

FACT SHEET

KEEPING THE PROMISE: TREATY RIGHTS, THE FEDERAL GOVERNMENT AND THE SITE C DAM



“If Prime Minister Trudeau truly wants to build a new relationship based on respect for our rights, he needs to act immediately to withdraw all federal support to the flooding of our land by the Site C dam.” – *Helen Knott, Prophet River First Nation, Treaty 8 Stewards of the Land*

The Site C dam, currently under construction in north-eastern British Columbia, is one of the largest resource development projects underway anywhere in Canada:

- The Site C dam would turn an 83 km long stretch of the Peace Valley into a reservoir. It would also flood a total of 24 km of two tributaries, the Halfway and the Moberly, that flow into the Peace.
- The reservoir would have a surface area of 9,330 hectares. The area to be flooded includes prime farmland, old growth forests and wetlands.
- The estimated cost to build the dam has risen steadily and is currently estimated at almost \$9 billion.

THE IMPACT

Flooding this vast area of river valley will inevitably cause significant permanent harm to the environment. The harm would be compounded by the fact that this is one of the last remaining areas of its kind in the northeast not already critically affected by oil and gas development, mining, and forestry. A joint federal-provincial environmental assessment concluded:

- Site C would “severely undermine” Indigenous peoples’ ability to hunt, fish, and use the land for ceremonies and other purposes.
- Hundreds of historic and cultural sites, including grave sites, would be inundated.
- Threatened plant and animal species and sensitive ecosystems would be harmed.



PHOTO BY ANDREA MORISON, PVEA

TREATY RIGHTS

The land that will be flooded is part of Treaty 8 territory. Treaty 8 protects the right of First Nations to maintain their traditions and economies. Treaty rights to hunt and fish will be permanently disrupted by the Site C dam, especially for the First Nations closest to the flood zone.

- Treaty rights are enshrined in the Canadian Constitution, an acknowledgement that they are part of the highest law of the land.
- Treaty rights are also protected in international law, including the *United Nations Declaration on the Rights of Indigenous Peoples*.
- Canadian courts have said that Treaty rights must be respected and that decisions that would infringe these rights must pass a legal justification test.
- The federal government has openly acknowledged that it approved the dam without examining its legal obligations under the Treaty.

THE FEDERAL ROLE

The Site C dam is a project of BC Hydro, a provincial public utility and has been championed by the BC government. But the federal government also plays a key role:

- The dam required both federal and provincial approval. This approval was given by both in late 2014.
- Construction also requires specific permits from federal ministries. There are permits currently before the Federal Minister of Fisheries that are necessary for construction to continue. The federal government has the power to deny or delay these permits.
- The federal government is actively defending its decisions in cases before the courts. The government could withdraw this defense.

BEFORE THE COURTS

First Nations and local landowners have challenged Site C in several separate court cases. Cabinet Ministers have said they can't comment on Site C because it's "before the courts." It's not acceptable for government officials to avoid their responsibilities by responding this way.

- Construction of the dam has gone ahead despite the legal challenges. The federal government will be asked to make decisions on permits for further construction while the cases are before the courts.
- The federal government is actively defending its approval of the dam before the courts.
- Elected officials should be accountable for the decisions that are within their jurisdiction, regardless of the fact that cases are before the courts.

CANADA'S LEGAL ARGUMENT

The federal government is arguing before the Federal Court of Appeal that Cabinet was entitled to ignore Treaty rights in approving Site C. The federal argument, if accepted by the courts, could force First Nations to shoulder the burden of an even lengthier legal process – one which might not be resolved in time to prevent the harm done by Site C.

- The federal government claims that First Nations must first prove that Treaty rights have been infringed before the government is required to act to protect those rights.
- The federal government claims that even the findings of the extensive environmental assessment didn't provide enough evidence to require the government to act.
- The federal government is further arguing that even the current legal challenge can't resolve the issue because it's a judicial review, not a full trial with new evidence. A judicial review is meant to be a more timely and less

expensive process. A full trial on Treaty rights could drag on for years and cost millions of dollars.

