ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT AND REVIEW UNDER SECTION 22 OF THE *JAMES BAY AND NORTHERN QUEBEC AGREEMENT*

AND

THE FIVE-YEAR REVIEW OF THE *CANADIAN ENVIRONMENTAL ASSESSMENT ACT*

GRAND COUNCILOF THE CREES (EEYOU ISTCHEE)
CREE REGIONAL AUTHORITY

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1.0 INTRODUCTION

1.1 Overview

This is the written contribution of the Grand Council of the Crees (Eeyou Istchee) and the Cree Regional Authority, to the consultations on the five-year review of the *Canadian Environmental Assessment Act* ("*CEAA*"). An oral presentation was made at the Montreal Consultations on March 9, 2000.

In considering the five-year review, it must be kept squarely in mind that the Crees have constitutionally entrenched rights to an appropriate and effective regime of federal environmental legislation and protection as contemplated in Section 22 of the *James Bay Northern Quebec Agreement* ("*JBNQA*") and to full partnership in its design and implementation.

Thus, we have very serious concerns regarding the present process. It is inappropriate, in the year 2000, to review the system of environmental assessment in Canada without directly including, as equals, the Crees and other Aboriginal peoples. The Crees and other Aboriginal peoples cannot simply be invited to join in a minor role in matters which affect our vital interests and the exercise of our constitutionally guaranteed rights. Despite our participation, we cannot and will not accept to be relegated to the role of mere "stakeholders".

Notably, the process by which the five-year review is proceeding all but ignores the special role for the Crees and the role of the James Bay Advisory Committee on the Environment ("JBACE") as the "preferential and official forum" for governments in the formulation of laws and regulations relating to environmental and social protection and their administration (*JBNQA* par 22.3.24). The simple and late transmission of consultation documents by the Canadian Environmental Assessment Agency ("the Agency") to the members of the JBACE does not amount to "adequate" consultation. The problem is compounded by the perennial failure to provide the JBACE with necessary resources. This has inevitably handicapped the

analysis of the issues raised by the five-year review. In short, the exercise was doomed to fail from the start.

The JBACE was designed to centralise discussions and planning. The intention was to avoid *ad hoc* processes and a situation where the Crees would be forced to "petition" various Ministers, or indeed make submissions to be filtered by non-governmental consulting firms. In embarking on the five-year review without effectively seizing the James Bay Advisory Committee on the Environment of the matter, the Government of Canada is in breach of its treaty obligations.

This brief is under reserve of and without prejudice to the Aboriginal and treaty rights, claims, interests, negotiations and positions of the Crees of Eeyou Istchee and subject to the constitutional and fiduciary obligations of Canada and Quebec. It is particularly without prejudice to the negotiations currently underway to establish a new Cree-Canada relationship, including in matters of environmental and social protection. Concretely, the review of *CEAA* must accommodate those negotiations.

In summary form, the Cree position is as follows:

a) Cree rights under the *JBNQA* are constitutionally protected and paramount over all other laws by virtue of the terms of the *JBNQA*, section 35 of the *Constitution Act, 1982* and under federal legislation.

b) The regime of environmental and social protection for Eeyou Istchee under the *JBNQA*, including the environmental and social impact assessment and review procedure ("ESIA"), is established by and in accordance with Section 22 thereof.

c) The *JBNQA* recognises substantive Cree constitutional rights to:
   i. adapted and effective environmental and social protection, notably through impact assessment;

ii. a special regime of laws, regulations, policies and standards to be developed together with the Crees through the JBACE and adopted by Canada and by Quebec; and

iii. special status for Cree through full involvement and presence at all levels of the implementation, administration and ongoing review and development of that regime.

d) A fundamental premise and condition of the *JBNQA* was continuing federal responsibility for the protection of the Cree way of life and environment. The Crees have treaty rights, matched by Crown constitutional and fiduciary duties, to an effective federal presence and role in implementing the overall regime of Section 22, including the ESIA procedure.

e) *CEAA*, its application and its five-year review must yield to the ESIA procedure established by and in accordance with Section 22 of the *JBNQA*.

f) Although the mechanics of *CEAA* can be married with the procedure set out in Section 22, the institutions and purposes of the two are quite different and *CEAA* does not provide sufficient guarantee of Aboriginal involvement in the assessment. Therefore, substitution of *CEAA* for the ESIA procedure - or "harmonizing" with *CEAA* - dilutes Cree rights and is inconsistent with the Treaty regime.

g) The Cree substantive right is to effective environmental and social protection, notably through ESIA. Therefore Cree rights are not frozen by the *JBNQA*. We have the right to benefit fully from evolution and improvement in environmental and social impact assessment and review by amendment of Section 22 or changes in practice thereunder, without requiring that we embrace the supplanting of Section 22 by *CEAA*.

h) The Cree of Eeyou Istchee seek appropriate federal legislation, including amendments to *CEAA*, to recognize and give effect to Section 22 as providing for the

environmental and social impact assessment and review procedure applicable in the Cree territory covered by the *JBNQA*.

i) The federal Crown must vindicate Cree rights and the achievement of the protection promised under the *JBNQA* by wholeheartedly embracing the Section 22 assessment procedure. Beyond legislation, this requires a fundamental change in federal policy. Concretely, this means:
   i. the commitment of substantial resources for scientific, technical, legal and administrative functions under Section 22; and,
   ii. ensuring that development is subjected as required to the federal side of the Section 22 procedure.

j) The Five-Year Review Discussion Paper assumes the layering and the marrying of multiple processes and does not recognize the primacy of the Section 22 procedure.

1.2 Eeyou Istchee: Territory, People and Institutions

A few words of introduction and history may be useful. More detail may be found at www.gcc.ca

The Crees have always occupied, used and governed the entire area of Eeyou Istchee, and used, managed, conserved, sustained, and have been sustained by the water and resources of the territory. Cree creation stories tell that the Eeyou were placed by the Creator in Eeyou Istchee as their "garden", a place in which they were to look after the land, the waters, the animals and the plants as a sacred obligation, and were in return permitted to benefit from these things so that they would survive and thrive as a people.

Cree governance and land and resource tenure systems were and are still derived from the family "trapline" system, covering the entire territory, in which each extended family uses and protects a defined area of the lands and waters and the resources it contains. The Cree

"tallymen" play a key role in this system of land tenure, environmental management and governance.

This evolving, integrated land and resource governance and tenure system ensures adequate economic means of subsistence for the Cree people, land use regulated according the carrying capacity of the land, and sustainability of Cree society and its economies.

Perhaps one feature of Cree existence, in common with many other indigenous peoples, transcends all others: our relationship with our lands and waters. This relationship is even deeper than title or governance; many Crees express this concept by stating that the Eeyou are *part of* the land.

Eeyou Istchee covers some 400,000 km^2, most, if not all, of which did not form part of the province of Quebec at the time of Confederation in 1867. It was only in 1898 and 1912 that the traditional territory of the James Bay Crees was included, always subject to Cree rights, in the province of Quebec.

As Chief Justice Lamer said in *R. v. Van der Peet*, [1996] 2 S.C.R. 507, par. 30:

> In my view, the doctrine of aboriginal rights exists, and is recognized and affirmed by s. 35(1), because of one simple fact: when Europeans arrived in North America, aboriginal peoples <u>were already here</u>, living in communities on the land, and participating in distinctive cultures, as they had done for centuries. It is this fact, and this fact above all others, which separates aboriginal peoples from all other minority groups in Canadian society and which mandates their special legal, and now constitutional, status.

The Crees, approximately 12,000 strong, are now mostly gathered into nine permanent communities on the James Bay coast and in the Eeyou Istchee interior: Whapmagoostui, Chisasibi, Wemindji, Eastmain, Waskaganish, Nemaska, Waswanipi, Mistissini and Oujé-Bougoumou. Nevertheless, Cree presence, occupation and use of the entire territory continue to this day.

The Grand Council of the Crees (Eeyou Istchee) ("GCC (EI)") represents the Eeyou in all matters affecting Cree status lands, rights and society. The Cree Regional Authority ("CRA") provides technical and administrative support for the nine Cree First Nations. The Grand Council and the CRA are overseen by a common board of directors. The CRA is the Cree party to the *JBNQA* and as such names members to all of the bodies provided for in Section 22.

2.0 THE *JAMES BAY AND NORTHERN QUEBEC AGREEMENT* AND SECTION 22 ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT

2.1 The *JBNQA*

The Government of Quebec and Hydro-Quebec proposed in the early 1970's, without regard for Cree rights, the construction of the La Grande hydroelectric mega-project. There followed major litigation regarding Cree Aboriginal title and rights. While an appeal of the injunction to stop construction was pending in the Supreme Court of Canada, construction of the project continued apace. The Crees made the best of a very bad situation and negotiated. The resulting treaty, signed in 1975, was the first modern land claims agreement in Canada: the *James Bay and Northern Quebec Agreement* (*JBNQA*).

The *JBNQA* is the cornerstone of Cree-Crown relations in Eeyou Istchee.

Pursuant to *JBNQA* sub-Section 2.5, federal and provincial legislation is required. The *James Bay and Northern Quebec Native Claims Settlement Act*, S.C. 1976-77, c. 32, approves, gives effect to and declares valid the *JBNQA*, making it paramount federal law, and ensuring to the Cree beneficiaries the rights, privileges and benefits provided for therein. Section 8 is as follows:

> **8.** Where there is any inconsistency or conflict between this Act and the provisions of any other law applying to the Territory, this Act prevails to the extent of the inconsistency or conflict.

Cree rights reflected in the *JBNQA* are recognized and affirmed under section 35 of the *Constitution Act, 1982*:

> RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA
> **35.** (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
> (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit, and Metis peoples of Canada.

> (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
> (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Therefore, rights of the Crees in the *JBNQA* are constitutionally entrenched treaty rights and beyond the unilateral reach of other governments: *Cree Regional Authority v. Canada (Federal Administrator)*, [1992] 1 F.C. 440 (T.D.), esp. pp. 448, 455-456 and 464-465.

There are profound implications for the *Canadian Environmental Assessment Act* and its five-year review. Neither Section 22 and its impact assessment procedure nor *CEAA*, its reform and interaction with the *JBNQA* regime of environmental and social protection can be considered in isolation from this legal and constitutional context. As we shall see, Cree rights under Section 22 of the *JBNQA* include rights to effective environmental and social protection, to the ESIA procedure, to special status in impact assessment, to be represented on the assessment bodies at all levels, to participate in and to consent to changes in the regime and to the paramount effect of the ESIA procedure over *CEAA*. These rights must all be given broad, liberal and remedial effect according to the spirit and intent of the *JBNQA*.

The Supreme Court of Canada insists on the sacred nature of treaty promises. In *R. v. Badger*, [1996] 1 S.C.R. 771, par. 41, the requirements for Crown behaviour are summarized in the following terms:

> […] the honour of the Crown is always at stake in its dealing with Indian peoples. Interpretations of treaties and statutory provisions which have an impact upon treaty or aboriginal rights must be approached in a manner which maintains the integrity of the Crown. It is always assumed that the Crown intends to fulfil its promises. No appearance of "sharp dealing" will be sanctioned.

The Cree underline the commitments of the Government of Canada in its 1997 response to the *Report of the Royal Commission on Aboriginal Peoples*. In *Gathering Strength*, the Crown reaffirmed its treaty relationships and promises in the following terms:

> A TREATY RELATIONSHIP
>
> A vision for the future should build on recognition of the rights of Aboriginal people and on the treaty relationship. Beginning almost 300 years ago, treaties were signed between the British Crown and many First Nations living in what was to become Canada. These treaties between the Crown and First Nations are basic building blocks in the creation of our country.
>
> For most First Nations, the historical treaties are sacred. They impose serious mutual obligations and go to the heart of how the parties wanted to live together. The federal government believes that treaties -- both historical and modern -- and the relationship they represent provide a basis for developing a strengthened and forward-looking partnership with Aboriginal people. [emphasis added]

Such regard for Cree rights and our treaty relationship must inform the understanding and application of the environmental and social protection regime promised by Section 22 of the *JBNQA*.

2.2 *Section 22 Environment and Future Development*

2.2.1 Scope and Purpose of Section 22

Section 22 encompasses far more than just impact assessment. Paragraphs 22.2.1 and 22.2.2 describe the farreaching and comprehensive regime it establishes:

> 22.2.1 The environmental and social protection regime applicable in the Territory shall be established by and in accordance with the provisions of this Section.
>
> 22.2.2 The said regime provides for:
>
> a) A procedure whereby environmental and social laws and regulations and land use regulations may from time to time be adopted if necessary to minimize the negative impact of development in or affecting the Territory upon the Native people and the wildlife resources of the Territory;

b) An environmental and social impact assessment and review procedure established to minimize the environmental and social impact of development when negative on the Native people and the wildlife resources of the Territory;

c) A special status and involvement for the Cree people over and above that provided for in procedures involving the general public through consultation or representative mechanisms wherever such is necessary to protect or give effect to the rights and guarantees in favour of the Native people established by and in accordance with the Agreement;

d) The protection of the rights and guarantees of the Cree people established by and in accordance with Section 24;

e) The protection of the Cree people, their economies and the wildlife resources upon which they depend;

f) The right to develop in the Territory. [emphasis added]

Due regard must also be given to the protection of our rights under *JBNQA* Section 24 - Hunting, Fishing and Trapping, referred to in d) above. Paragraph 24.11.1 provides:

24.11.1 The rights and guarantees of the Native people established by and in accordance with this Section shall be guaranteed, protected and given effect to with respect to environmental and social protection by and in accordance with Section 22 and Section 23. [emphasis added]

Nine guiding principles form part of the treaty promises of the Crown. Largely ignored by federal officials and in federal legislation, they must be considered in interpreting and applying Section 22, including the environmental and social impact assessment and review procedure and in considering its relationship to *CEAA* and the five-year review. The guiding principles are laid down in paragraph 22.2.4:

22.2.4 The responsible governments and the agencies created in virtue of this Section shall within the limits of their respective jurisdictions or functions as the case may be give due consideration to the following guiding principles:

a) The protection of the hunting, fishing and trapping rights of Native people in the Territory, and their other rights in Category I lands, with respect to developmental activity affecting the Territory;

b) The environmental and social protection regime with respect to minimizing the impacts on Native people by developmental activity affecting the Territory;

c) The protection of Native people, societies, communities, economies, with respect to developmental activity affecting the Territory;

d) The protection of wildlife resources, physical and biotic environment, and ecological systems in the Territory with respect to developmental activity affecting the Territory;

e) The rights and guarantees of the Native people within Category II established by and in accordance with section 24 until such land is developed;

f) The involvement of the Cree people in the application of this regime;

g) The rights and interests of non-Native people, whatever they may be;

h) The right to develop by persons acting lawfully in the Territory;

i) The minimizing of negative environmental and social impacts of development on Native people and on Native communities by reasonable means with special reference to those measures proposed or recommended by the impact assessment and review procedure. [emphasis added]

Thus, Section 22 does not simply provide for the protection of the biophysical environment.

Rather, it holds out the substantive promise of vindication of Cree rights, way of life and economies through effective social and environmental protection and sustainability of management and use of land and resources.

The promised effective protection is to be not just through environmental impact assessment, but more broadly, through an appropriate and effective body of "legislation, regulations and other appropriate measures" (par. 22.3.25).

