

# The Treaty 8 First Nations and BC Hydro's Site C Dam

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The Site C Clean Energy Project is a proposed dam and hydroelectric generating station on the Peace River in northeast British Columbia, seven kilometres southwest of the city of Fort St. John. The proposed site—within the Peace River Valley—is home to BC's Treaty 8 First Nations with an approximate Aboriginal<sup>1</sup> population of 2500-3000 people (T8TA, "Treat 8 Communities"). The project's proponent, BC Hydro, received environmental approval for Site C from the federal and provincial governments on October 14, 2014 (BCEAO *Conditional Environmental Assessment Certificate Granted: Site C Clean Energy Project*; CEAA "Government of Canada's Decision on the Environmental Assessment of the Site C Clean Energy Project"); however, the project still requires an investment decision from the Province and regulatory permits and authorizations before it can proceed to construction (BC Hydro, "Multi-Stage Evaluation"). The Treaty 8 First Nations are opposing Site C, having filed a lawsuit on grounds that the project would have a devastating impact on their traditional land and thus violate their treaty rights (Keller).

The struggle between the Treaty 8 First Nations over the future of their land and the Peace River Valley is emblematic of broader struggles for self-determination, recognition of Aboriginal rights and title, and environmental justice in Canada. In what follows, I attempt to unpack some of the contentious issues surrounding Site C and draw attention to the First Nations strategies for resistance. By examining the Treaty 8 First Nations challenge to BC Hydro's Site C dam through an environmental justice lens, I argue that the project represents an inequitable distribution of environmental costs and benefits between the Province and the affected First Nations communities, and undermines the right of First Nations peoples to maintain and strengthen their own

institutions, cultures, and traditions, and pursue development in keeping with their own needs and aspirations as outlined in the United Nations Declaration of Indigenous Peoples (art. 20).

I will begin by providing a brief background of the history of Site C, including an overview of previous development on the Peace River, a summary of the project's key components and their anticipated environmental impacts, and the rationale for building the dam. In the next section, I discuss the First Nations perspective of the project—as well as any differences of opinion amongst the Treaty 8 First Nations—and their experience of consultation, dispute settlement, and their subsequent legal challenge. Lastly, I attempt to draw parallels with previ-

ous First Nations court decisions and discuss the potential for the case to set a legal precedent regarding how Canadian courts balance issues of resource development, public interest, and First Nations land claims.

Finally, it is necessary to disclose that as this is an ongoing story the discussion included herein is by no means exhaustive nor are the positions of prominent actors in any sense fixed. It is also necessary to acknowledge that while this study employs environmental justice as a foundation for analysis, it represents only one of many ways to approach and explore the subject of First Nations rights and self-determination in Canada. Similarly, as a means of delineating this study, I focus specifically on the stories of Aboriginal communities and their opposition to Site C; while the proposed hydroelectric project would have extensive effects on a range of groups beyond Aboriginal peoples, these impacts are beyond the scope of this paper.

## *History of Site C*

The W.A.C. Bennett Dam at the head of the Peace River Canyon was the first hydroelectric facility built on the Peace waterway. Completed in 1967, the dam is one of the world's largest earth-fill dams,<sup>2</sup> and impounds BC's largest

reservoir, Williston Lake (BC Hydro, "W.A.C. Bennett Dam"). Williston Lake, which in reality is an artificial reservoir, formed when the W.A.C. Bennett Dam caused parts of three rivers—the Finlay, Parsnip, and the Peace—to flood; its creation destroyed habitat, changed the immediate climate of the area, and compromised biodiversity (Loo 901). In addition to flooding 140,000 hectares of forested land and blocking the east-west migration of the now endangered mountain caribou across the Rocky Mountain Trench, the creation of Williston Lake also affected some 40 or 50 members of the Tsay Keh Dene First Nation; the Sekani peoples, then known as the Ingenika, were relocated to new reserves when it became clear their settlements and traplines near Fort Grahame and Finlay Forks would be inundated by the reservoir's waters (Loo 901).

