

23 August 2018

SENT BY EMAIL

Indigenous Relations
Consultation and Land Claims Division
20th Floor Commerce Place
10155 - 102 Street
Edmonton, AB
T5J 4G8

Attention: Stan Rutwind, Q.C., Assistant Deputy Minister

Dear Mr. Rutwind:

**Re: Aboriginal Consultation Process
*Natural Resources Conservation Board Act Applications***

Following up on our discussions, I respect that you have advised the Natural Resources Conservation Board (NRCB) that the Aboriginal Consultation Office will not provide the NRCB with a recommendation or comment on the question of adequacy of consultation in relation to any reviews we conduct. In the longer term, the NRCB remains hopeful that the ACO will reconsider the policy with a view to assist aboriginal peoples, application proponents and the NRCB provincial public review agency.

As you know, virtually all applications under the *Natural Resources Conservation Board Act* require an *Environmental Protection and Enhancement Act* environmental impact assessment, and therefore require level 3 consultation according to the GOA's Guidelines on Consultations with First Nations on Land and Natural Resource Management (2014). At this time, we would request your assistance in understanding the GOA's expectations, if any, of the role of the NRCB review process in fulfilling the Crown's consultation obligations.

Based on our review of the Supreme Court of Canada decisions on the Chippewas of the Thames and the Clyde River cases last summer, the NRCB seeks your response to a number of questions. These questions are:

1. Will the GOA rely on the NRCB application and review process to satisfy components of the Crown's aboriginal consultation obligations? If so:
 - a. Which components of the Crown's consultation obligations?

- b. Will the GOA also rely on the NRCB to determine mitigation and accommodation measures that arise from aboriginal consultation?
 - c. Can the NRCB expect the GOA to formally advise the NRCB, indigenous peoples and the project proponent of that intended reliance (Clyde River, para. 23), and if so, at what stage in the NRCB review process will that occur?
 - d. Will the ACO provide the NRCB with any direct correspondence or communication it has with aboriginal peoples and the proponent in relation reviewable projects in front of the NRCB?
2. Many of the projects the NRCB reviews under the NRCBA also require subsequent approval(s) from GOA ministries, most commonly Alberta Environment & Parks.
- a. Will the GOA rely on NRCB's aboriginal consultation to fulfill the consultation requirements for GOA ministry statutory decisions?
 - i. If so, how and when will the ACO provide notice to the NRCB, aboriginal peoples and the proponent of this decision?
 - ii. If not, how and when will aboriginal consultation be completed for GOA statutory decisions that are inherently intertwined with the NRCB review and approval process?

The NRCB looks forward to your response to these questions. Please call should you have any questions.

Yours sincerely,



Bill Kennedy
General Counsel

cc Lawrence Aimoe, Executive Director, Aboriginal Consultation Office