Our rights are articulated in Section 22 notably as rights to appropriate processes and institutions which are to produce a promised result in terms of the quality of the environment and the protection of resources, always with special regard for the involvement and protection of Crees and Cree rights.

2.2.2 Environmental and Social Impact Assessment and Review Procedure

Section 22 comprehensively provides for the oversight, application, operation and ongoing evolution of the ESIA procedure.

The Section 22 procedure has many features in common with other regimes. Notably, impact assessment under Section 22 is a planning tool to inform decisions on whether, and on what terms, development should proceed.

However, reflecting the guiding principles, there are a number of fundamental distinctions from other assessment procedures, including *CEAA*. Notably:

- ✓ The procedure is a key element in protecting Cree traditional land tenure and resource allocation and in ensuring the perpetual protection of Crees and our environment, ecosystems, wildlife resources, society, communities and economies;
- ✓ Social impact assessment is not just an accessory afterthought, but rather an integral and co-equal requirement.
- ✓ A special status and role for Crees, as manifested notably through our representation on all of the bodies created under Section 22 and at every stage of the procedure;
- ✓ Section 22 involves decisions and project authorizations on the basis of impact assessment, not just information for decisions taken outside of the procedure;

- ✓ Section 22 provides for permanent assessment bodies, not the multiple responsible authorities and *ad hoc* panels of *CEAA*;

One recurrent problem in most impact assessment processes is with post-authorization monitoring. Given the features of Section 22 just outlined, the potential for such monitoring under Section 22 and for Cree involvement therein are obvious.

In terms of territorial application, the Section 22 procedure applies to all development or development projects "which might affect the environment or the people of the Territory" (par. 22.1.1). It is not restricted to projects physically located in the territory or even in the province of Quebec. Section 22 is thus adapted to transboundary assessment and *CEAA* is superfluous in this regard.

In contrast to *CEAA*, the development subject to assessment under Section 22 is open-ended. Certain development is either automatically subject to or automatically exempt from the procedure (Schedules 1 and 2). In addition, Section 22 provides for screening of "grey zone" development not listed in either schedule in order to determine whether assessment is required. The coverage of the procedure is thus much broader and more flexible than *CEAA*.

A full revision of Schedules 1 and 2 is long overdue. *JBNQA* paragraphs 22.5.1 and 22.5.2 provide for recurrent five-year review of the lists. Section 22 was thus considered 25 years ago as being flexible and adapted to evolving conditions. Of course, the revision of the lists would not amount to a general review of the ESIA procedure, but 25 years is a long time to wait for such a modest renewal. We cannot help but notice that the five-year review of *CEAA* is apparently regarded by the Government of Canada as a matter of much greater importance.

2.2.3 Federal Abdication

Section 22 establishes the comprehensive and integrated environmental and social impact assessment and review procedure to which Crees have a constitutional right. The Crees are directly present at all stages of the process. In its details and institutions, the procedure makes distinctions on the basis of matters involving federal or provincial jurisdiction.

As already mentioned, Section 22 provides for the establishment of the James Bay Advisory Committee on the Environment, with an equal number of members named by the Cree Regional Authority, Quebec and Canada. With voting rules adjusted to whether matters of exclusive provincial jurisdiction, exclusive federal jurisdiction or joint or mixed jurisdiction are being discussed, the Advisory Committee is a compulsory consultative body. As such it is the preferential and official forum for responsible governments concerning both the development of and the oversight of the administration and management of the Section 22 environmental and social protection regime. With specific respect to impact assessment, paragraph 22.3.27 provides:

> 22.3.27 The Committee shall examine and make recommendations respecting the environmental and social impact assessment and review mechanisms and procedures for the Territory.

Although generally ignored, it is important in this context to understand that it is the JBACE, properly funded, staffed and respected, not the federal (or any other Administrator) that has overall responsibility for the regime.

Under par. 22.1.1, “Administrator” is variously defined as being provincial, federal or local (Cree). In practice, the federal administrator is the president of the Agency.

The Administrator receives proponent proposals, dispatches development for consideration in the Committees and exercises, in interaction with the Section 22 assessment

bodies, structured decision-making power over the conduct of assessments and approval of development.

The two-stage review process set out in Section 22 provides throughout for federal involvement together with the Crees.

The Evaluating Committee, an advisory body, was conceived as a common forum and a clearinghouse on jurisdictional issues and it has voting rules similar to the JBACE (par. 22.5.7). It plays an important role in preparing draft directives to define the scope and extent of the assessment. Contrary to the original intent however, submission of projects to the Evaluating Committee has been controlled by proponents and by the federal and provincial Administrators. Therefore, the Evaluating Committee and the JBACE have not played their intended role in determining the course of the ESIA procedure on the basis of whether the development in question involves matters of federal jurisdiction, provincial jurisdiction or both.

For the review stage of the ESIA procedure, two bodies are established and involved according to whether the development in question involves provincial or federal jurisdiction (par. 22.6.1 and 22.6.4). They are, respectively, the provincial Environmental and Social Impact Review Committee (COMEX) and the federal Environmental and Social Impact Review Panel (COFEX).

In accord with the historical and constitutional role and responsibilities of the Government of Canada and its status as a party to the *James Bay and Northern Quebec Agreement*, a fundamental premise and condition of the *JBNQA* is an ongoing federal presence in giving effect to the regime of environmental and social protection provided for in Section 22. In practice, the Government of Canada has not fulfilled its fiduciary duty and respected constitutionally protected Cree rights in this regard.

Rather, for 25 years, the Government of Canada has exploited the intricacies of jurisdictional questions in Canada and in the process details of Section 22 to circumvent its ESIA obligations. Taking a minimalist, mechanical and adversarial (or “superficially neutral” - see

R. v. Sparrow, [1990] 1 S.C.R. 1075, at p. 1110) approach to legal issues of all kinds relating to Section 22 has meant ongoing refusal to apply the Section 22 federal *ESIA* procedure to development projects which clearly involve matters of federal jurisdiction: *Cree Regional Authority v. Canada (Federal Administrator)*, [1992] 1 F.C. 440 (T.D.). This has been coupled with persistent federal failure to provide the personnel, financial resources, institutional support, field presence and political commitment necessary to give effect to the rights of the Crees as regards resource management and environmental protection in Eeyou Istchee.

Instead of honouring its treaty obligations, the federal government has sporadically and disruptively applied *CEAA*, effectively denying Cree the constitutionally protected process and substantive rights provided for in Section 22.

It is inconceivable and perverse to interpret and apply the *JBNQA* in such a way that only the Crees, who have a constitutional right to an effective process of impact assessment and to the federal role therein, have no right to a strong federal role in impact assessment.

2.3 Paramount Application of Section 22 ESIA

As seen, the general provisions of Section 22 state that:

> 22.2.1 The environmental and social protection regime applicable in the Territory shall be established by and in accordance with the provisions of this Section.
>
> 22.2.2 The said regime provides for:
> […]
> b) An environmental and social impact assessment and review procedure established to minimize the environmental and social impact of development when negative on the Native people and the wildlife resources of the Territory;

Thus, Section 22 establishes <u>the</u> regime applicable, including for impact assessment.

The *JBNQA* also provides for the interrelation between the Section 22 regime of environmental and social protection and other regimes. As we have already seen, *JBNQA* Section 2 Principal Provisions include in sub-Section 2.5 the requirement that legislation giving effect to and implementing the *JBNQA* prevails over any other law to the extent of any inconsistencies or conflicts. Section 8 of the federal *Settlement Act* so provides (see part 2.1 above).

The Section 22 environmental and social impact assessment and review procedure is a federal treaty obligation, while federal environmental and social protection legislation, including *CEAA*, only applies if it is not inconsistent with the paramount application of the *JBNQA* regime. In this connection, it is essential to note that Section 22 provides a complete ESIA code, while other environmental and social protection measures were to be developed over time, leaving room for federal environmental and social protection laws of other kinds. Thus, paragraph 22.2.3 provides that:

> 22.2.3 All applicable federal and provincial laws of general application respecting environmental and social protection shall apply in the Territory to the extent that they are not inconsistent with the provisions of the Agreement and in particular of this Section. If necessary to give effect to the present Section of the Agreement, Québec and Canada shall take the required measures to adopt suitable legislation and regulations for such purpose.

Paragraph 22.6.7 provides as follows:

> 22.6.7 The Federal Government, the Provincial Government and the Cree Regional Authority may by mutual agreement combine the two (2) impact review bodies provided for in this Section and in particular paragraphs 22.6.1 and 22.6.4 provided that such combination shall be without prejudice to the rights and guarantees in favour of the Crees established by and in accordance with this Section.
>
> Notwithstanding the above, a project shall not be submitted to more than one (1) impact assessment and review procedure unless such project falls within the jurisdictions of both Québec and Canada or unless such project is located in part in the Territory and in part elsewhere where an impact review process is required.

The first sub-paragraph of this provision allows for measures of harmonization internal to the Section 22 ESIA procedure, but only with Cree consent and if it is without prejudice to Cree rights. Government failure to give effect to the Section 22 ESIA procedure and substitution of another procedure under general federal law was dealt with in the following terms in *Cree Regional Authority v. Canada (Federal Administrator)*, [1992] 1 F.C. 440 (T.D.), p. 465:

> The federal/provincial Agreement entered into some sixteen years subsequent to the JBNQ Agreement purports to substitute the federal environmental review process and to proceed with an assessment in accordance with the EARP Guidelines. It is apparent that this Agreement was intended both to appease and circumvent the native populations who desired to have a separate federal review of matters within federal competence as required by the 1975 understanding; moreover, it appears to have been negotiated in an attempt to free themselves from the duties and responsibilities imposed under the JBNQ Agreement.
>
> In my opinion, the new bipartite (November 15, 1990) agreement cannot legally be substituted by the federal authorities as an answer to their obligations under the JBNQ Agreement.

The second sub-paragraph of paragraph 22.6.7 both limits the application of more than one procedure and contemplates such application if the project falls within the jurisdiction of both Quebec and Canada or triggers a procedure outside of the Territory (e.g. the *JBNQA* Section 23 impact assessment procedure).

Paragraph 22.7.5 is a vestige of the pre-legislative history of federal assessment when the federal government did not wish to legislate:

> 22.7.5 Nothing in the present Section shall be construed as imposing an impact assessment review procedure by the Federal Government unless required by Federal law or regulation. However, this shall not operate to preclude Federal requirement for an additional Federal impact review process as a condition of Federal funding of any development project.

Of course, the *James Bay and Northern Quebec Native Claims Settlement Act* does now impose the Section 22 ESIA procedure itself as federal law: *Cree Regional Authority v. Canada (Federal Administrator)*, [1991] 3 F.C. 533 (C.A.), leave to appeal refused (4 July 1991), S.C.C. No. 22486. It is the applicable federal impact assessment review procedure for projects affecting the territory.

Paragraph 22.7.7 confirms that the unilateral application of general federal assessment procedures with mere Cree "participation" was contemplated only as a transitional measure, not as an ongoing practice as the federal government would apparently have it under *CEAA*. Its closing words are as follows:

> 22.7.7 […] Notwithstanding paragraphs 22.6.6 and 22.6.7, with respect to development projects falling under the Federal review process, Canada shall, during the transitional period referred to in Section 2 of the Agreement, continue in respect to Federal projects and Federal jurisdictions to exercise unilaterally existing Federal review processes and procedures with Cree participation.

Finally and fundamentally, paragraph 22.7.10 recognizes an absolute Cree veto over changes to the provisions of Section 22; the federal and provincial legislative role is limited to giving effect to Section 22:

> 22.7.10 The provisions of this Section can only be amended with the consent of Canada and the interested Native party, in matters of federal jurisdiction, and with the consent of Québec and the interested Native party, in matters of provincial jurisdiction.
>
> Legislation enacted to give effect to the provisions of this Section may be amended from time to time by the National Assembly of Québec in matters of provincial jurisdiction, and by Parliament in matters of federal jurisdiction.

The procedure may not be amended without Cree consent. This is so whether the modification is direct and explicit, or *de facto* by way of non-application or the establishment and application of a competing process like *CEAA*: *Cree Regional Authority v. Canada (Federal Administrator)*, [1992] 1 F.C. 440 (T.D.).

CEAA and its five-year review are measured against an exacting standard. Even if well-intentioned, government legislation and initiatives must be scrutinized and circumscribed to protect Cree rights. As the Supreme Court of Canada said in *R. v. Sparrow*, [1990] 1 S.C.R. 1075, at p. 1110:

> Section 35(1) suggests that while regulation affecting aboriginal rights is not precluded, such regulation must be enacted according to a valid objective. Our history has shown, unfortunately all too well, that Canada's aboriginal peoples are justified in worrying about government objectives that may be superficially neutral but which constitute *de facto* threats to the existence of aboriginal rights and interests. By giving aboriginal rights constitutional status and priority, Parliament and the provinces have sanctioned challenges to social and economic policy objectives embodied in legislation to the extent that aboriginal rights are affected. [emphasis added]

3.0 NEW REALITIES AND NEW DEVELOPMENTS

The *JBNQA* did not freeze all conceptions of Cree rights in 1975. To so argue would be to deny the nature of our rights and their constitutional protection.

From a broad perspective, implementation of Section 22 and its interface with *CEAA* must at least take account of such new realities as:

- The inherent right to Aboriginal self-government (recognized as a matter of Canadian government-wide policy);
- The emerging recognition of and recourse to traditional ecological knowledge (TEK) for the purposes of impact assessment;
- The work of the *Royal Commission on Aboriginal Peoples* and Canada's response to it;
- Access to adequate land and resources as a fundamental human right and as a condition of sustainable development for indigenous peoples;
- Provision for and agreement on co-management and Aboriginal access to the employment, revenue sharing and other benefits of economic development;
- The new standards which have emerged for Aboriginal and northern environmental and land management regimes.

In addition, certain developments in the case law are of note. Decisions from the Supreme Court of Canada have:

- ✓ given legal requirements of environmental assessment a new importance - *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3;
- ✓ begun to articulate limits on Crown action in resource management and allocation and to recognize requirements of Aboriginal participation in such decisions - *R. v. Sparrow*, [1990] 1 S.C.R. 1075, *Delgamuukw v. B.C.*, [1997] 3 S.C.R. 1010.

In *Delgamuukw*, it was held that mere consultation of Aboriginal peoples is only rarely sufficient for justification of infringement of Aboriginal title. Chief Justice Lamer said:

> […] There is always a duty of consultation. Whether the aboriginal group has been consulted is relevant to determining whether the infringement of aboriginal title is justified, in the same way that the Crown's failure to consult an aboriginal group with respect to the terms by which reserve land is leased may breach its fiduciary duty at common law: *Guerin*. The nature and scope of the duty of consultation will vary with the circumstances. In occasional cases, when the breach is less serious or relatively minor, it will be no more than a duty to discuss important decisions that will be taken with respect to lands held pursuant to aboriginal title. Of course, even in these rare cases when the minimum acceptable standard is consultation, this consultation must be in good faith, and with the intention of substantially addressing the concerns of the aboriginal peoples whose lands are at issue. In most cases, it will be significantly deeper than mere consultation. Some cases may even require the full consent of an aboriginal nation, particularly when provinces enact hunting and fishing regulations in relation to aboriginal lands. [p. 1113, par. 168]

The solemn treaty promises of adapted and effective mechanisms to protect the Cree in the face of development, must provide rights and protections at least equal to those which obtain under Aboriginal title. Therefore, *CEAA* cannot fulfil federal obligations regarding Cree participation in resource allocation, land use and development decisions. At a minimum, the broad and integrated regime of the *JBNQA* must be fully applied.