The Peace Canyon Dam was constructed thirteen years later and twenty-three kilometres downstream from the W.A.C. Bennett Dam at the outlet of the Peace River Canyon (BC Hydro, "W.A.C. Bennett Dam"). Before construction of the Peace Canyon Dam was completed, the search for an appropriate site for a third dam had already begun. Following exploratory surveys, the government identified five potential sites—Sites A, B, C, D, and E—between the Peace Canyon Dam and the Alberta border as suitable for generating stations (BC Hydro, *Peace River Site C hydro project: An option to help close B.C.'s growing electricity gap* 22). In 1967, geological reconnaissance determined that Sites B and D were unattractive due to unstable geology, while Site A would require the removal of significantly more overburden, leaving Site C and E as the only viable options (22).

After a 1976 feasibility study, surveyors deemed Site C the topographically and geologically preferable location for another earthfill dam. However, whereas the W.A.C. Bennett and Peace Canyon Dams were uncontroversial at the time of their construction and were planned and built with little to no public debate, growing awareness of the environmental impacts of hydroelectricity and new expectations regarding public input into decision-making created

concern about the BC energy planning regime (Dusyk 875). Therefore, in 1981, the provincial government referred BC Hydro's application for an Energy Project Certificate for Site C to the newly created British Columbia Utilities Commission (BCUC) for review. Following a two-year assessment of the project's justification, design, impacts, and other relevant matters, the BCUC released its report in 1983 concluding that:

[T]he [British Columbia Utilities Commission] found that "while the impacts of Site C on a provincial scale may be small, they could be significant to the native population in the region."

An Energy Project Certificate for Site C should not be issued at this time. The evidence does not demonstrate that construction must or should start immediately or that Site C is the only or best feasible source of supply to follow Revelstoke in the system plan. The Commission therefore concludes that an Energy Project Certificate for Site C should not be issued until (1) an acceptable forecast demonstrates that construction must begin immediately in order to avoid supply deficiencies and (2) a comparison of alternative feasible system plans demonstrates, from a social benefit-cost point of view, that Site C is the best project to meet the anticipated supply deficiency. (BCUC 10-11)

With respect to the impacts on First Nations communities, the BCUC found that "while the impacts of Site C on a provincial scale may be small, they could be significant to the native population in the region" (BCUC 19). The BCUC also suggested that impacts on First Nations communities be monitored and that if, for instance, adverse impacts on hunting were identified, "then measures to compensate in kind be implemented; *monetary compensa-*

*tion will not suffice* [emphasis added]" (BCUC 19).

In the wake of BCUC's denial of the application, BC Hydro revisited the prospect of proceeding with Site C throughout the 1980s until they decided to suspend engineering and other work in March 1991 as opportunities for demand-side management and gas-fired generation became more attractive ways of meeting demand (BC Hydro 23). It

was not until 2004 under the Province's Integrated Electricity Plan (IEP) that BC Hydro tabled Site C again as a potential energy development option (BC Hydro, *Integrated Electricity Plan: Summary* 29).

The proposed Site C earthfill dam would measure just over a kilometre in length and rise 60 meters above the riverbed with a rated capacity of 1,100 megawatts, producing 5,100 gigawatt hours of electricity annually. The Site C reservoir would run for 83 kilometres, flooding 5,500 hectares of land, and double to triple the width of the current river (BC Hydro, *Environmental Impact Statement: Executive Summary* 10). The estimated capital cost of the project including construction and development costs, inflation, contingencies, and interest accrued over the course of the seven-year period needed to complete construction would be \$7.9 billion (BC Hydro, "Cost Estimate").

The revival of the Site C proposal began with an outline of a five-stage approach, beginning with a feasibility review, followed by a consultation and technical review, an environmental and regulatory review, acquisition of permits and regulatory approvals, and finally construction. The feasibility review took place between 2004 and 2007, in which BC Hydro declared: (1) that the anticipated magnitude of the Prov-

ince's electricity gap<sup>3</sup> was significant enough that Site C should continue to be examined as a potential resource option; (2) that no project characteristics were identified that would render Site

modation and mitigation options, prior to any decision being made on whether the assessment should proceed to Stage 3. The Treaty 8 Tribal Association asserted that,

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C unfeasible; and (3) that Site C would offer sufficient overall benefits relative to alternatives to make it an attractive electricity option (BC Hydro, *Peace River Site C hydro project: An option to help close B.C.'s growing electricity gap iv*). Given the above findings, BC Hydro encouraged moving the project on to Stage 2.

