



UPDATE on MCFN Settlement Agreement regarding BC Hydro's Site C Project

This update has been prepared to provide the Mikisew Cree First Nation membership with further information on the settlement agreement for the Site C project, which was announced today.

It is important to note, this settlement does not have any impact on MCFN's continuing litigation against BC Hydro regarding the effects of the Bennett dam. Negotiations with BC Hydro regarding the damages caused by the Bennett Dam will remain as ongoing.

What is Site C?

The Site C Clean Energy Project (Site C) is a third dam and hydroelectric generating station on the Peace River in northeast B.C.

The Site C project received environmental approvals from the federal and provincial governments in October 2014, then got the green light from the Province of B.C. in December, 2014. Construction of the project is expected to begin in the summer of 2015.

Although it is a much smaller dam and reservoir than the existing dams, MCFN participated extensively in the environmental assessment of Site C throughout 2013 and 2014, due to concerns that Site C could cause additional impacts to water in the Peace Athabasca Delta.

What happened at the environmental assessment?

During the environmental assessment, BC Hydro conducted studies that demonstrated Site C would have a negligible effect on water levels in the Delta (eg: a potential for 1cm reduction in water levels once every 10 years, for 6 weeks).

MCFN conducted an independent assessment of these studies and brought members to the Joint Review Panel hearings to share stories about how the Bennett dam has affected their use of the Delta.

After hearing the evidence, the Joint Review Panel responsible for carrying out the environmental assessment, concluded that Site C would not be capable of causing environmental effects in the Delta.



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What happened during Consultation?

Canada also determined that Site C would not be capable for causing any adverse effects to the Delta, or MCFN's rights.

Despite Canada's assessment, as a result of MCFN raising concerns, Canada required that BC Hydro monitor the downstream effects of Site C as a condition of building the project.

What were the Site C legal proceedings about?

The Site C legal proceedings started by MCFN (together with Athabasca Chipewyan First Nation) challenged the conclusion of the Joint Review Panel and Canada that Site C would not cause environmental effects to the Delta.

Although that conclusion is a positive outcome, if true, MCFN's took the position that the JRP should have carried out more studies before making that conclusion.

What were the benefits and risks of the legal proceeding?

The judicial review had a low prospect of success. To win, a judge had to be willing to overrule the findings of the Joint Review Panel. Several recent court cases have shown judges are generally unwilling to revisit conclusions of independent study commissions, and that judge's rarely find "more studies" are required. Nonetheless, given the importance of the Delta, MCFN started the judicial review proceedings in hopes of achieving better accommodation.

Why did MCFN decide to settle the proceeding?

At the end of June, BC Hydro and Canada filed its first response to MCFN's claim. In its response, BC Hydro appeared to make a significant concession: it stated that monitoring would address the Nation's concerns because if changes were observed early Project modifications could be implemented. Such a representation was consistent with the very accommodation MCFN had been seeking through the environmental assessment process.

Given this was the first concession Hydro had made in that regard, MCFN seized the opportunity to formalize it.





It is important to note, that the alternative was an almost certain loss at court, with MCFN exposed to paying more legal fees and costs, plus a potential adverse decision/precedent for other cases.

What are the terms of the settlement agreement?

MCFN entered into the settlement agreement with BC Hydro and Canada which provides:

1. That MCFN will participate in the monitoring of downstream effects of Site C to confirm that Site C is not causing additional effects on the PAD, and MCFN will provide its input (TEK);
2. That MCFN will have the opportunity to negotiate funding to participate in such monitoring;
3. That Canada and MCFN will discuss the formation of a committee to study ecological flow needs for MCFN and other land users in the PAD;
4. That BC Hydro will respond to requests from regulators to change the operation of Site C if monitoring reveals that Site C is causing downstream effects on the PAD.

No compensation payments being made by Canada or BC Hydro pursuant to this settlement given the evidence did not establish the potential for impacts from Site C.

MCFN's primary concern has been to protect the PAD. In the end starting the litigation created the leverage we needed to obtain favourable terms with BC Hydro and Canada that will allow MCFN to ensure that Site C will not cause further impacts.

What's next?

MCFN and Canada will meet soon to discuss the formation of a committee to study ecological flow needs for MCFN and other land users in the PAD

Prior to the Site C reservoir being filled MCFN will meet with BC Hydro to discuss the implementation of the monitoring program.