As seen, Section 22 provides a substantive promise of effective and sustainable environmental and social protection for Cree. Therefore, with respect to specifics, we have a right to the benefit, within the Section 22 ESIA procedure, of positive developments in impact assessment which have emerged or have become more prominent since the 1975 conclusion of the *JBNQA*. Without any attempt at a comprehensive enumeration, we refer to:

- class, program, policy and strategic assessment;
- rigorous scoping prior to determining the focus and content of the statement of environmental and social impact, including scoping hearings;

- enhanced consideration of the justification of development and of alternatives thereto;
- assessment of cumulative effects;
- full public hearings permitting both adapted community involvement and the testing of evidence and the presentation of competing proof, all supported by funding for participants.

4.0 *CEAA* AND SECTION 22

4.1 General Characteristics of *CEAA*

It is useful to begin by considering the general characteristics of *CEAA* in order to identify the major similarities and divergences of the two processes.

4.1.1 Objectives

In terms of declared objectives, *CEAA* has a focus on environmental quality, sustainable development, integration of environmental factors into early planning and decision-making, and access to information and public participation (Preamble and ss. 4 and 11). In practice, the provisions of *CEAA* and assessment under the federal law are largely disconnected from any strong sustainability focus (the exception is s. 16(2) (d) - effect on capacity of renewable resources to meet needs of the present and future).

It is certainly clear that *CEAA* would offer Cree nothing remotely comparable to the substantive and process protections offered by the guiding principles of Section 22 and their expression in the specifics of the ESIA procedure.

4.1.2 "Environment" and "Environmental Effects" and "Environmental Assessment"

The definitions of "environment" and "environmental effects" and "environmental assessment" in section 2 of *CEAA* are the heart of the regime:

> "environment" means the components of the Earth, and includes
> (*a*) land, water and air, including all layers of the atmosphere,
> (*b*) all organic and inorganic matter and living organisms, and
> (*c*) the interacting natural systems that include components referred to in paragraphs (*a*) and (*b*);
>
> "environmental effect" means, in respect of a project,

> (*a*) any change that the project may cause in the environment, including any effect of any such change on health and socio-economic conditions, on physical and cultural heritage, on the current use of lands and resources for traditional purposes by aboriginal persons, or on any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, and
> (*b*) any change to the project that may be caused by the environment,
>
> whether any such change occurs within or outside Canada;
>
> "environmental assessment" means, in respect of a project, an assessment of the environmental effects of the project that is conducted in accordance with this Act and the regulations;

Specifically, these definitions determine the object of the Act and the nature of the assessment factors studied pursuant to s. 16 and weighed in decisions regarding projects during and at the end of the *CEAA* process (ss. 20, 23 and 37).

It will be seen that these definitions are biophysical. Socio-economic conditions, heritage and use of lands and resources by Aboriginal persons are considered only where and insofar as they are affected by primary environmental change. Of course, for the Crees, direct social impact of development is a matter of great concern, but it does not enter into *CEAA* assessment. Thus, the *CEAA* approach stands in stark contrast to the equal weight given to environmental and social factors in all aspects of the Section 22 procedure.

4.1.3 Public Participation

Public participation in assessment is an important tenant of *CEAA* (Preamble, s. 4). This is of course laudable. However, the relevant *CEAA* provisions (ss. 2 (“interested parties”), 16(1)(c), 18(3), 20(1)(c)(iii), 22, 23 and 34) do not accommodate and ensure the special status and involvement of Crees which lies at the heart of Section 22.

4.1.4 Self-Assessment

Self-assessment by federal authorities is a fundamental organising principle of *CEAA*. It is often dressed up as the ultimate in the institutionalisation of sustainable development through the general integration of environmental considerations into decision-making. In fact, it long predates the Bruntland Commission. In our view, it may have more to do with the protection of departmental decision-making prerogatives than environmental idealism.

Again, self-assessment does not accord well with the requirement under Section 22 of "special status and involvement for the Cree people" (par. 22.2.2(c)) as reflected in the presence of Cree representatives on the advisory, assessment and review bodies under the *JBNQA*. This defect is not curable by the naming of Cree members to *CEAA* public review panels because *CEAA* assessment, in the vast majority of cases, does not ever reach the panel phase. Furthermore, s. 33 of *CEAA* contemplates *ad hoc* panels, not the permanent parity bodies which exist under Section 22.

4.1.5 Decision-making

Decision-making under *CEAA* to allow federal powers to be exercised and to allow projects to proceed is on the self-assessment model by federal authorities (ss. 20 and 37). Such authorities are often proponents, partners in projects or the federal department with a "client" interest in seeing the project proceed. Furthermore, at the end of the day, *CEAA* makes it rather easy to put aside environmental concerns on the basis of it being "justified in the circumstances".

In contrast, the Section 22 procedure provides for Cree involvement in the decision-making process and structures discretion by reference to the *JBNQA* Section 22 guiding principles and environmental and social impact considerations (par. 22.6.15)). Furthermore, there is a presumption that the evaluating and review recommendations will be followed and a Cree role is ensured by process requirements prior to any deviations therefrom (par. 22.5.4, 22.5.5, 22.5.13, 22.5.14, 22.5.15, 22.6.13, 22.6.15 and 22.6.17).

4.2 *CEAA* and Land Claims Assessment Procedures: Cooperation, Delegation and Substitution

Beyond the topics already treated, a number of *CEAA* provisions deal with the participation of Aboriginal peoples in *CEAA* assessment; others provide for the relationship between *CEAA* and land-claims based assessments. None is sufficient to justify the supplanting of Section 22, including the federal side of its process of environmental and social impact assessment and review.

Section 12 of *CEAA* provides for cooperation in environmental assessment between responsible authorities in screening or comprehensive study and *Constitution Act, 1982*, s. 35 assessment bodies. This latter category would certainly cover the bodies under Section 22 of the *JBNQA*. However, it does not meet our fundamental concern that the addition of the *CEAA* process for projects in the *JBNQA* Territory dilutes Cree rights by forcing the bodies on which we have guaranteed and direct representation to share assessment responsibilities with *CEAA* federal authorities.

Section 17 of *CEAA* both recognizes and limits delegation of screening or comprehensive study functions. Specifically, it allows delegation of the preparation of the relevant reports, but reserves decision-making at the end of the day to the responsible authority in question. Note that, unless designated by regulation, a section 35 assessment body is not a "federal authority" which may be a "responsible authority" (*CEAA*, ss. 2 and 59(e)).

Section 40 to 42 of *CEAA* provide for consultation, cooperation regarding assessment and for agreements or arrangements for a joint review panel between the federal Minister of the Environment and section 35 land-claims assessment bodies.

By virtue of section 41, such arrangements or agreements must include consideration of the *CEAA* section 16 factors and meet certain standards, including regarding the naming of panel members and public participation. Once again, the naming of panel members on an *ad hoc* basis with no guarantee of Cree membership is in contradiction with the fundamental nature of the

Section 22 parity bodies. Furthermore, section 41(e) provides for public participation, but no special status is recognized for Crees.

Sections 43 to 45 of *CEAA* would allow substitution of Section 22 assessment for a federal panel review. This has some potential to give effect to the primacy of the Section 22 ESIA procedure. However, substitution is subject to case-by-case exercise of the discretion of the federal Environment Minister. More fundamentally, panel review is a rare occurrence under *CEAA*, so substitution must necessarily be equally rare.

At first blush, section 48 of *CEAA* appears to be of interest. But the discretionary referral of a project to panel review or mediation is so circumscribed as to be stillborn.

We conclude that the application of *CEAA* and the non-application of the federal side of the ESIA procedure are inconsistent with Section 22 and that *CEAA* and its application must yield to the paramount provisions of our treaty.

5.0 THE FIVE-YEAR REVIEW

We have already stated our difficulties with the process of the five-year review.

However, the Five-Year Review Discussion Paper does broach questions of importance. It also offers the potential for limited improvements in *CEAA* and in federal assessment practice which should inform the renewal of the Section 22 procedure. It also touches on the role of the courts in ensuring compliance with assessment obligations.

5.1 The Discussion Paper and Aboriginal Peoples

Several major themes run through the treatment of Aboriginal issues in the Discussion Paper. There is some acknowledgement of the unique and important nature of the Aboriginal role. At the same time and without reference to section 35 of the *Constitution Act, 1982*, the Paper quietly but firmly reasserts paramount federal authority. It promotes harmonization of *CEAA* and land-claim assessment processes and adapting and improving mechanisms for involvement of Aboriginal peoples in assessment.

Chapter 3 of the Discussion Paper deals at page 16 with the impact of Aboriginal self-government on environmental assessment. We note with satisfaction and some impatience the acknowledgement of the need to "clarify the administration" of pre-*CEAA* land claims assessment regimes "and their relationship with the Act". It would be more encouraging if the *JBNQA* and the paramount nature of its Section 22 assessment procedure were given explicit consideration in this connection.

Instead, the Discussion Paper appears to focus on *CEAA* as if it were the centre of the universe. This continues the pattern of the past. Federal policy development has failed over the years to respect the constitutionally protected promise of policy development under our treaty through the work of the JBACE. As a result, federal policy development has completely failed to deliver the required adapted environmental and social protection. In fact, it has not even been

a process of harmonization. Rather, the push has been for homogenisation and anything that suggests a special regime or higher standard in order to respect the *JBNQA* has been snuffed out or ignored. This brings into question the ability of the central government to accommodate and facilitate rather than dictate the development of social protection and environmental policy in Canada. Federal policy makers appear to have a melting pot vision of Canada based on urban realities which ignores the rich cultural diversity represented by Canada's Aboriginal cultures and communities.

Thus, the Discussion Paper takes no notice and gives no effect to the constitutional nature and protection of the rights of the Cree under Section 22. Rather, in dealing with harmonization, the analysis appears to proceed from the precept of uniformity in environmental assessment (see *CEAA*, s. 62(b)), to the detriment of the specificity of the Section 22 procedure of environmental and social impact assessment. The goal of such uniformity breaches Crees treaty rights and is an unconstitutional push to the lowest-common denominator.

At pages 65 to 67 of the paper, the Aboriginal role is dealt with in a context of "public" participation. Although this classification is highly inappropriate, to the extent that *CEAA* may apply, some of the issues as set out at page 65 are appropriate and of concern to the Crees.

It will be obvious that we demand not a "separate approach", but rather implementation of the applicable regime of social and environmental protection, i.e. that provided for by and in accordance with Section 22. In this context, it is crucial to underline that the Cree position must not be confused with that of provinces or industry interests who wish to effectively eliminate federal assessment in favour of the sole application of provincial regimes. On the contrary, the Crees insist on federal assessment under the applicable law, i.e. the ESIA procedure in Section 22 of the *JBNQA*. This is required under our treaty, under the *JBNQA* as paramount federal law and as a matter of constitutional right.

Regarding "consultation obligations" and *Delgamuukw*, it has already been pointed out that for the Crees, involvement in resource and development management goes beyond environmental assessment as a type of consultation.

At pages 65 and 66, the Discussion Paper deals with the definition of "environmental effect". Insofar as *CEAA* may apply, we support a move to broaden this definition to include direct social effects.

5.2 General Improvements

The Discussion Paper deals with a number of other discrete issues and omits others. The Crees have a general interest in high standards of environmental assessment practice. Furthermore, our rights are not frozen and improvements in the text of *CEAA* and in federal assessment practice thereunder must be mirrored in a revitalized ESIA procedure under Section 22 of the *JBNQA*. Under reserve of our general position on *CEAA*, we support:

- ✓ Making prior public and Aboriginal public consultation obligatory in all comprehensive studies and non-discretionary, in pre-determined cases, for screening (pp. 35 and 63-64).
- ✓ Requiring public and Aboriginal participation in project scoping (all three aspects mentioned at p. 49) and an obligatory scoping phase in panel review (hearings and other methods).
- ✓ As regards the coverage of *CEAA*, eliminating the distinction between physical works and physical activities in the s. 2 definition of "project". It serves only to limit in an arbitrary fashion the coverage of the Act.
- ✓ Revising and lengthening the Law List.
- ✓ Revising the thresholds of the Comprehensive Study List to better reflect environmental significance.
- ✓ Measures to improve the frequency and effectiveness of the consideration of cumulative effects (p. 57).
- ✓ Measures to improve follow-up (p. 59).
- ✓ Greatly improved funding for participation in assessment. Such funding should be extended at least to comprehensive study (p. 65).

5.3 No Privative Clause

Finally, the Discussion Paper touches on the question of judicial review. The Grand Council of the Crees (Eeyou Istchee) / Cree Regional Authority strongly condemn as ill-advised and unworkable any move to insert a privative clause into *CEAA*. This would amount to an attempt to immunise illegal government and proponent action and inaction from judicial review. Privative clauses are typically for expert boards. Due to the self-assessment model of *CEAA* and the *ad hoc* nature of *CEAA* panels, a privative clause in *CEAA* would amount to protecting government actors in their thousands and *ad hoc CEAA* panels from judicial review. Recourse to the Courts has been absolutely essential for Aboriginal people in countering the abusive circumventing of assessment obligations and no doubt will be so in the future. Government and proponents can avoid judicial review by obeying the law.

6.0 CONCLUSION AND RECOMMENDATIONS

In summary form, the Cree position is as follows:

a) Cree rights under the *JBNQA* are constitutionally protected and paramount over all other laws by virtue of the terms of the *JBNQA*, section 35 of the *Constitution Act, 1982* and under federal legislation.

b) The regime of environmental and social protection for Eeyou Istchee under the *JBNQA*, including the environmental and social impact assessment and review procedure, is established by and in accordance with Section 22 thereof.

c) The *JBNQA* recognises substantive Cree constitutional rights to:
   i. adapted and effective environmental and social protection, notably through impact assessment;
   ii. a special regime of laws, regulations, policies and standards to be developed together with the Crees through the JBACE and adopted by Canada and by Quebec; and
   iii. special status for Cree through full involvement and presence at all levels of the implementation, administration and ongoing review and development of that regime.

d) A fundamental premise and condition of the *JBNQA* was continuing federal responsibility for the protection of the Cree way of life and environment. The Crees have treaty rights, matched by Crown constitutional and fiduciary duties, to an effective federal presence and role in implementing the overall regime of Section 22, including the ESIA procedure.

e) *CEAA*, its application and its five-year review must yield to the ESIA procedure established by and in accordance with Section 22 of the *JBNQA*.

f) Although the mechanics of *CEAA* can be married with the procedure set out in Section 22, the institutions and purposes of the two are quite different and *CEAA* does not provide sufficient guarantee of Aboriginal involvement in the assessment. Therefore, substitution of *CEAA* for the ESIA procedure - or "harmonizing" with *CEAA* - dilutes Cree rights and is inconsistent with the Treaty regime.

g) The Cree substantive right is to effective environmental and social protection, notably through ESIA. Therefore Cree rights are not frozen by the *JBNQA*. We have the right to benefit fully from evolution and improvement in environmental and social impact assessment and review by amendment of Section 22 or changes in practice thereunder, without requiring that we embrace the supplanting of Section 22 by *CEAA*.

h) The Cree of Eeyou Istchee seek appropriate federal legislation, including amendments to *CEAA*, to recognize and give effect to Section 22 as providing for the environmental and social impact assessment and review procedure applicable in the Cree territory covered by the *JBNQA*.

i) The federal Crown must vindicate Cree rights and the achievement of the protection promised under the *JBNQA* by wholeheartedly embracing the Section 22 assessment procedure. Beyond legislation, this requires a fundamental change in federal policy. Concretely, this means:
   i. the commitment of substantial resources for scientific, technical, legal and administrative functions under Section 22; and,
   ii. ensuring that development is subjected as required to the federal side of the Section 22 procedure.

j) The Five-Year Review Discussion Paper assumes the layering and the marrying of multiple processes and does not recognize the primacy of the Section 22 procedure.