Following provincial approval of Stage 1, consultation took place over a period of a year between December 2007 and December 2008, during which time BC Hydro initiated consultation and engagement with 41 Aboriginal groups consisting primarily of Treaty 8 First Nations in BC (BC Hydro, *Stage 2 report: Consultation and technical review 44*). The approach and conclusions of the consultation and technical review differed markedly between BC Hydro and the Treaty 8 First Nations. In response to First Nations raising grievances related to past BC Hydro projects in the area and the cumulative effects of past and current projects on the region including those from the mining and oil and gas sectors,<sup>4</sup> BC Hydro submitted that consultation would be “ongoing” with “a greater focus on impact assessment, mitigation, and accommodation” (46) if the government accepted its recommendation to move the project into the environmental and regulatory review phase. In contrast, the Treaty 8 First Nations’ report claimed that BC Hydro had not made best efforts to complete the consultation process as agreed and documented in the Stage 2 Consultation Agreement, the purpose of which was to include the identification of potential impacts, and accom-

There have been excessive delays in providing the results of the reports and studies to the Treaty 8 First Nations, delays in responding to written questions regarding potential impacts of the proposed project and delays in allowing the commencement of the TLUS [Traditional Land Use Study]. Collectively, these delays have prevented the Treaty 8 First Nations from fully participating in the Stage 2 Consultation Agreement on the basis of free, prior and informed consent and, accordingly, the only conclusion that can be reached is that efforts have been inadequate and commitments under the Stage 2 Consultation Agreement remain unfulfilled. (T8TA, *Treaty 8 First Nations report on stage 2 consultation 14-15*)

The Treaty 8 Tribal Association, consisting of a council of five of the eight<sup>5</sup> BC Treaty 8 First Nations Chiefs, also questioned BC Hydro’s decision to conduct Stage 1 without any involvement of First Nations and to have made significant progress on Stage 2 (including the completion of the public pre-consultation, which outlined how stakeholders wished to be consulted and about what topics) before engaging with the Treaty 8 First Nations at all (2). Together, these factors led the Treaty 8 First Nations to register their strong objection to BC Hydro for having made a recommendation to the provincial government to proceed to Stage 3.

The provincial government accepted BC Hydro’s recommendation and authorized the Site C proposal to move to environmental assessment.

The review process began in 2011 and concluded on October 14, 2014, when the Canadian Environmental Assessment Agency (CEAA) and the British Columbia Environmental Assessment Office (BCEAO) granted approval to the proposal (BC Hydro, *Environmental Impact Statement: Executive Summary 2*). In addition to shouldering an increased burden from generalized environmental impacts such as soil erosion, loss of agricultural land, habitat fragmentation and alteration, loss of wildlife, and reduction in fish health and survival (CEAA, *Volume 5, Section 39: Complete Lists of Mitigation and Follow-up Measures*), First Nations groups also faced specific cultural losses due to their immediate and deep-rooted relationship with the land. Several burial sites, ceremonial areas, medicinal plant harvesting zones, and teaching areas are at risk of being irrevocably lost due to flooding from the Site C reservoir. Moreover, the CEAA admits that these type of damages are not amenable to mitigation or compensation measures.

At the time of writing, BC Hydro is awaiting a decision from their Board of Directors and the Province to secure regulatory permits and funding before they can proceed to project construction. In the following section, I examine the project’s impacts and opposition to the development of Site C more closely through the perspective of First Nations communities. I also attempt to differentiate between the perspectives, positions, and strategies of the Treaty 8 First Nations in negotiating compensation, engaging in direct action, or litigating.

