the Peace: Environmental Change and the Scales of Justice on a Northern River."* *Environmental History* 12 (4): 895-919. 2007.
- ⁴ Cited in Stop the Site C Dam at www.stopsitec.org/learn_more
- ⁵ Quotations from the JRP Mandate cited in *Briefing Note #1: First Nations and Site C* written by concerned scholars in support of the Statement of Concern on the Site C dam project released by the Royal Society of Canada. May 24, 2016. <https://sitecstatement.files.wordpress.com/2016/01/briefing-note-1-first-nations-and-site-c1.pdf>
- ⁶ Cited in Emma Gilchrist. *Exclusive: B.C. Government Should have Deferred Site C Dam decision Says Chair of Joint Review Panel.* Desmog.ca. March 10, 2015.
- ⁷ Cited in Briefing Note #1 by the concerned scholars. See Note 5 above.
- ⁸ Ibid.
- ⁹ Cited from *Briefing Note #3: The Regulatory Process for the Site C Project* written by concerned scholars in support of the Statement of Concern on the Site C dam project released by the Royal Society of Canada. May 24, 2016. <https://sitecstatement.files.wordpress.com/2016/01/briefing-note-3-regulatory-process1.pdf>
- ¹⁰ Emma Gilchrist. “The Forgotten Electricity that Could Eliminate Need for Site C Dam.” Desmog.ca. May 28, 2015.
- ¹¹ Ibid.
- ¹² Letter from Treaty 8 Tribal Association to the Minister of Energy and Mines and the Minister of Finance. December 2014. Page 18. www.desmog.ca/sites/beta.desmogblog.com/files/C500.T8TA%20o%20Bennett%2C1214.pdf
- ¹³ Ibid. Pages 9-12 and 18-19.
- ¹⁴ Clean Energy Canada. *A Year for the Record Books: Tracking the Energy Revolution.* Vancouver: Clean Energy Canada. February 2016. Page 9.
- ¹⁵ Emma Gilchrist. “Three Decades and Counting: How B.C. has Failed to Investigate Alternatives to Site C Dam.” Desmog.ca June 3, 2014.
- ¹⁶ Emma Gilchrist. “Geothermal Offers Cheaper, Cleaner Alternative to Site C Dam: New Report.” Desmog.ca. November 25, 2014.
- ¹⁷ Emma Gilchrist. “‘Dereliction of Duty’: Chair of Site C Panel on B.C.’s Failure to Investigate Alternatives to Mega Dam.” Desmog.ca. March 11, 2015.
- ¹⁸ Ben Parfitt. “The real reason the B.C. government is spending \$9 billion on Site C.” Vancouver: Canadian Centre for Policy Alternatives. December 21, 2015. www.policyalternatives.ca/publications/commentary/real-reason-bc-government-spending-9-billion-site-c
- ¹⁹ See “Ethical Reflections on Fracking: A KAIROS Discussion Paper.” February 2015. Pages 16-17. www.kairoscanada.org/product/ethical-reflections-on-fracking
- ²⁰ Cited in Justine Hunter. “LNG threatens greenhouse gas goals.” *The Globe and Mail*. November 13, 2013. A3.
- ²¹ Letter from Salil Shetty, Secretary General, Amnesty International, to Prime Minister Justin Trudeau and Premier Christy Clark. London UK.. November 18, 2015.
- ²² Sarah Cox. “B.C. Hydro should drop SLAPP suits against protester.” *The Province*. May 25, 2016. <http://blogs.theprovince.com/2016/05/25/sarah-cox-b-c-hydro-should-drop-slapp-suits-against-protesters/>
- ²³ Sarah Cox. “B.C. Hydro Tells Farmers Fighting Site C Dam to Vacate Property by Christmas.” Desmog.ca. June 15, 2016.
- ²⁴ See the Royal Society of Canada website at <https://www.rsc-src.ca/> for more information.
- ²⁵ See “Site C: Statement by Concerned Scholars.” <https://sitecstatement.org/>
- ²⁶ See Shawn McCarthy. “Ottawa pushes ahead with Site C dam amid opposition from academics.” *The Globe and Mail*. May 24, 2016.
- ²⁷ To sign the Leadnow.ca petition, go to www.leadnow.ca/stop-site-c/.
To view a three-minute video and sign the Amnesty International petition go to http://e-activist.com/ea-ac-tion/action?ea.client.id=1770&ea.campaign.id=40607&_ga=1.214460887.1181932106.1464287602.
To participate in the Amnesty International letter writing campaign, go to <http://www.amnesty.ca/get-involved/take-action-now/site-c-dam-contact-your-member-parliament>