Section 22 contemplates changes in federal law and policy to accommodate and vindicate Cree rights, and full Cree partnership in determining the nature and details of the changes made. As regards only the five-year review of *CEAA*, we seek the following changes:

> *JAMES BAY AND NORTHERN QUEBEC AGREEMENT*
>
> APPLICABLE PROCEDURE
> **s. X.** (1) Notwithstanding anything in this Act or any other law, the environmental and social protection regime, including the environmental and social impact assessment and review procedure, applicable to projects which might affect the environment or people of that part of Eeyou Istchee defined in paragraph 22.1.6 of the *James Bay and Northern Quebec Agreement*, shall be as established by and in accordance with Section 22 thereof.
>
> (2) Further to subsection (1) and notwithstanding anything else in this Act or any other law, with respect to projects within the part of Eeyou Istchee defined in paragraph 22.1.6 of the *James Bay and Northern Quebec Agreement* and to projects which might affect the environment and people thereof, no environmental assessment or assessment of environmental effects is required or may be carried out by or in accordance with this Act.

We expect that these changes will demand other consequential amendments to *CEAA*.

Finally, amending federal impact assessment is not enough. The second leg of any effective reform must necessarily include development, with the Crees, of policies, guidelines, programmes, laws and regulations to implement the environmental and social protection regime of Section 22. This must be complemented by an unequivocal federal policy and budgetary

commitment of the administrative, scientific, legal and support services necessary for the vindication of Cree rights under Section 22. This means devoting significant federal effort and resources to the JBACE, Evaluating Committee and COFEX and ensuring that development is subjected, as required, to the federal side of the Section 22 procedure.

Agreement

The Grand Council of the Crees (of Quebec), a corporation duly incorporated and mandated for these presents by, and acting on behalf of, the councils and Members of the Cree Bands of Fort George, Old Factory, Eastmain, Rupert House, Waswanipi, Mistassini, Nemaska and Great Whale River (which Members are herein after collectively referred to as the "James Bay Crees") as well as the said Members of the said Cree Bands and the said Bands herein acting and represented by the respective chiefs or leaders of the above Bands,

and

The Northern Quebec Inuit Association, a corporation duly incorporated and duly mandated for these presents, herein acting and represented by the president, Charlie Watt, the first vice-president, George Koneak, the second vice-president, Johnny Williams, the secretary, Zebedee Nungak, the treasurer, Pootoolik Papigatuk, a director, Tommy Cain, a director, Robbie Tookalook,a director, Peter Inukpuk, a director, Mark Annanack, a director, Sarolie Weetaluktuk, a director, Charlie Arngak, and acting on behalf of the Inuit of Quebec and the Inuit of Port Burwell, and the Inuit of Quebec and the Inuit of Port Burwell represented by the said corporation, and The Government of Quebec, herein acting and represented by Gerard D. Levesque, es-qualité Minister of Intergovernmental Affairs,(hereinafter referred to as "Quebec") and La Société d'énergie de la Baie James (the James Bay Energy Corporation) a corporation duly incorporated with its head office in Montreal, Quebec, herein acting and represented by the president Robert A. Boyd and La Société de développement de la Baie James (the James Bay Development Corporation) a corporation duly incorporated with its head office in Montreal, Quebec, herein acting and represented by the president, Charles Boulva

and

La Commission hydroélectrique de Québec(the Quebec Hydro-Electric Commission -Hydro-Quebec), a corporation duly incorporated with its head office in Montreal, Quebec, herein acting and represented by the president, Roland Giroux The Government of Canada, herein acting and represented by the Minister of Indian Affairs and Northern Development, the Honorable Judd Buchanan. (hereinafter referred to as "Canada").

WHEREAS it is desirable for the Province of Quebec to take measures for the organization, reorganization, good government and orderly development of the areas within the purview of the 1898 Acts respecting the Northwestern, Northern and Northeastern Boundaries of the Province of Quebec and of the 1912 Quebec Boundaries Extension Acts;

WHEREAS the Province of Quebec assumed certain obligations in favour of the Native people inhabiting the said areas(hereinafter referred to as the "Territory");

WHEREAS the Province of Quebec now wishes to fully satisfy all of its obligations with respect to the Native people inhabiting the Territory and the James Bay Crees, the Inuit of Quebec and the Inuit of Port Burwell have consented to the terms and conditions of an agreement of settlement with respect thereto;

WHEREAS, in particular, it is expedient to agree upon the terms and conditions of the surrender of the rights referred to in the1912 Quebec Boundaries Extension Acts;

WHEREAS, for such purpose, it is expedient that Canada and Quebec recommend to the Parliament of Canada and to the National Assembly of Quebec respectively, that the said 1912 boundaries extension acts be amended by legislation;

WHEREAS La Société d'énergie de la Baie James, La Société de développement de la Baie James and La Commission hydroélectrique de Quebec (Hydro-Quebec) have an interest in, and have made commitments for, the orderly development of the said Territory;

WHEREAS it is appropriate that it be recommended to Parliament and to the National Assembly of Quebec that the agreement herein set forth (hereinafter referred to as the "Agreement") be approved and given effect to by suitable legislation.

Now the parties hereto agree as follows:

Section 1 Definitions

For the purposes of the Agreement and, unless otherwise expressly provided or indicated by the context, the following words and phrases shall mean:

1.1 "Category l": an area of land in the Territory described in Sections 5 and 7 of the Agreement.

1.2 "Category IA": an area of land in the Territory described in Section 5 of the Agreement.

1.3 "Category IB": an area of land in the Territory described in Section 5 of the Agreement.

1.4 "Category IB Special and Special Category l": areas of land in the Territory described in Sections 5 and 7 respectively of the Agreement.

1.5 "Category II": an area of land in the Territory described in Sections 5 and 7 of the Agreement.

1.6 "Category III": land in the Territory other than Category l, lA, lB, lB Special, Special Category l, and Category ll.

1.7 "Community", in the case of the Crees, or "Cree Community": a collectivity of Crees for whom Category l lands have been allocated and in the case of Category lA, the band as represented by the band council, and in the case of Category lB, the public corporations contemplated by Section 5 or 10 of the Agreement.

1.8 "Community", in the case of the Inuit or "Inuit Community": one of the existing Inuit communities at George River, Fort Chimo, Leaf Bay, Aupaluk, Payne Bay, Koartak, Wakeham Bay, Sugluk, Ivujivik, Akulivik (Cape Smith), Povungnituk, Inukjuak, Great Whale River, and Fort George, future Inuit communities recognized as such by Quebec, and Port Burwell for the specific purposes mentioned in the Agreement.

1.9 "Cree" or "James Bay Cree": a person eligible pursuant to paragraphs 3.2.1, 3.2.2 and 3.2.3 of Section 3 of the Agreement.

1.10 "Inuk" or "Inuit" in the plural: a person eligible pursuant to paragraphs 3.2.4, 3.2.5 and 3.2.6 of Section 3 of the Agreement.

1.11 "Native party": in the case of the Crees, the Grand Council of the Crees (of Quebec) or its successor until the coming into force of the legislation establishing the Cree Regional Authority and, thereafter, the Cree Regional Authority or its successor. In the case of the Inuit, the Northern Quebec Inuit Association or its successor until the coming into force of the legislation establishing La Société Inuit de développement - The Inuit Development Corporation and, thereafter, the said corporation or its successor.

1.12 "Native people": the Crees and the Inuit

1.13 "Native person": a Cree or an Inuk.1.14 "Non-native": a person not eligible pursuant to Section 3 of the Agreement.

1.15 "Minister": the provincial or federal minister responsible for a matter falling within the jurisdiction of the government of which he is a member.

1.16 "Territory": the entire area of land contemplated by the 1912 Quebec boundaries extension acts (an Act respecting the extension of the Province of Quebec by the annexation of Ungava, Que. 2 Geo. V. c.7 and the Quebec Boundaries Extension Act, 1912, Can. 2 Geo. V. c.45) and by the 1898 acts (an Act respecting the delimitation of the Northwestern, Northern and Northeastern

boundaries of the Province of Quebec, Que. 61 Vice. c.6 and an Act respecting the Northwestern, Northern and Northeastern boundaries of the Province of Quebec, Can. 61 Vice.c.3).

Section 2 Principal Provisions

2.1 In consideration of the rights and benefits herein set forth in favour of the James Bay Crees and the Inuit of Quebec, the James Bay Crees and the Inuit of Quebec hereby cede, release, surrender and convey all their Native claims, rights, titles and interests, whatever they may be, in and to land in the territory and in Quebec, and Quebec and Canada accept such surrender.

2.2 Quebec and Canada, the James Bay Energy Corporation, the James Bay Development Corporation and the Quebec hydro-Electric Commission (Hydro-Quebec), to the extent of their respective obligations as set forth herein, hereby give, grant, recognize and provide to the James Bay Crees and the Inuit of Quebec the rights, privileges and benefits specified herein, the whole in consideration of the said cession, release, surrender and conveyance mentioned in paragraph 2.1 hereof.

Canada hereby approves of and consents to the Agreement and undertakes, to the extent of its obligations herein, to give, grant, recognize and provide to the James Bay Crees and the Inuit of Quebec the rights, privileges and benefits herein.

2.3 In consideration of the rights and benefits herein set forth in favour of the Inuit of Port Burwell who are ordinarily resident of Killinek Island, the Inuit of Port Burwell hereby cede, release, surrender and convey all their Native claims, rights, titles and interests, whatever they may be, in and to land in the Territory and in Canada, and Quebec and Canada accept such surrender.

Quebec and Canada, the James Bay Energy Corporation, the James Bay Development Corporation and the Quebec Hydro-Electric Commission (Hydro-Quebec) to the extent of their respective obligations as set forth herein, hereby give, grant, recognize and provide to the Inuit of Port Burwell the rights, privileges and benefits specified herein, the whole in consideration of the said cession, release, surrender and conveyance mentioned in this paragraph.

For purposes of the Agreement a person of Inuit ancestry who was or will be born on that part of Killinek Island within the Northwest Territories shall be deemed to have been born or to be born in Quebec, or if such person is ordinarily resident in Port Burwell he shall be deemed to be ordinarily resident in Quebec.

The provisions of the Agreement as set forth in Section 3 (Eligibility); Section 6 (Land Selection - Inuit of Quebec); Section 7 (Land Regime Applicable to the Inuit); Section 23 (Environment and Future Development- North of the 55th Parallel); Section 24 (Hunting, Fishing and Trapping) Section 25 (Compensation and Taxation) and Section 27 (Inuit Legal Entities) shall apply to the Inuit of Port Burwell and for the purposes of such Sections the Inuit community of Port Burwell shall be deemed to be an "Inuit community". Notwithstanding the foregoing the Inuit of Port Burwell shall not be included in paragraph 3.2.4 for the purpose of calculating the division of compensation as provided in paragraph 25.4.1.

Canada or the Government of the Northwest Territories, as the case may be, will continue to be responsible for providing programs and services to the Inuit who are ordinarily resident in Port Burwell in accordance with criteria that may be established from time to time.

2.4 In consideration of and subject to the rights, benefits and privileges in Legal favour of the James Bay Crees and the Inuit of Quebec, the James Bay Proceedings Crees and the Inuit of Quebec consent by these presents to the settlement out of court of all legal proceedings relating to the James Bay project or to the claims, rights, titles and interests in land that they may have. The James Bay Crees and the Inuit of Quebec further undertake not to institute any further proceedings relating to the matters contemplated in the said legal proceedings already instituted which are presently before the Supreme Court of Canada in virtue of leave to appeal granted by the Supreme Court of Canada on February 13,1975.

The legal proceedings involving the parties and bearing the numbers 05-04840-72 and 05-04841-72 of the records of the Superior Court of the District of Montreal are hereby settled and transacted and the parties respectively release and discharge each other, their agents, mandataries, representatives and employees from all claims, demands, damages and inconvenience arising from or in relation to the matters contemplated by the said proceedings. The parties to the said proceedings undertake that they will forthwith upon the coming into force

of the Agreement cause the necessary documents to be filed in the records of the Courts to give effect to the above.

2.5 Canada and Quebec shall recommend to the Parliament of Canada and Legislation to the National Assembly of Quebec respectively, forthwith upon the execution of the Agreement, suitable legislation to approve, to give effect to and to declare valid the Agreement and to protect, safeguard and maintain the rights and obligations contained in the Agreement. Canada and Quebec undertake that the legislation which will be so recommended will not impair the substance of the rights, undertakings and obligations provide for in the agreement.

Both the federal and provincial legislation approving and giving effect to and declaring valid the Agreement, if adopted, shall provide that, where there is an inconsistency or conflict between such legislation and the provisions of any other federal or provincial law, as the case may be, applicable to the Territory, the former legislation shall prevail to the extent of such inconsistency or conflict. Canada and Quebec acknowledge that the rights and benefits of the Indians and Inuit of the Territory shall be as set forth in the Agreement and agree to recommend that the federal and provincial legislation approving, giving effect and declaring valid the Agreement will provide for the repeal of Sub-Sections c), d) and e) of Section 2 of the federal Quebec Boundaries Extension Act, 1912, and of the same Sub-Sections of Section 2 of the Schedule to the provincial Quebec boundaries extension act, 1912.

The provincial legislation approving, giving effect to and declaring valid the Agreement shall allocate lands in the manner set forth in the Agreement, notwithstanding any other provincial laws or regulations.

2.6 The federal legislation approving, giving effect to and declaring valid the Agreement shall extinguish all native claims, rights, title and interests of all Indians and all Inuit in and to the Territory and the native claims, rights, title and interests of the Inuit of Port Burwell in Canada, whatever they may be.

2.7 During the Transitional Period of two (2) years referred to herein, Canada and Quebec shall to the extent of their respective obligations, take the measures necessary to put it into force, with

effect from the date of execution of the Agreement, the Transitional Measures referred to in the Agreement.

Except for such Transitional Measures, the Agreement shall come into force and shall bind the Parties on the date when both the federal and provincial laws respectively approving, giving effect to and declaring valid the Agreement are in force.

Upon the coming into force of the said federal and provincial legislation the Transitional Measures shall be replaced by all the other provisions of this Agreement. All acts done by the Parties in virtue of the said Transitional Measures shall then be deemed to have been ratified by all the Parties hereto.