### ***Uneven Burdens and the First Nations Response***

From its formal emergence in the early 1980s in the United States, the environmental justice movement focused on the existence of inequity in the distribution of environmental “bads.” The concept illustrates that not only do some communities receive more environmental risks than others, but goes on to ask why those (typically racialized and/or marginalized) communities were devalued in the first place (Schlossberg 39). In the Canadian context, part

of the answer may lie in the way environmental justice fits into existing policy paradigms. Geographer Michael Buzzelli notes that the Canadian identity and collectivist ethos of fairness and social welfare built on a foundation of progressive taxation is ill-equipped to account for or measure “environmental deficits” in the way it does socio-economic inequalities between individuals, households, neighbourhoods, and communities. The unpriced, spatially uneven, and often unfair character of environmental quality is also complicated by environmental justice’s emphasis on distributive justice over absolute pollution reduction (Buzzelli 7).

Further resource development such as Site C only stands to exacerbate environmental stressors in a region that is already experiencing enormous and widespread changes due to a convergence of industrial interests in the area. In their study of the Peace River region, the David Suzuki Foundation & Global Forest Watch calculated that physical changes from logging, mining, oil and gas development, water withdrawals, stream crossings, large-scale hydro development, and urban and agricultural conversions take up one fifth of the Peace Region landscape. If this is expanded to account for the effects on wildlife populations, over two thirds of the region would be classified as what Dane-zaa elder May Apsassin refers to as “broken” country for wildlife and the communities that rely on them (2).

In the case of Site C, there is a strong case that Aboriginal communities carry a disproportionate burden from environmental risks and that the damages from these risks are typically of a higher magnitude than those facing the general population. The report of the Joint Review Panel<sup>6</sup> on Site C found—in disagreement with BC Hydro—that the project would have significant adverse effects on fishing opportunities and practices for the Blueberry River First Nations and the First Nations represented by the Treaty 8 Tribal Association (CEAA, *Report of the joint review panel: Site C clean energy project* 314). Site C, however, would not significantly affect the harvest of fish and wildlife by non-Aboriginal people (iv). Part of the

reason for this discrepancy is that First Nations treaty rights include the right to hunt, fish, and trap for preferred species such as bull trout, Arctic grayling, and mountain whitefish—most of which would be lost—while the species that stand to benefit have been introduced to the ecosystem and are of little interest to them.

Flooding from Site C would alter or destroy many of these traditional fishing grounds; thus, knowledge of fishing grounds, preferred species, and cultural attachment to specific sites would be lost. The Site C reservoir would also produce changes in hydrology and sedimentation, which would alter the composition of fish species through habitat loss and disruption of migration routes (126). Moreover, the panel raised health

The panel, again in disagreement with BC Hydro, also found that the project would likely cause significant adverse and cumulative effects on hunting, non-tenured trapping, and traditional uses of land, all of which predominantly impress upon the livelihoods of Aboriginal peoples. The multitude of disagreements regarding the environmental impacts of Site C between Aboriginal groups and BC Hydro are telling of whose voices are privileged and how the concerns of various parties are weighed. For instance, the rationale for Site C rests on the claim that it would supply electricity that British Columbians need and would pay for, at a lower combination of price and external costs than any other alternative; however, the provincial government has refused to

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concerns over increased methylmercury levels in fish and fish-eating wildlife since it is primarily First Nations that depend on them as a food source (221). In contrast, the economic stability of the sport fishery is not so dependent on numbers of fish harvested as it is on “maintenance of opportunity and expectation” (131). The Joint Review Panel found that no mitigation measures short of stopping development existed to safeguard First Nations fishing opportunities, whereas measures to support recreational shoreline use, boating access, and water-based navigation could all serve to buoy fishing opportunities and mitigate the effects of construction on changes in public fishing areas for non-Aboriginals.

tender an independent assessment of BC Hydro’s projections. The BCUC, which typically makes such assessments, has been blocked from doing so by the provincial government, which passed an Order-in-Council and a provision in the *Clean Energy Act* that exempted Site C from this customary regulatory review (Johnston).