2.8 In the event that the legislation referred to in paragraph 2.5 hereof does not come into force within a period of two (2) years from the execution of the Agreement, all compensation paid to or for the benefit of the James Bay Crees and the Inuit of Quebec by Quebec or Canada pursuant to Sub-Section 25.1 shall be repaid to, revert to or remain with, as the case may be, the said governments. However, during the transitional period, the James Bay Crees, the Inuit of Quebec and the Inuit of Port Burwell shall be entitled to receive, retain and use any interest earned thereon when due under the provisions of paragraphs 25.1.6 and 25.2.6. Such interest payments shall be made to the Grand Council of the Crees (of Quebec) for the benefit of the James Bay Crees and to the Northern Quebec Inuit Association for the benefit of the Inuit of Quebec and the Inuit of Port Burwell.

2.9.1 During the period between the date of execution of the Agreement and either the coming into force of the legislation referred to in paragraph 2.5 or two (2) years from the date of execution of the Agreement, whichever is the earlier (which period is herein referred to as the "Transitional Period"), Quebec undertakes, in the case of the James Bay Crees, from the date of the execution of the Agreement and in the case of the Inuit of Quebec and the Inuit of Port Burwell, from the respective dates that agreements are reached with Quebec in accordance with Section 6 for the selection of Category I lands. not to alienate, cede, transfer or otherwise grant rights respecting the lands which are to be allocated as Category l lands to or for the benefit of the James Bay Crees, the Inuit of Quebec and the Inuit of Port Burwell, except for those rights which Quebec could grant under Sections 5 or 7. Such lands are described in the Territorial

descriptions annexed to Section 4 and to be annexed to Section 6 as selections are made and shall include the lands known as Category lA and Category lB lands.

2.9.2 During the Transitional Period, the James Bay Crees, the Inuit of Quebec and the Inuit of Port Burwell shall be permitted to occupy, enjoy and use the Territory in accordance with present practice, subject to the rights of the other parties to the Agreement to act in such a manner as not to jeopardize rights which the James Bay Crees, the Inuit of Quebec and the Inuit of Port Burwell will have when the Agreement comes into force and effect. Nonetheless, this shall not be deemed to be a recognition nor a waiver of any right in or to the Territory in favour of or by the James Bay Crees, the Inuit of Quebec and the Inuit of Port Burwell.

2.9.3 Moreover, during the Transitional Period, and subject to acquired rights, the James Bay Crees, the Inuit of Quebec and the Inuit of Port Burwell when they will have selected their lands as aforesaid, shall be granted by regulations of Quebec and Canada, to the extent of their respective jurisdictions, which Quebec and Canada hereby undertake to adopt to give effect to these presents, the exclusive right to hunt, fish and trap in the lands which are or shall be described as Category I and Category II lands and to grant the right to trap and to hunt and fish in Category III lands, the whole subject to such limitations on the Native people as are contained in Section 24 of the Agreement. These regulations shall also provide that the Inuit of Quebec and the Inuit of Port Burwell (through their Community Councils) and the James Bay Crees shall be authorized to allow other persons to hunt, fish and trap in Category I and Category II lands the manner set forth in Section 24. Moreover, subject to acquired rights, the said regulations shall also provide for the same rights to the Native people in respect to outfitting as would have applied had the Agreement come into force on the date of its execution, except that notices relating to the right of first refusal with respect to outfitting facilities during the Transitional Period shall be given to the interested Native parties in respect to their respective areas of primary interest and to both interested Native parties in respect to areas of common interest.

2.9.4 From the date execution of the Agreement, Canada and Quebec shall pay for the benefit of the James Bay Crees, the Inuit of Quebec and the Inuit of Port Burwell the amounts of compensation to which they shall be entitled upon the coming into force of the Agreement in

accordance with the provisions of Sub-Section 25.1. However, during the Transitional Period, such amounts of compensation shall not be paid to the legal entity or entities contemplated by Section 26 and 27 but shall instead be paid to financial institutions in Quebec mutually acceptable to Quebec, Canada and the Cree and Inuit parties, for the benefit of the James Bay Crees, the Inuit of Quebec and the Inuit of Port Burwell, pursuant to trust arrangements acceptable to Canada, Quebec and the interested Native parties. It is recognized that there may be separate trust arrangements for each of the interested Native parties.

2.9.5 During the Transitional Period, the James Bay Energy Corporation and Hydro-Quebec undertake that they will carry out all measures respecting Le Complexe La Grande 1975 in the manner provided for Section 8 as if the said Section were in force and effect from the date of execution of the Agreement. Furthermore, the James Bay Energy Corporation and Hydro-Quebec undertake that during the said Transitional Period Le Complexe La Grande 1975 which is being built will substantially conform to the provisions contemplated by the "Description Technique-Le Complexe La Grande 1975" (dated October 20, 1975)referred to in Section 8 of the Agreement.

The James Bay Crees, the Inuit of Quebec and the Inuit of Port Burwell undertake that during the transitional Period, no legal proceedings will be instituted having as an object the halting of works being carried out substantially in conformity with the said Le Complexe La Grande 1975.

2.9.6 In addition to the foregoing, the provisions of the Agreement relating to Health and Social Services, Education and Justice and Police shall be implemented to the extent possible within existing legislation, during the Transitional Period. In respect to the Income Security Program for the Crees and in respect to the support program for Inuit hunting, fishing and trapping the Transitional measures during the Transitional Period shall be as described in Sections 30 and 29 respectively. Subject to the provisions of said Sections, at the termination of said transitional Period the Native parties shall be obliged to render an account to Quebec concerning the use of such moneys for such programs and to repay and remit to Quebec any portion of such moneys not used for the said purposes.

At the termination of the Transitional Period, Canada and Quebec may cease implementation of the above mentioned provisions, and the Crees and Inuit shall have the right to opt out of such

implementation, in either of which events the parties shall be restored to their respective positions prior to the execution of the Agreement, provided that nothing herein shall be interpreted to require the Crees and the Inuit to repay any sums spent in accordance with and with respect to this paragraph.

2.9.7 The Parties agree to further suspend during the transitional Period the legal proceedings relating to the James Bay project or to the claims, rights, titles and interests in land of the James Bay Crees and the Inuit of Quebec, including the effects of any judgment, rendered or to be rendered, resulting therefrom, and not to institute any further proceedings relating to such matters, during the Transitional Period, including all matters contemplated by the proceedings in the case of Kanatewat et al vs. the James Bay Development Corporation et a/. pending before the Supreme Court of Canada and related proceedings pending before the Superior Court of Quebec. The Parties further agree not to institute legal proceedings relating to transitional Measures referred to herein during the transitional Period.

2.9.8 In the event that the legislation referred to in paragraph 2.5 hereof does not come into force within a period of two (2) years from the execution of the Agreement then, notwithstanding the Transitional Measures herein specified, nothing in the Agreement shall be construed as imposing any obligation upon Quebec or Canada to continue any or all of the Transitional Measures or any other obligation or undertaking referred to elsewhere in the Agreement. Nevertheless, Quebec and Canada, to the extent of the irrespective undertakings, agree to assume and implement the Transitional Measures provided for herein and the Crees, the Inuit of Quebec and the Inuit of Port Burwell have accepted same on the basis that suitable legislation shall be adopted to put the Agreement into force and effect.

2.9.9 The Transitional Period may be extended by consent of all Parties.

2.10 The Parties hereto recognize and declare that all lands other than Category IA lands are and shall remain under the exclusive legislative jurisdiction of the Province of Quebec.

In the event that a final judgment of a competent court of last resort declares that the whole or any part of categories II and III lands fall under the legislative jurisdiction of Canada, because of

rights granted to the Native people with respect to all or any such lands or because such lands are held to be lands reserved for Indians, then any rights given to the Native people with respect to such lands shall cease to exist for all legal purposes.

Quebec and Canada undertake as of the date of the said judgment, both one to the other, as well as individually and collectively, in favour of the Native people to do all things necessary and to introduce such legislative or other measures needed to enable Quebec and/or Canada, in their respective jurisdictions, to grant anew the same rights that ceased to exist but with provincial jurisdiction in the said lands.

Nonetheless, in order to avoid hardship to the Native people and notwithstanding the above, the effect of the preceding provisions with respect to the termination of the rights of the Native people shall be suspended for a period of two (2) years following the date of the judgment.

During such period of suspension, Quebec and Canada undertake that they will not do anything or permit anything to be done which would prevent the granting or restoration to the Native people of any rights so nullified.

At the expiration of the period of suspension of two (2) years mentioned above, should no measures have been taken which would make possible, under provincial jurisdiction, the restoration of rights to the Native people, Canada and Quebec shall continue to endeavour to take the measures necessary which will make possible the restoration under provincial jurisdiction of the said rights over Categories II and III lands.

Should any Category l lands, exclusive of Category lA lands of the Crees, be held by a final judgment of a competent court of the last resort to fall under federal legislative jurisdiction, none of the rights of the Native people in regard to such lands shall be affected. However, Canada and Quebec undertake to diligently do all things necessary and to introduce such legislative or other measures required so that such lands and rights of the Native people related to such lands fall under legislative jurisdiction.

The termination of any rights in virtue if this paragraph and the circumstaces described herein shall not be deemed to be nor be construed as nullifying in any manner whatsoever any other rights or provisions of the agreement

2.11 Nothing contained in this Agreement shall prejudice the rights of the Native people as Canadian citizens of Quebec, and they shall continue to be entitled to all of the rights and

benefits of all other citizens as well as those resulting from the Indian Act (as applicable) and from any other legislation applicable to them from time to time.

2.12 Federal and provincial programs and funding, and the obligations of the Federal and Provincial Governments, shall continue to apply to the James Bay Crees and the Inuit of Quebec on the same basis as to the other Indians and Inuit of Canada in the case of federal programs, and of Quebec in the case of provincial programs, subject to the criteria established from time to time for the application of such programs.

2.13 The rights of the Crown in right of Canada in respect to Federal properties and installations in the Territory and the rights of the Crown in right of Quebec in respect to provincial properties and installations in the Territory, which are now or hereafter owned by the Crown or used for the purposes of the Federal or Provincial Government, as the case may be, shall not be affected by the Agreement,except as otherwise specifically provided for herein.

Subject to the provisions of this Agreement the rights of persons not parties hereto shall not be affected.

2.14 Quebec undertakes to negotiate with other Indians or Inuit who are not entitled to participate in the compensation and benefits of the present Agreement, in respect to any claims which such Indians or Inuit may have with respect to the Territory.

Notwithstanding the undertaking of the preceding sub- paragraph, nothing in the present paragraph shall be deemed to constitute a recognition, by Canada or Quebec, in any manner whatsoever, of any rights of such Indians or Inuit.

Nothing in this paragraph shall affect the obligations if any, that Canada may have with respect to claims of such Native persons with respect to the Territory. This paragraph shall not be enacted into law.

2.15 The Agreement may be, from time to time, amended or modified in the manner provided in the Agreement, or in the absence of such provision, with the consent of all the Parties. Whenever for the purposes of, or pursuant to, the Agreement, unless otherwise expressly specified, consent

is required in order to amend or modify any of the terms and conditions of the Agreement, such consent may be given on behalf of the Native people by the interested Native parties.

2.16 The Agreement shall, within four months from the date of execution, and in a manner satisfactory to Canada, be submitted to the Inuit and the Crees for purposes of consultation and confirmation. The Transitional Measures provided for herein and the provisions of Sub Sections 25.5 and 25.6 shall take effect only from the time of such confirmation but retroactive to the date of the execution of the Agreement.

2.17 Canada and Quebec shall recommend that legislative effect be given to the Agreement by Parliament and the National Assembly, subject to the terms of the Agreement and the legislative jurisdiction of Parliament and the National Assembly.

2.18 The other provisions of this Agreement are set forth in the Section attached hereto dealing with various subject matters, which Sections form part of this Agreement.

Section 22 Environment and Future Development Below the 55th Parallel

22.1 Definitions

For the purposes of this Section:

22.1.1 "Administrator" shall mean:

i) In the case of matters respecting provincial jurisdiction, the Director of the Environmental Protection Service or his successor, or any person or persons authorized from time to time by the Lieutenant-Governor in Council to exercise functions described in this Section.

ii) In the case of matters involving federal jurisdiction, any person or persons authorized from time to time by the Governor in Council to exercise functions described in this Section.

iii) In the case of proposed development in Category I, the Cree Local Government Administrator responsible for the protection of the environment.

22.1.2 "Cree community" shall mean the Cree communities of Great Whale River, Fort George, Old Factory, Eastmain, Rupert House, Nemiscau, Waswanipi and Mistassini as well as any new Cree communities recognized as such by Canada and Quebec.

22.1.3 "Cree economy" shall mean the activities and means by which Cree people earn, conduct and enjoy their economic livelihood.

22.1.4 "Development" or "Development Project" shall mean a project consisting of any work, undertaking, structure, operation, industrial process which might affect the environment or people of the Territory, exclusive of the operation and maintenance of such project after

construction. However, the operation of such project shall form part of the considerations in the assessment and review procedures for the construction of such project.

22.1.5 "Section" shall mean this Section of the Agreement.

22.1.6 "Territory" shall mean the area in Quebec south of the 55th parallel of latitude, (excluding the area in the vicinity of Schefferville south of the 55th parallel of latitude), and west of the 69th meridian of longitude, and including the Categories I and II lands of the Crees of Great Whale, and with the southern boundary coinciding with the southern limits of the Cree traplines as defined in Section 24.

22.1.7 "Preliminary Planning Stage" shall mean the stage at which a proponent studies the alternatives available and the technical, economic, financial and social dimensions of the project before taking a decision on the best alternatives to retain for further study.

22.2 General Provisions

22.2.1 The environmental and social protection regime applicable in the Territory shall be established by and in accordance with the provisions of this Section.

22.2.2 The said regime provisions for:

a) A procedure whereby environmental and social laws and regulations and land use regulations may from time to time be adopted if necessary to minimize the negative impact of development in or affecting the Territory upon the Native people and the wildlife resources of the Territory;

b) An environmental and social impact assessment and review procedure established to minimize the environmental and social impact of development when negative on the Native people and the wildlife resources of the Territory;

c) A special status and involvement for the Cree people over and above that provided for in procedures involving the general public through consultation or representative mechanisms wherever such is necessary to protect or give effect to the rights and guarantees in favour of the Native people established by and in accordance with the Agreement;

d) The protection of the rights and guarantees of the Cree people established by and in accordance with Section 24;

e) The protection of the Cree people, their economies and the wildlife resources upon which they depend;

f) The right to develop in the Territory.

22.2.3 All applicable federal and provincial laws of general application respecting environmental and social protection shall apply in the Territory to the extent that they are not inconsistent with the provisions of the Agreement and in particular of this Section. If necessary to give effect to the present Section of the Agreement, Quebec and Canada shall take the required measures to adopt suitable legislation and regulations for such purpose.