The Treaty 8 Tribal Association conducted its own analysis of alternatives to Site C and concluded that “the superiority of Site C in relation to the alternatives has not been demonstrated” and that “Site C is not a cost-effective solution to meeting BC Hydro’s forecast needs for additional energy and capacity” (Raphals 41). Treaty 8 Tribal Chief Liz Logan wrote that “BC Hydro has not

taken seriously clean energy alternatives...nor have the concerns of the communities and stakeholders impacted by the project been properly assessed." The Canadian Geothermal Energy Association also objected to BC Hydro's predilection for further damming of the Peace, arguing that compared to Site C, geothermal could offer more jobs spread throughout BC and First Nations, provide electricity at a lower cost and with fewer environmental impacts, and provide planning flexibility to follow the actual demand growth in the provincial system (295).<sup>7</sup> Other critics insisted that a variety of geographically dispersed intermittent clean or renewable energy sources such as run-of-river, wind, small-scale hydro, or solar would be capable of dispatching power more reliably and beneficially than fewer and less diverse power sources like the proposed hydroelectric megaproject (294).

In this sense, Site C is simply the latest project in a long series of resource development plans in the Peace region, an area already crisscrossed with pipelines, fractured by clearcuts, and strewn with petroleum and natural gas well sites and facilities. While some Treaty 8 First Nations were initially willing to discuss mitigation and compensation measures with the BC government, this changed as more information became available. "Now everyone is opposed,"<sup>8</sup> said Chief Roland Willson of the West Moberly First Nation (Lavoie). Blueberry River First Nations is one of the communities that originally agreed to negotiate an impact benefit agreement (Pynn), but following public hearings and the BC government's approach to evaluating Site C in isolation from the cumulative impacts of all the other industrial activity in the area, the band backed away from the talks. Negotiations broke down after the band requested that the Province set aside 8,100 hectares of land from development, to which the Province countered with a guarantee to protect 2,900 hectares on condition that the band give up its claim to treaty rights on all the other land in their traditional territory (Hume).

Early opposition to Site C amongst Aboriginal communities took the form of protests such as the Peace River En-

vironmental Association's "Paddle for the Peace" and the Yellowstone to Yukon Conservation Initiative's "Focus on Peace" campaign. Following the Joint Review Panel's judgement that BC Hydro "has not fully demonstrated the need for the project on the timetable set forth" (306), Fort Nelson First Nation Chief Liz Logan and West Moberly First Nation Chief Roland Willson visited Ottawa with Grand Chief Stewart Phillip, head of the Union of BC Indian Chiefs, to lobby against Site C in September (Stodalaka). Nonetheless, a month later CEAA and the BCEAO gave Site C environmental approval.

In response to the decision, the Doig River, Prophet River, West Moberly, and McLeod Lake bands filed a judicial review against Site C, claiming that the Ministry of Environment failed to consider the effects the dam would have on First Nations treaty rights (Stodalaka). The judicial review will determine whether the Ministry of Environment failed to adequately consider the potential impact of Site C on First Nations,

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thus violating their treaty rights. If the Province goes ahead with development before the review is over, the First Nations litigants say they will seek an injunction to halt construction (Stodalaka). The Mikisew Cree and Athabasca Chipewyan of Northern Alberta have also joined their Treaty 8 counterparts in legal action challenging the government's failure to consult them properly and consider the downstream effects of Site C on the Peace Athabasca Delta (CBC News).

### ***Previous Court Decisions and Implications for Canadian Environmental Law***

Former Chief Stewart Cameron of the Saluteau First Nations, speaking on the significance of Treaty 8 said:

Whether they were written or not, we know what the true spirit and intent of Treaty 8 is to us...for hunting, fishing, trapping, yes, but it goes way more than that also. It's a way of life, mode of life, [a] meaning that's [in] the land. It's related to the land...Our language is related to the land. Our teachings come from that. Our way of life, our laws come from that, from all of this. (125)

Cameron's statement highlights that Aboriginal treaty rights represent more than mere permits to hunt and fish. Indeed, they must be viewed in the context of the fundamental place of land in their culture, including rights to occupy the land and to secure the continuity of traditional knowledge.