22.2.4 The responsible governments and the agencies created in virtue of this Section shall within the limits of their respective jurisdictions or functions as the case may be give due consideration to the following guiding principles:

a) The protection of the hunting, fishing and trapping rights of Native people in the Territory, and their other rights in Category I lands, with respect to developmental activity affecting the Territory;

b) The environmental and social protection regime with respect to minimizing the impacts on Native people by developmental activity affecting the Territory;

c) The protection of Native people, societies, communities, economies, with respect to developmental activity affecting the Territory;

d) The protection of wildlife resources, physical and biotic environment, and ecological systems in the Territory with respect to developmental activity affecting the Territory;

e) The rights and guarantees of the Native people within Category II established by and in accordance with section 24 until such land is developed;

f) The involvement of the Cree people in the application of this regime;

g) The rights and interests of non-Native people, whatever they may be;

h) The right to develop by persons acting lawfully in the Territory;

i) The minimizing of negative environmental and social impacts of development on Native people and on Native communities by reasonable means with special reference to those measures proposed or recommended by the impact assessment and review procedure.

22.3 James Bay Advisory Committee on the Environment

22.3.1 A James Bay Advisory Committee on the Environment (hereinafter referred to as the "Advisory Committee"), a body made up of members appointed by the Cree Regional Authority, Canada and Quebec is established to review and oversee the administration and management of the environmental and social protection regime established by and in accordance with this Section.

22.3.2 The Advisory Committee shall have thirteen (13) members. The Cree Regional Authority, Quebec and Canada shall each appoint four (4) members. The Chairman of the Hunting, Fishing and Trapping Coordinating Committee established by and in accordance with Section 24 shall ex

officio be a member, save when the said Chairman is appointed from the members appointed by the Inuit party in which case the Vice-Chairman shall ex officio be a member.

22.3.3 Such members shall be appointed and replaced from time to time at the discretion of the respective appointing party. The appointing parties may upon unanimous consent increase or decrease the membership of the Advisory Committee

22.3.4 The members of the Advisory Committee shall each have one (1) vote except as hereinafter provided otherwise:

a) When matters of exclusive provincial jurisdiction are being dealt with by the Advisory Committee, the members appointed by Canada including the Chairman of the Hunting, Fishing and Trapping Coordinating Committee, when he has been appointed by Canada shall not vote;

b) When matters of exclusive federal jurisdiction are being dealt with by the Advisory Committee, the members appointed by Quebec including the Chairman of the Hunting, Fishing and Trapping Coordinating Committee, when he has been appointed by Quebec, shall not vote;

c) When matters of joint or mixed federal and provincial jurisdiction are being dealt with by the Advisory Committee, the members appointed by Quebec and the members appointed by Canada shall each have one (1) vote and the members appointed by the Cree Regional Authority shall each have two (2) votes, and the Chairman of the Hunting, Fishing and Trapping Coordinating Committee shall have a vote.

22.3.5 The respective parties shall appoint a Chairman and Vice-Chairman of the Advisory Committee from among their appointees in the following manner:

a) In the first year of the operation of the Advisory Committee, the Chairman shall be appointed by Quebec and the Vice-Chairman shall be appointed by Canada;

b) In the second year of the operation of the Advisory Committee, the Chairman and Vice-Chairman shall be appointed by the Cree Regional Authority;

c) In the third year of the operation of the Advisory Committee, the Chairman shall be appointed by Canada and the Vice-Chairman shall be appointed by Quebec;

d) In the fourth year of the operation of the Advisory Committee, the Chairman and Vice-Chairman shall be appointed as provided in b);

e) In subsequent years, the appointment of the Chairman and Vice-Chairman of the Advisory Committee shall take place in the sequence set forth in sub-paragraphs a), b), c) and d) of this paragraph;

f) In the absence of the Chairman at any meeting, an alternate Chairman shall be selected by and from among the members appointed by the party that appointed the Chairman;

g) The Vice-Chairman shall act as Chairman only when the Chairman does not have the right to vote pursuant to paragraph 22.3.4.

22.3.6 The Chairman and Vice-Chairman shall hold office for one (1) year.

22.3.7 The Advisory Committee may, from time to time, select from among its members such other officers as may be required to enable the Committee to fulfil its role and functions.

22.3.8 When matters of exclusive provincial jurisdiction or exclusive federal jurisdiction are being discussed, a quorum shall be five (5) members physically present provided that at least one (1) member appointed by each party whose members are entitled to vote is physically present.

22.3.9 When matters of joint provincial and federal jurisdiction are being discussed, a quorum shall be seven (7) provided at least one (1) member appointed by each party is physically present.

22.3.10 The quorums mentioned in the preceding paragraphs 22.3.8 and 22.3.9 may from time to time be changed with the unanimous consent of all members of the Advisory Committee.

22.3.11 A member of the Advisory Committee shall upon his appointment execute a written proxy in the form provided by the Advisory Committee in favour of the other members, including their replacements, appointed by the party that appointed the member executing the proxy. The holder of such a proxy shall have the right to vote and otherwise act in the place of the absent member from whom the proxy has been obtained, in addition to the voting and other rights that the member holding the proxy is entitled to exercise in his own right.

22.3.12 All decisions shall be decided by a majority of the votes cast.

22.3.13 The Chairman shall have, in the case of a tie vote, a second and deciding vote.

22.3.14 The Advisory Committee shall have a principal office within the Province of Quebec, and may establish other offices within the said Province.

22.3.15 The Advisory Committee may establish and adopt by-laws regulating its own internal operations, including notice and place of meetings and other matters relating to the administration of the Advisory Committee. All members of the Advisory Committee shall be entitled to vote on such by-laws which shall be subject to the approval of each party to the Advisory Committee.

22.3.16 The Advisory Committee shall meet at least four (4) times annually.

22.3.17 The Chairman of the Advisory Committee shall convoke a special meeting of the Advisory Committee within twenty (20) days of receipt from any four (4) members of the Advisory Committee of a written request indicating the purpose of such meeting.

22.3.18 The Chairman or Vice-Chairman, as the case may be, shall preside over meetings of the Advisory Committee.

22.3.19 A secretariat shall be established for the Advisory Committee consisting of not more than five (5) full-time persons; however, the Advisory Committee may recommend an alteration to the size of the secretariat. The secretariat shall be responsible to and under the direction and control of the Advisory Committee. Quebec and Canada shall equally maintain and equally fund the secretariat. The secretariat shall receive and distribute data to the members when appropriate, report the results of meetings and decisions of the Advisory Committee and perform such other functions as the Advisory Committee shall from time to time determine, pursuant to this Section.

22.3.20 An official record of minutes and decisions of the Advisory Committee shall be kept by the secretariat.

22.3.21 Agenda for meetings shall be prepared in advance and distributed to members by the secretariat.

22.3.22 Members of the Advisory Committee or the Advisory Committee itself may call upon other persons for expert advice or assistance. The remuneration and expenses of any such person shall be paid by the party appointing the member or members who requires the services of such person. The remuneration and expenses of such person shall be paid from the budget of the Advisory Committee if the services of such person have been requested by the Advisory Committee.

22.3.23 Each party shall pay the remuneration and expenses of the members it appoints

22.3.24 The Advisory Committee shall be a consultative body to responsible governments and as such shall be the preferential and official forum for responsible governments in the Territory concerning their involvement in the formulation of laws and regulations relating to the environmental and social protection regime and as such shall oversee administration and

management of the regime through the free exchange of respective views, concerns and information.

22.3.25 The Committee shall, with adequate justification, recommend to responsible governments legislation, regulations and other appropriate measures related to the environmental and social protection regime for enactment or action by the appropriate authority.

22.3.26 The Committee shall examine environmental and social laws and regulations existing from time to time relating to the effects of development as well as existing land use regulations and procedures which might directly affect the rights of Native people established by and in accordance with Section 24 and this Section, and propose changes to responsible governments where appropriate.

22.3.27 The Committee shall examine and make recommendations respecting the environmental and social impact assessment and review mechanisms and procedures for the Territory.

22.3.28 The Committee shall be consulted from time to time on major issues respecting the implementation of the regime of the environmental and social protection and land use measures and may advise responsible concerned governments on the implementation of the environmental and social protection and land use regimes.

22.3.29 The Advisory Committee shall operate in accordance with the provisions of this Section.

22.3.30 All proposed regulations, measures and decisions of the Advisory Committee shall be communicated to the responsible government for attention, information and appropriate action.

22.3.31 Before submitting a regulation for enactment which relates only to the environmental and social protection regime and which is to apply only to Category I lands and/or Category I lands and/or Category III lands surrounded by Category I lands, the responsible Provincial or Federal Minister shall consult with the Advisory Committee provided that the failure to consult shall not invalidate the said regulations.

22.3.32 In the case of regulations recommended by the Advisory Committee which are to apply only to Category II lands and/or Category l lands and/or Category III lands surrounded by Category l lands, where the responsible Federal or Provincial Minister modifies or decides not to act upon such recommendations or decides to take new action, he shall before acting consult with the Advisory Committee provided that the failure to consult shall not invalidate the said regulations.

22.3.33 The James Bay Advisory Committee shall provide to the local government upon request technical and scientific information, advice or technical assistance, which it will obtain from the appropriate governmental agencies.

22.3.34 The Department of Lands and Forests shall when preparing a management plan for Crown forests and forestry operations, forward such management plan to the Advisory Committee for its consideration and comments before approving the said management plan. The said Committee shall make its comments, if any, known to the said Department within ninety (90) days.

22.4 Regulatory Power and Implementation in Categories I, II and III Lands

22.4.1 The local government shall have in Category l the by-law powers set forth in Sections 9 and 10.

22.4.2 All developments and activities in Category l lands shall have to meet all applicable provincial and federal environmental regulations and all applicable local government environmental and social and land use regulations.

22.4.3 Regulatory powers in Category II lands respecting land use and environmental and social protection shall be the responsibility of Quebec or Canada as the case may be within their respective jurisdiction and shall be exercised in a manner consistent with the provisions of this Section.

22.4.4 All permissible developments and activities in Category II will have to meet all applicable Quebec and Canada environmental, social and land use regulations.

22.4.5 In Category III lands, regulatory power shall be vested in the Lieutenant-Governor in Council or the Governor General in Council as the case may be subject to the provisions of Sub-Section 22.3 of this Section.

22.4.6 The administration and enforcement of the regulatory regime in Category III shall be the responsibility of Quebec or Canada as the case may be.

22.5 Requirement for Impact Assessment and Review

22.5.1 All developments listed in Schedule 1 shall automatically be subject to the impact assessment and review procedures provided for herein. A proponent of a development contemplated by this paragraph shall submit a project description to the Administrator during the preliminary planning stage. This list shall be reviewed by the parties every five (5) years and may be modified by mutual consent of the parties as may be necessary, in the light of technological changes and experience with the assessment and review process..

22.5.2 All developments listed in Schedule 2 shall not be subject to an impact assessment or review. This list shall be reviewed by the parties every five (5) years and may be modified by mutual consent of the parties as may be necessary in the light of technological changes and experience with the assessment and review process.

22.5.3 The provisions of paragraphs 22.5.4 to 22.5.17 shall apply in the Territory to all development other than that contemplated in paragraph 22.5.2.

22.5.4 In the case of development contemplated in paragraph 22 5.1, the Administrator shall decide, in a manner consistent with the provisions of this Sub-Section, and more particularly only after receiving the recommendation of the evaluating committee pursuant to paragraph

22.5.14, the extent of impact assessment which shall be required and the stages at which such assessment and review shall occur. The Administrator shall instruct or make recommendations to the proponent in accordance with the said decision .

22.5.5 The Administrator shall decide, in a manner consistent with the provisions of this Sub-Section, and more particularly only after receiving the recommendation of the evaluating committee pursuant to paragraph 22.5.13, whether a proposed development not contemplated in paragraph 22.5.1 or 22.5.2 shall be assessed and reviewed. In the event that the Administrator decides that a proposed development shall be assessed or reviewed he shall act in the manner stipulated in paragraph 22.5.4.

22.5.6 There is established an Evaluating Committee, an advisory body, which shall be under the administrative supervision of the James Bay Advisory Committee on the Environment. The Evaluating Committee shall have six (6) members. Quebec, Canada and the Cree Regional Authority shall each appoint two (2) members. The remuneration of a member shall be paid for by the body that appoints such member.

22.5.7 The members of the Evaluating Committee shall each have one (1) vote except as hereinafter provided otherwise:

a) When development projects of exclusive provincial jurisdiction are being dealt with by the Evaluating Committee, the members appointed by Canada shall not vote;

b) When development projects of exclusive federal jurisdiction are being dealt with by the Evaluating Committee, the members appointed by Quebec shall not vote;

c) When development projects of joint or mixed federal and provincial jurisdiction are being dealt with by the Evaluating Committee, the members appointed by the Cree Regional Authority shall each have two (2) votes. The members appointed by Quebec and the members appointed by Canada shall each have one (1) vote unless otherwise agreed to by Quebec and Canada. However, any change in the Federal/Provincial representation or the allocation of votes shall be

without prejudice to the rights and guarantees in favour of the Crees established by and in accordance with this Section.

22.5.8 The respective parties shall appoint a Chairman and Vice-Chairman of the Evaluating Committee from among their appointees in the following manner:

a) In the first year of the operation of the Evaluating Committee, the Chairman shall be appointed by Quebec and the Vice-Chairman shall be appointed by Canada;

b) In the second year of the operation of the Evaluating Committee, the Chairman and the Vice-Chairman shall be appointed by the Cree Regional Authority;

c) In the third year of the operation of the Evaluating Committee, the Chairman shall be appointed by Canada and the Vice-Chairman shall be appointed by Quebec;

d) In the fourth year of the operation of the Evaluating Committee, the Chairman and the Vice-Chairman shall be appointed as provided for in b);

e) In subsequent years the appointment of the Chairman and Vice-Chairman of the Evaluating Committee shall take place in the sequence set forth in sub-paragraphs a), b), c) and d) of this paragraph.

22.5.9 The Chairman or the Vice-Chairman, as the case may be, of the Evaluating Committee, who shall hold office for one (1) year, shall have a second and deciding vote.

22.5.10 The Administrator shall in all cases contemplated by this Sub-Section consult with and take into consideration the advice of the Evaluating Committee.

22.5.11 The proponent shall submit to the Administrator the following preliminary information respecting the proposed development:

a) In the case of developments contemplated by paragraph 22.5.1;

i) Purpose of the project; ii) Nature and extent of the proposed development; iii) Intention to study alternative sites for development where appropriate; iv) In the case when only one (1) alternative is proposed, reasons why no site alternatives are possible.

b) In the case of development not contemplated in paragraphs 22.5.1 and 22.5.2 information contemplated in I), ii), iii) and iv) above and in addition information and technical data adequate to permit a gross assessment of environmental and social impact of the project by the Evaluating Committee and the Administrator.

22.5.12 The Administrator shall forthwith transmit information referred to in paragraph 22.5.11 to the Evaluating Committee.

22.5.13 In the case of a development not contemplated in paragraphs 22.5.1 and 22.5.2, the Evaluating Committee shall determine if the proposed development may have a significant impact on the Native people, or on the wildlife resources of the Territory. On this basis, the Evaluating Committee shall recommend to the Administrator that either:

a) The development has no such significant impact, and may proceed without assessment and review, or

b) the development may have such a significant impact, and should be subject to assessment and review.

22.5.14 In the case of all developments subject to assessment and review pursuant to paragraph 22.5.1 or 22.5.13, the Evaluating Committee shall recommend the extent of impact assessment and review and whether or not a preliminary and/or a final impact statement should be done by the proponent.