The Mikisew Cree First Nation v. Canada, 2005 SCC 69, decision provides support for Cameron's claim that the words in the Treaty are to be "interpreted in the sense that they would naturally have been understood by the Indians at the time of signing" (para. 29). In relation to Site C, this means that any adverse effects on Treaty 8 First Nations must be considered under the scope of their traditional territories and "not on a treaty-wide basis" (para. 48). The rationale for Site C therefore remains just as tenuous as it was three decades prior when the BCUC reported that the losses First Nations would incur posed a seri-

ous threat to their way of life and “could not be compensated for” (BCUC 277).

Anna Johnston of the West Coast Environmental Law Association argues that the significant environmental and social costs that would be borne by the residents of BC’s Peace region could only be justified by an unambiguous need for Site C’s power, something BC Hydro has not satisfactorily demonstrated according to the Joint Review Panel. Thus,

The test for whether BC Hydro should be allowed to build with Site C, then, is an “unambiguous need” for the energy it would provide. Without conclusive proof that BC will need Site C by the time it would start operating, the dam’s approval cannot be justified. (Johnston)

As the proposal for Site C stands at the time of writing, going forward with the project would undermine not only the role of meaningful consultation and accommodation but also the premise of Aboriginal title more broadly.

With respect to Aboriginal title, the recent Supreme Court judgement in *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44, can prove instructive. The Court found that Aboriginal title confers ownership rights including, “the right to decide how the land will be used; the right of enjoyment and occupancy of the land; the right to possess the land; the right to the economic benefits of the land; and the right to pro-actively use and manage the land” (para. 73). Furthermore, “incursions on Aboriginal title cannot be justified if they would substantially deprive future generations of the benefit of the land” (para. 86). BC Hydro’s Site C proposal is not justified on the basis of a compel-

ling and substantial public interest considering, (1) that BC Hydro has not fully demonstrated the need for the project on the timetable set forth (CEAA, *Report of the joint review panel: Site C clean energy project* 306); and (2) that alternative resources could provide adequate energy and capacity until at least 2028 (299, 304).

The *Delgamuukw v. British Columbia*, 1997 SCC 1010, decision also affirms the content of Aboriginal title described in the *Tsilhqot’in Nation* case. Here, judges arrived at the conclusion that Aboriginal title encompasses “the right to exclusive use and occupation of the land held pursuant to that title for a variety of purposes” (para. 117). Accordingly, justification for infringement upon Aboriginal title must be consistent with the special fiduciary relationship between the Crown and the Aboriginal peoples (para. 162). This suggests that the Crown has a duty to involve Aboriginal peoples in decisions taken with respect to their lands, which in most cases will be significantly deeper than mere consultation.

Considering the outcry from First Nations communities has centred on the government’s disregard for the conclusions of the Joint Review Panel, there is good reason to believe that BC Hydro’s Site C proposal has taken consultation for a mere formality on the way to doing what they intended all along. This is also evidenced in the tension between First Nations requests to complete a comprehensive cumulative assessment and allow for their formal participation in the decision-making process before moving forward with the development of Site C (T8TA, “First Nations declaration concerning the proposed Site C dam”) and BC Hydro’s insistence that further consultation and accommoda-

tion would be forthcoming contingent on approval to move Site C along the development process (BC Hydro 6).

With the threat of permanent destruction for swathes of Aboriginal territory in the Peace River watershed, compensation in-kind for the construction of Site C is not possible. The panel report made clear that there would be significant adverse effects on fish and fish habitat, rare plants, wetlands, wildlife habitat, traditional uses of land by First Nations, and on cultural heritage resources for both Aboriginal and non-Aboriginal people (CEAA, *Report of the joint review panel: Site C clean energy project* iv). Bearing in mind these effects in the context of permanently flooding 5,500 hectares of land across an 83 kilometre stretch of the Peace River and its tributaries makes any justification for Site C fly in the face of deference for future generations. At best, Site C should be a last resort, one that should be visited only after pause for thought is given to examine whether better policies may lead to better alternatives.