22.5.15 The Administrator shall, consistent with the provisions of the Agreement, and in particular this Section, and after considering among other possible factors the said recommendations, decide as the case may be, whether or not assessment and review shall be required and/or the nature and extent of such assessment and review and shall act in the manner stipulated in paragraphs 22.5.4 or 22.5.5 as the case may be. In the event that the Administrator cannot accept the recommendations of the Evaluating Committee or wishes to modify such recommendations he shall, before deciding, consult with the Evaluating Committee so as to explain his position and discuss same before formally informing the proponent or taking action thereon.

22.5.16 The Administrator shall notify the proponent of his decision within thirty (30) days of receipt of the information stipulated in paragraph 22.5.11 unless in the opinion of the Administrator, who may receive advice from the Evaluating Committee, an additional period is required for evaluating or the information submitted by the proponent is not adequate to perform such evaluation. Such period and delay do not apply to developments being carried out by or on behalf of Federal Government departments or agencies.

22.5.17 The Administrator shall transmit his decision to the interested regional authorities. The information stipulated in paragraph 22.5.11 and the recommendations of the Evaluating Committee shall be available to the interested regional authority through its representatives on the Evaluating Committee. Such information or portion thereof may by exception be ordered withheld by the responsible Minister for reasons of national defence, national security or other justified reasons.

22.6 Preparation and Review of Impact Statements

22.6.1 An Environmental and Social Impact Review Committee (hereinafter referred to as "the Review Committee") is established which shall be the review body respecting development projects in the Territory involving provincial jurisdiction.

22.6.2 The Review Committee shall have five (5) members. Quebec shall appoint three (3) members and the Cree Regional Authority shall appoint two (2) members. The Chairman shall be appointed by the Lieutenant-Governor in Council from among the members appointed by the Provincial Government. The remuneration of a member and his expenses shall be paid for by the body that appoints such a member. However, the expenses of the Cree representatives shall be part of the costs of the secretariat.

22.6.3 The Review Committee shall be provided with an adequate staff to fulfil its functions and such staff shall be maintained and funded by Quebec, subject to the approval of the budget for same.

22.6.4 There is established an Environmental and Social Impact Review Panel (hereinafter referred to as "the Review Panel"), a Federal panel, which shall be the review body respecting development projects in the Territory involving Federal jurisdiction.

22.6.5 The Environmental and Social Impact Review Panel shall be composed of three (3) members appointed by the Federal Government and two (2) members appointed by the Cree Regional Authority. The Chairman shall be appointed by Canada. At the discretion of the Administrator the size of the Review Panel may be altered from time to time according to the extent of the project being reviewed provided that the same proportion of Federal and Cree representation is respected. The Review Panel shall be provided with an adequate staff to fulfil its functions and such staff shall be maintained and funded by Canada, subject to the approval of the budget for same. The renumeration of a member and his expenses shall be paid for by the body that appoints such a member. However, the expenses of the Cree representatives shall be part of the costs of the secretariat.

22.6.6 All procedures and requirements provided for in this Sub-Section and Sub-Section 22.7 shall apply equally in the case of review of development by the Environmental and Social Impact Review Committee or the Environmental and Social Impact Review Panel.

22.6.7 The Federal Government, the Provincial Government and the Cree Regional Authority may by mutual agreement combine the two (2) impact review bodies provided for in this Section and in, particular paragraphs 22.6.1 and 22.6.4 provided that such combination shall be without prejudice to the rights and guarantees in favour of the Crees established by and in accordance with this Section.

Notwithstanding the above, a project shall not be submitted to more than one (1) impact assessment and review procedure unless such project falls within the jurisdictions of both Quebec and Canada or unless such project is located in part in the Territory and in part elsewhere where an impact review process is required.

22.6.8 The proponent shall prepare a statement of Environmental and Social Impact which shall include any requirements pursuant to paragraph 22.5.15 or applicable laws or regulations and such other information as is referred to in Schedule 3, as is applicable under the circumstances.

22.6.9 The interested Cree community or communities through their local or regional government may make written representations to the proponent respecting the proposed development and may submit such written representations to the Review Committee or the Review Panel.

22.6.10 The proponent shall submit the impact statement of the proponent to the Administrator, who shall forthwith transmit it to the Review Committee or the Review Panel.

22.6.11 The Review Committee or the Review Panel shall transmit such impact statement to the Cree Regional Authority. Such information or portion thereof may by exception be ordered withheld by the responsible Minister for reasons of national defence, national security or other justified reasons.

22.6.12 Within the first thirty (30) days of the forty-five (45) day period, referred to at paragraph 22.6.14, the interested Cree community or communities through their respective local government or regional government may make representations to the Review Committee or the

Review Panel. Such representations may be in written form, or where appropriate in oral form, and may include representations from interested individuals, if authorized by the interested local government. The Administrator may extend such period when such extension is justified by the nature or extent of the project. The Review Committee or the Review Panel shall be consulted and may make recommendations respecting such extension. Such delay does not apply to developments being carried out by or on behalf of Federal Government Departments or agencies. This paragraph shall not be construed as limiting the right of the responsible Administrator to authorize more extensive representations.

22.6.13 On the basis of the said impact statement and other information before it, the Review Committee or the Review Panel shall recommend whether or not the development should proceed and, if so, under what terms and conditions including, if appropriate, preventive or remedial measures, or whether the development should be subject to further assessment and review and, if so, the data or information required.

22.6.14 The recommendations of the Review Committee or the Review Panel shall be transmitted to the Administrator within forty-five (45) days of receipt of the impact statement unless an additional period has been agreed to by the Administrator when such additional period is justified by the nature and extent of the project or when in the opinion of the Administrator the said statement is inadequate. The Review Committee or the Review Panel shall be consulted and may make recommendations respecting requirements for such an additional period. Such period and delay do not apply to developments being carried out by or on behalf of Federal Government Departments or agencies.

22.6.15 The Administrator, consistent with the provisions of the Agreement, and in particular this Section, and after considering among other possible factors the recommendations of the Review Committee or the Review Panel shall:

a) In the case of an impact statement at a preliminary stage prepared pursuant to paragraph 22.5.15 or in the case of an inadequate statement, advised the proponent respecting the alternatives submitted or, further assessment required, or

b) In the case of an impact statement submitted at a stage where a final decision may be made, decide whether or not on the basis of the environmental and social impact considerations the development should proceed and if so upon what terms and conditions, including if appropriate, preventive or remedial measures.

22.6.16 If pursuant to sub-paragraph 22.6.15 a) the Administrator so decides, the proposed development shall be subject to the further impact assessment and review which may include the same information requirements, specifications for impact statements and procedures as are specified herein.

22.6.17 If the Administrator is unwilling or unable to accept any recommendations of the Review Committee or the Review Panel or wishes to modify such recommendations he shall, before deciding or, as the case may be, advising the proponent consult with the Review Committee or the Review Panel to explain his position and discuss such position with the Review Committee or the Review Panel.

22.6.18 The decision of the Administrator shall be transmitted to the proponent.

22.6.19 Subject to paragraph 22.7.2 the decision of the Administrator as to whether or not the development should proceed and if so under what terms and conditions shall bind the proponent who shall respect and give effect to such decision.

22.7 Final Provisions

22.7.1 If the proposed development is approved in accordance with the provisions of this Section, the proponent shall before proceeding with the work obtained where applicable the necessary authorization or permits from responsible Government Departments and Services. The Cree Regional Authority shall be informed of the decision of the Administrator.

22.7.2 Subject to the regime respecting Category l land provided for in Section 5, the Lieutenant-Governor in Council or Governor in Council may for cause authorize a development which has not been authorized pursuant to Sub-Section 22.6 or alter the terms and conditions established by the Administrator pursuant to Sub-Section 22.6.

22.7.3 In the event that a proposed development not authorized to proceed pursuant to Sub-Section 22.6 is subsequently approved by the Lieutenant-Governor in Council or Governor in Council, or in the event that the Lieutenant-Governor in Council or Governor in Council alters the terms and conditions established by the Administrator, the Administrator after consulting, with the Review Committee or the Review Panel may recommend to the Lieutenant-Governor in Council or Governor in Council the necessary environmental and social protection measures which should be respected by the proponent.

22.7.4 The environmental and social impact assessment review procedures shall be without prejudice to the legal rights and recourses of the Native people and proponents.

22.7.5 Nothing in the present Section shall be construed as imposing an impact assessment review procedure by the Federal Government unless required by Federal law or regulation. However, this shall not operate to preclude Federal requirement for an additional Federal impact review process as a condition of Federal funding of any development project.

22.7.6 The environmental and social impact assessment and review procedure which requires the establishment of the Evaluating Committee, the Review Committee and Review Panel shall be fully operative within a period of four (4) months following the date of coming into force of the Agreement. Between the date of the coming into force of the Agreement and the time that these committees become operative, the Administrator shall assume the responsibilities of the said committees.

22.7.7 Any development which has been approved or authorized by the Administrator before the date of coming into force of the Agreement by legislation, will not be subjected to the assessment and review procedure provided for in this Section. During this period, the

environmental protection law will apply to the Territory and the parties to the Agreement will respect the interim measures described below. These interim measures shall apply to the Territory. They shall not apply to Le Complexe La Grande (1975), already agreed to in the Agreement, to projects of third parties not signatory to the Agreement, except those acting as agents, contractors, or sub-contractors to the parties in the Agreement and to mining investigations and mining explorations.

The parties to the Agreement will be subjected to the following interim measures:

a) they will continue to incorporate environmental and social considerations in the planning of their future development which could potentially have a significant impact on Native people and the environment;

b) prior to any construction and/or decision to construct new development, they will inform and consult the other parties at an appropriate time for meaningful consultation in connection with such development as follows:

- the developer will provide a general description of the project together with its assessment of the project impact on the Native people referred to above and on the environment related thereto;

- the Native people will then be given the opportunity to discuss this assessment within reasonable delays;

- if there is objection to the proposed project in account of a disagreement on the impact assessment, and any proposed remedial action, and that discussion has not resolved such disagreement, the Native people and the proponent shall formulate their objections and their justifications and refer the whole matter to the Administrator;

c) they will provide information on field investigation of projects when the nature of these investigations might significantly affect Native rights contemplated in the Agreement and will discuss such activities with the Native people where considered appropriate by any party to the Agreement;

d) upon specific request from the Native parties, the Departments of Natural Resources, Lands and Forests, and Environment Protection Services, will supply information available to them with respect to projects of third parties;

e) they will take appropriate measures to make sure that all applicable environmental laws and regulations and existing government policies are respected;

f) nothing in the foregoing shall prejudice the right of the Federal and Provincial authorities to withhold information, the disclosure of which would be contrary to any existing law and regulation or to the interests of national security.

Notwithstanding paragraphs 22.7.6 and 22.7.7, Quebec and Canada shall forthwith upon the execution of the Agreement, take the necessary measures to implement the provisions of Sub-Section 22.3 of this Section respecting the James Bay Advisory Committee, with the exception of the provisions respecting the secretariat. Notwithstanding paragraphs 22.6.6 and 22.6.7, with respect to development projects falling under the Federal review process, Canada shall, during the transitional period referred to in Section 2 of the Agreement, continue in respect to Federal projects and Federal jurisdictions to exercise unilaterally existing Federal review processes and procedures with Cree participation.

22.7.8 Notwithstanding any of the interim measures referred to in this Section, nor the implementation thereof, nothing in the present Section shall be construed as constituting a recognition of any right of the Native people in the event that the Agreement does not come into force in accordance with the provisions in Section 2 of the Agreement.

22.7.9 The interim measures provided for in this Section shall not give rise to any right in favour of any Native person to invoke any or all of the interim measures in legal proceedings before the Courts in and of Quebec.

22.7.10 The provisions of this Section can only be amended with the consent of Canada and the interested Native party, in matters of federal jurisdiction, and with the consent of Quebec and the interested Native party, in matters of provincial jurisdiction.

Legislation enacted to give effect to the provisions of this Section may be amended from time to time by the National Assembly of Quebec in matters of provincial jurisdiction, and by Parliament in matters of federal jurisdiction.

Section 22 Schedule 1

Future Developments Automatically Subject to Assessment

1. All New Major Mining Operations Excluding Explorations.

2. Siting and Operation of Major Sand and Gravel Pits and of Quarries.

3. Energy Production:

a) Hydro-electric power plants and their associated works.

b) Storage and water supply reservoirs.

c) Transmission lines of 75 kilovolts and above.

d) Extraction and processing of energy yielding materials.

e) Fossil-fuel fired power generating plants above three thousand (3,000) kilowatts.

4. Forestry and Agriculture:

a) Major access roads built for extraction of forest products.

b) Pulp and paper mills or other forestry plants.

c) In general, any significant change in land use substantially affecting more than 25 square miles.

5. Community and Municipal Services:

a.new major sewage and waste water collection and disposal systems. b.solid waste collection and disposal, including land fill and incineration.

c) proposals for parks, wilderness areas, ecological reserves or other similar land classifications.

d) new outfitting facilities for more than thirty (30) persons, including networks of outpost camps.

e) new communities or significant expansion of existing communities.

6. Transportation:

a) access roads to and near Native communities.

b) port and harbour facilities.

c) airports.

d) railroads.

e) road infrastructure for new development.

f) pipelines.

g) dredging operations for navigation improvements

Section 22 Schedule 2

Future Development Exempt from the Requirement for Impact Assessment

a) Any development within the limits of non-Native communities not directly affecting the wildlife resources outside these limits;

b) small hotels, motels, service stations and similar structures on provincial or lesser highways;

c) structures intended for dwellings, wholesale and retail trade, garages, offices or handicrafts and car parks;

d) fossil-fuel fired power generating systems below three thousand (3,-000) kilowatts.

e) the following immoveables:

teaching establishments, banks, fire stations, immoveables intended for administrative, recreational, cultural, religious, sports and health purposes and immoveables and equipment used for telecommunications;

f) the construction, modification, restoration, relocation or putting to another purpose of control and transformer stations of seventy-five (75) kilovolts or under and transport and electric power transmission lines of a voltage of seventy-five (75) kilovolts or under;

g) the construction and extension of a pipe main of less than thirty (30) centimetres in diametre to a maximum length of five (5) miles;

h) preliminary investigation, research, experiments outside the plant, survey and technical survey works prior to any project, work or structure;

i) forestry development when included in governmental approved management plans, subject to the provisions of paragraph 22 3 34 of this Section;

j) municipal streets and sidewalks build in accordance with municipal by-laws, and operation and maintenance of roads and highway structures;

k) repairs and maintenance on existing municipal works;

l) temporary hunting, trapping, harvesting camps; outfitting facilities for less than thirty (30) persons;

m) small wood cuttings for personal and community use;

n) borrow pits for highway maintenance purposes.

The foregoing shall not be construed as restricting the requirements for environmental impact assessment under the Federal impact assessment and review process for Federal projects.

Section 22 Schedule 3

Contents of an Environmental and Social Impact Statement

I Introduction

This Schedule describes the objectives, preparation and contents of an environmental and social impact statement prepared pursuant to this Section of the Agreement In the exercise of his functions, and duties pursuant to this Section of the Agreement, the Administrator shall give due consideration to the provisions of this Schedule but shall not be restricted or bound by or to the said provisions.