Site C’s implications for Canadian environmental law and justice include questions over how public goods are squared with treaty rights, and the degree of jurisdiction governments hold over aboriginal lands. Another contentious issue is around the notion of “veto.” BC Environment Minister Mary Polak has upheld that the government’s obligation “is meaningful consultation [and] accommodation where it is appropriate—we don’t believe that constitutionally there exists such a thing as a veto” (Stueck). However, what of cases such as Site C, in which accommodation cannot begin to offset the social and cultural losses incurred by Aboriginal peoples. In this sense, we are preserving a myth that “meaningful consultation” amounts to nothing more than a process—a series of boxes to check off. Meaningful consultation must allow for room to say “no.” Likewise, it is entirely fanciful to think that no damage exists which cannot be compensated or somehow accommodated. At play is a fundamental clash of values, an incommensurability between price and dignity, making a living and making a life. While many of these questions remain

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to be hashed out in courts, Canada's Aboriginal peoples continue to make clear that putting a price on nature, on one's livelihood and cultural heritage, diminishes not just one peoples but us all.

ceed at all, was not accepted" (Hume). He also found that the government had "made reasonable and good faith efforts to consult and accommodate" First Nations.

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### Addendum

On July 7th, 2015, the BC government issued two dozen permits to BC Hydro granting them rights to timber removal, road construction, and site preparation, which constitute the first phase of construction of the Site C dam. In response, the West Moberly and Prophet River First Nations filed an application for injunctive relief to enjoin BC Hydro from undertaking any work pursuant to the permits until their petition was heard and determined. However, in August, Justice Sewell ruled against their claim writing that he was satisfied "that the petitioners were provided a meaningful opportunity to participate in the environmental assessment process," and that the process as a whole did provide the petitioners with "a reasoned explanation as to why their position, that the project should not pro-

Construction of a work camp expected to house 1,800 workers when it opens early next year is currently underway and BC Hydro has awarded a \$1.5 billion contract to the Peace River Hydro Consortium<sup>9</sup> as its preferred partner in the project (CBC News). For now, a coalition of First Nations groups led by President of the Union of BC Indian Chiefs Stewart Phillip is urging the new federal government to take action to stop Site C. Grand Chief Phillip noted that while their legal challenge was rejected in Federal Court this summer, the West Moberly and Prophet River First Nations will ask the Trudeau government to drop federal government opposition to an appeal of that decision.

### Notes

<sup>1</sup> It is necessary to differentiate between the usage of "Aboriginal" and "First Nations" in this paper. I use Aboriginal as an all-encompassing term that includes Inuit, First

Nations, and Métis, whereas "First Nations" refers to Aboriginal peoples who are neither Inuit nor Métis.

<sup>2</sup> An earthfill dam, also referred to as an embankment dam, consists of numerous layers of compacted earth that form an impervious barrier across a waterway and impound a reservoir behind it.

<sup>3</sup> The electricity gap was calculated based off the 2007 BC Energy Plan's (BC MEM) objective of achieving energy self-sufficiency by 2016 as well as having an additional 3,000 gigawatt hours of capacity by 2026. BC Hydro's forecasted data show customer demand at approximately 75,000 gigawatt hours with a supply of only 55,000 gigawatt hours in 2026 (BC Hydro 2).

<sup>4</sup> For more details on industrial interests in the Peace Region, refer to the David Suzuki Foundation's report *Passages from the Peace* (2013).

<sup>5</sup> The five First Nations represented by the Treaty 8 Tribal Association are Doig River, Halfway River, Prophet River, Sauleteau, and West Moberly First Nations (T8TA). Blueberry River, McLeod Lake, and Fort Nelson First Nations make up the other three Treaty 8 First Nations in BC.

<sup>6</sup> The federal and provincial governments appointed the Joint Review Panel, which was chaired by individuals with academic and professional backgrounds. While the voices of First Nations peoples were prominent at the public hearings, they had no representation on the panel.

<sup>7</sup> BC has however put policy constraints on the development of geothermal so that only independent power producers may develop it; as a result, BC Hydro has invested little in geothermal exploration, research, and engineering (CEAA 308).

<sup>8</sup> Refer to signatories of the *First Nations Declaration Concerning the Proposed Site C Dam* (2010).

<sup>9</sup> The consortium is comprised of Acciona Infrastructure Canada, Samsung C&T Canada, and the Petrowest Corporation.

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