The environmental and social impact assessment procedure provides for the Administrator pursuant to paragraphs 22.5.15, 22.6.15 and 22.6.16 to instruct or make recommendations to the proponent respecting the preparation of a preliminary or a final impact statement.

The preliminary environmental and social impact statement will evaluate site alternatives for the development and provide information for the determination of the need for final statement of the retained alternative The preliminary statement should be based on existing information and on information from reconnaissance or survey studies.

The final or detailed environmental and social impact statement of the retained alternative would be based on a much deeper knowledge of the environmental and social implications of the development.

The inclusion of specified items in the preparation of an impact statement will depend upon the nature and extent of the proposed development Items potentially affected should be included in the report Pursuant to paragraphs 22.5.15, 22.6.15 and 22.6.16, the Administrator may decide to what extent these guidelines for contents are appropriate in specific cases, and should be incorporated into a given impact statement.

II Objectives

An impact statement should identify and assess clearly and in as factual a manner as possible, the environmental and social impacts induced by the project, especially those on the Cree populations potentially affected.

The main objectives of an environmental and social impact statement are to ensure that:

- Environmental and social considerations form an integral part of the proponent’s planning and decision-making process.
- Potential environmental and social impacts resulting from development are identified as systematically as possible.

- Alternatives to the proposed action, including alternatives to individual elements of large scale projects, will be evaluated with a view to minimizing within reason impacts on Native people and wildlife resources and maintaining the quality of the environment.
- Remedial or preventive measures will be incorporated into proposed development so as to minimize within reason expected negative impacts.
- The Review Committee, the Review Panel and the Administrator are adequately informed to be able to take the decisions for which they are responsible under this Section.

In general, the impact assessment procedure should contribute to a further understanding of the interactions between Native people, the harvesting of wild life resources and the economic development of the Territory, and also to promote understanding of ecological processes.

The impact statement is expected to be short and concise and contain an adequate guide to the contents and to the conclusions of the study, and it should also contain a clear summary containing the essential arguments and findings of the proponent The statement may be in French or in English at the option of the proponent.

III Contents

The following outline gives the major headings that should be included in any impact statement.

1. *Description of the Project.*

The following should be included in the project description:

a) Purpose and objectives.
b) Location or alternative locations being considered.
c) Identification of area and human populations potentially affected by each project location being considered.
d) Physical plant, activities involved in construction phase of development, including an estimate of size and composition of work force.
e) Material/energy balance for the plant (Input/Output).
f) Physical and human requirements for operation phase of the project.
g) Possible future phases of the development.

2. *Environmental and Social Setting*

The state of the environmental and social setting should be described before the proposed development begins, in order to have a reference point for the evaluation of the impacts of the development.

The description should not only include the identification and description of the components identified below, but should equally consider their ecological relationships, their interaction, and when appropriate, their scarcity, sensitivity, productivity, variety, evolution, location, etc The level of details provided in the description should be based upon the importance, and the implications of the specific impacts involved.

The following is a representative list of the items that could be considered in the environmental and social setting Any item potentially affected should be included.

Environmental Conditions

Lands	*Water*	*Air*
Physical: — topography — geology — soil and drainage	Physical: — hydrology — quality	Climate
Vegetation	Vegetation	Micro-climate
Fauna	Fauna	Quality

Social Conditions

Populations
— demography

Income and Employment:
— standard of living
— employment
— enterprises

— residence
— ethnic composition

Land Use:
— settlements and habitations
— basic utilities
— roads
— harvesting patterns
— known archaeological sites
— cemetery and burial sites

Harvesting:
— use of various species
— importance

Institutions:
— education
— utilities
— transportation
— other service institutions

Health and Safety

Social organization
— family
— community
— ethnic relations

Culture:
— values
— goals and aspirations

3. *Predicting and Evaluating Probable Impacts*

This part of the Schedule involves the identification. evaluation and synthesis of impacts associated with the headings referred to in the part of this Schedule entitled "Environmental and Social Setting".

The proponent may, at his discretion, include in his statement a section on information and questions submitted by the community potentially affected Where he considers it appropriate the proponent may discuss and comment upon such information or questions.

This section of the statement should consider, whenever appropriate, direct, indirect and cumulative impacts, short term and long term impacts, reversible or irreversible impacts Attention should also be given to impacts occurring at different phases of the development, and on different scales, i.e. local, regional or national scale.

The proponent should in his prediction and evaluation of impacts discuss the reliability and adequacy of the information used, limitations imposed upon his study by the unavailability of information, and areas of significant uncertainty and risk.

4. *Alternatives to the Proposed Project*

When justified by the nature of the project, there should be a section which explores and objectively assesses the impact on the Native people and on the environment of reasonable site alternatives of the project in the Territory and/or of reasonable alternatives to certain elements of the proposed project. These alternatives should be considered with a view to optimize as much as reasonably possible the positive effect of the development on the environment, taking into account environmental, socioeconomic and technical considerations and to minimize negative impacts including impacts on the affected population, as reasonably as possible. Where the gross impact of alternative actions differs significantly, the analysis should be sufficiently detailed to permit the comparative assessment of the costs, benefits, and the environmental risk to the different interested populations between the proposed project and the available options.

5. *Corrective and Remedial Measures*

The proponent should include in the statement a section identifying and evaluating reasonable remedial or corrective measures which should reduce or alleviate the negative impact of the proposed development on Native people, wildlife resources of the Territory and the quality of the environment in general. Measures aimed at enhancing positive impacts induced by the project should also be included in this section.

CONSOLIDATED STATUTES OF CANADA

James Bay and Northern Quebec Native Claims Settlement Act
1976-77, c. 32
[J-0.3]

An Act to approve, give effect to and declare valid certain agreements between the Grand Council of the Crees (of Quebec), the Northern Quebec Inuit Association, the Government of Quebec, la Société d'énergie de la Baie James, la Société de développement de la Baie James, la Commission hydro-électrique de Québec and the Government of Canada and certain other related agreements to which the Government of Canada is a party

[Assented to 14th July, 1977]

Preamble

WHEREAS the Government of Canada and the Government of Quebec have entered into an Agreement with the Crees and the Inuit inhabiting the Territory within the purview of the 1898 acts respecting the Northwestern, Northern and Northeastern Boundaries of the Province of Quebec and 1912 Quebec Boundaries extension acts, and with the Inuit of Port Burwell;

AND WHEREAS the Government of Canada and the Government of Quebec have assumed certain obligations under the Agreement in favour of the said Crees and Inuit;

AND WHEREAS the Agreement provides, inter alia, for the grant to or the setting aside for Crees and Inuit of certain lands in the Territory, the right of the Crees and Inuit to hunt, fish and trap in accordance with the regime established therein, the establishment in the Territory of regional and local governments to ensure the full and active participation of the Crees and Inuit in the administration of the Territory, measures to safeguard and protect their culture and to ensure their involvement in the promotion and development of their culture, the establishment of

laws, regulations and procedures to manage and protect the environment in the Territory, remedial and other measures respecting hydro-electric development in the Territory, the creation and continuance of institutions and programs to promote the economic and social development of the Crees and Inuit and to encourage their full participation in society, an income support program for Cree and Inuit hunters, fishermen and trappers and the payment to the Crees and Inuit of certain monetary compensation;

AND WHEREAS the Agreement further provides in consideration of the rights and benefits set forth therein for the surrender by the said Crees, the Inuit of Quebec and the Inuit of Port Burwell of all their native claims, rights, titles and interests, whatever they may be, in and to the land in the Territory and in Quebec;

AND WHEREAS Parliament and the Government of Canada recognize and affirm a special responsibility for the said Crees and Inuit;

AND WHEREAS it is expedient that Parliament approve, give effect to and declare valid the Agreement;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title
1. This Act may be cited as the James Bay and Northern Quebec Native Claims Settlement Act.

INTERPRETATION

Definitions

2. In this Act,

"Agreement" «Convention»

"Agreement" means the agreement between the Grand Council of the Crees (of Quebec), the Northern Quebec Inuit Association, the Government of Quebec, la Société d'énergie de la Baie James, la Société de développement de la Baie James, la Commission hydro-électrique de Québec and the Government of Canada dated November 11, 1975, as amended by the agreement between the same parties dated December 12, 1975, tabled in the House of Commons by the Minister of Indian Affairs and Northern Development on July 13, 1976 and recorded as document number 301-5/180C;

"Territory" «Territoire»

"Territory" has the meaning assigned to that word by subsection 1.16 of the Agreement, namely, the entire area of land contemplated by the 1912 Quebec boundaries extension acts (an Act respecting the extension of the Province of Quebec by the annexation of Ungava, Que. 2 Geo. V, c. 7 and the Quebec Boundaries Extension Act, 1912, Can. 2 Geo. V, c. 45) and by the 1898 acts (an Act respecting the delimitation of the Northwestern, Northern and Northeastern boundaries of the Province of Quebec, Que. 61 Vict. c. 6 and an Act respecting the Northwestern, Northern and Northeastern boundaries of the Province of Quebec, Can. 61 Vict. c. 3).

AGREEMENT

Agreement approved

3. (1) The Agreement is hereby approved, given effect and declared valid.Conferral of rights and benefits

(2) Upon the extinguishment of the native claims, rights, title and interests referred to in subsection (3), the beneficiaries under the Agreement shall have the rights, privileges and benefits set out in the Agreement.

Extinguishment of claims

(3) All native claims, rights, title and interests, whatever they may be, in and to the Territory, of all Indians and all Inuit, wherever they may be, are hereby extinguished, but nothing in this Act

prejudices the rights of such persons as Canadian citizens and they shall continue to be entitled to all of the rights and benefits of all other citizens as well as to those resulting from the Indian Act, where applicable, and from other legislation applicable to them from time to time.

Exemption from taxation
(4) The total amount mentioned in subsection 25.3 of the Agreement as monetary compensation and all the other sums mentioned in that subsection are exempt from taxation in the manner and to the extent set out in that subsection.Regulations
(5) The Governor in Council may make such regulations as are necessary for the purpose of carrying out the Agreement or for giving effect to any of the provisions thereof.Interest
(6) Any sum of money payable by the Government of Canada under section 25 of the Agreement shall, in the event of default in making payment, bear interest from the date of such default at the legal rate of interest.

SUPPLEMENTARY AND OTHER AGREEMENTS

Supplementary and other agreements approved
4. (1) Subject to sections 5 and 6, the Governor in Council may, by order, approve, give effect to and declare valid
(a) any agreement pursuant to subsection 2.15 of the Agreement to which the Government of Canada is a party that amends or modifies the Agreement; or
(b) any agreement to which the Government of Canada is a party with the Naskapi Indians of Schefferville, Quebec, or with any other Indians or Inuit or groups thereof, concerning the native claims, rights, title and interests that such Indians, Inuit or groups thereof may have had in and to the Territory prior to the coming into force of this Act.
Idem

(2) No order shall be made under paragraph (1)(b) in respect of any agreement under that paragraph that expressly or by necessary implication amends or modifies the Agreement unless the procedure set forth in subsection 2.15 of the Agreement has been followed.

Conferral of rights and benefits

(3) Upon the coming into force of an order of the Governor in Council approving, giving effect to and declaring valid an agreement referred to in paragraph (1)(b), the beneficiaries under the agreement shall have the rights, privileges and benefits set out in the agreement.

Exemption from taxation

(4) Any capital amounts payable as compensation under an agreement approved, given effect to and declared valid under paragraph (1)(b) shall be exempt from taxation in the manner and to the extent set out in the agreement.

Regulations

(5) The Governor in Council may make such regulations as are necessary for the purpose of carrying out any agreement approved, given effect and declared valid under subsection (1) or for giving effect to any of the provisions thereof.

Tabling order

5. (1) An order under subsection 4(1), together with the agreement to which the order relates, shall be laid before Parliament not later than fifteen days after its issue or, if Parliament is not then sitting, within the first fifteen days next thereafter that Parliament is sitting.

Coming into force

(2) An order referred to in subsection (1) shall come into force on the thirtieth sitting day after it has been laid before Parliament pursuant to that subsection unless before the twentieth sitting day after the order has been laid before Parliament a motion for the consideration of the House of Commons or Senate, to the effect that the order be revoked, signed by not less than fifty members of the House of Commons in the case of a motion for consideration of that House and by not less than twenty members of the Senate in the case of a motion for the consideration of the Senate, is filed with the Speaker of the appropriate House.

Consideration of motion

(3) Where a motion for the consideration of the House of Commons or Senate is filed as provided in subsection (2) with respect to a particular order referred to in subsection (1), that House shall, not later that the sixth sitting day of that House following the filing of the motion, in accordance with the rules of that House, unless a motion to the like effect has earlier been taken up and considered in the other House, take up and consider the motion.

Procedure on adoption of motion
(4) If a motion taken up and considered in accordance with subsection (3) is adopted, with or without amendments, a message shall be sent from the House adopting the motion informing the other House that the motion has been so adopted and requesting that the motion be concurred in by that other House.

Procedure in other House
(5) Within the first fifteen days next after receipt of a request pursuant to subsection (4) that the House receiving the request is sitting, that House shall, in accordance with the rules thereof, take up and consider the motion that is the subject of the request.

Where motion adopted and concurred in
(6) Where a motion taken up and considered in accordance with this section is adopted by the House in which it was introduced and is concurred in by the other House, the particular order to which the motion relates shall stand revoked but without prejudice to the making of a further order of a like nature to implement a subsequent agreement to which the Government of Canada is a party.

Where motion not adopted or concurred in
(7) Where a motion taken up and considered in accordance with this section is not adopted by the House in which it was introduced or is adopted, with or without amendments, by that House but is not concurred in by the other House, the particular order to which the motion relates comes into force immediately upon the failure to adopt the motion or concur therein, as the case may be.

Definition of expression "sitting day"
(8) For the purpose of subsection (2), a day on which either House of Parliament sits shall be deemed to be a sitting day.

Negative resolution of Parliament
6. When each House of Parliament enacts rules whereby any regulation made subject to negative resolution of Parliament within the meaning of section 28.1 of the Interpretation Act may be made the subject of a resolution of both Houses of Parliament introduced and passed in accordance with the rules of those Houses, section 5 of this Act is thereupon repealed and an order made thereafter under subsection 4(1) is an order made subject to negative resolution of Parliament within the meaning of section 28.1 of the Interpretation Act.

CONSEQUENTIAL AMENDMENT

7. [Amendment]

INCONSISTENT LAWS

Inconsistency or conflict
8. Where there is any inconsistency or conflict between this Act and the provisions of any other law applying to the Territory, this Act prevails to the extent of the inconsistency or conflict.

APPROPRIATION

Payments out of C.R.F.
9. There shall be paid out of the Consolidated Revenue Fund such sums as may be required to meet the monetary obligations of Canada under section 25 of the Agreement.

REPORT TO PARLIAMENT

Annual report

10. The Minister of Indian Affairs and Northern Development shall, within sixty days after the first day of January of every year including and occurring between the years 1978 and 1998, submit to the House of Commons a report on the implementation of the provisions of this Act for the relevant period.

COMMENCEMENT

Coming into force

11. This Act shall come into force on a day to be fixed by proclamation.[Note: Act in force October 31, 1977, see SI/77-223.]