CONSULTATION AND CONSENT

The federal and provincial governments claim that they have met their obligations to respect Indigenous rights by having carried out an extensive consultation process with First Nations. But Canadian courts have already established that consultation has to be more than just talk: governments must be prepared to consider what Indigenous peoples want. Critically, where there is potential for serious harm, Canadian and international law requires the free, prior and informed consent of Indigenous peoples.

- The BC government has been determined from the beginning that it would build Site C, despite the objections of First Nations.
- The environmental impact assessment found that BC Hydro had failed to seriously consider the alternatives, including alternative power generating plans supported by First Nations.

OPPOSITION TO SITE C

The Site C dam has been vigorously opposed by Indigenous peoples, local landowners, and concerned citizens in the Peace Valley. They are supported by a growing national movement.

- The Treaty 8 Tribal Association opposed the Site C dam throughout the environmental assessment process.
- West Moberly and Prophet River First Nations, and the Peace Valley Landowners Association, are currently before the courts in an attempt to stop the dam.
- First Nations and non-Indigenous residents who came together as the Treaty 8 Stewards of the Land risked arrest by holding a culture camp in the path of Site C land clearing.

- The dam has been denounced by the Union of British Columbia Indian Chiefs, the First Nations Summit, and the Assembly of First Nations.
- In an open letter to the federal and provincial governments, the global head of Amnesty International called for a halt to construction to avoid further violations of the human rights of Indigenous peoples.

JUSTIFICATION

Federal and provincial officials often quote the finding of the environmental assessment that the benefits of Site C are “clear”: a large, reliable source of electricity “at a price that would benefit future generations.” This is only part of the story.

- The province has not established that the power is needed on this scale or timeline. The BC government has said that provincial demand for electricity has not grown in 8 years. The dam was approved as a project to produce power for consumption in BC. The provincial government has recently been promoting it as a source of power for export.
- The environmental assessment recommended that BC Hydro’s projections for future demand, and its estimates of the costs of producing energy through Site C, be reviewed by the independent BC Utilities Commission. The province has refused to do so.
- The environmental assessment was highly critical of the failure of BC Hydro to fully examine options that could make Site C unnecessary, such as reducing demand, upgrading current facilities, buying electricity, or developing other sources of alternative energy such as geothermal.
- Harry Swain, the chair of the environmental assessment panel, called the singular focus on the Site C dam a “dereliction of duty.”

THE PROMISES

The government of Prime Minister Justin Trudeau has repeatedly promised to respect and uphold the rights of Indigenous peoples as set out in Treaties, the Canadian Constitution, and international law:

- “No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership.” - *Commitment in the published mandate letters for all federal Cabinet ministers*
- “...work with provinces and territories, and with First Nations, the Métis Nation, and Inuit, to implement recommendations of the Truth and Reconciliation Commission, starting with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.” - *Mandate letter for the federal Minister of Indigenous Affairs*
- “Where measures are found to be in conflict with your rights, where they are inconsistent with the principles of good governance, or where they simply make no public policy sense, we will rescind them,” *Prime Minister Trudeau announcing commitment to review laws passed by the previous government such as the Canadian Environmental Assessment Act 2012*
- “Words will never be enough so long as the government lacks the political will to be a true and honest partner.” *Liberal leader’s speech to the Assembly of First Nations Annual General Assembly during the federal election campaign*

LEARN MORE AND GET INVOLVED

Amnesty International

www.amnesty.ca/sitec

Peace Valley Environment Association

realsitehearings.org

Treaty 8 First Nations

<http://treaty8.bc.ca/site-c/>

Petition to Parliament for suspension of Site C

<http://ow.ly/lecY3005ibl>

REFERENCES

Review Panel Established by the Federal Minister of the Environment and the British Columbia Minister of the Environment, *Report of the Joint Review Panel - Site C Clean Energy Project*, 1 May 2014.

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Amnesty International. “Open Letter: Site C Dam and the Human Rights of Indigenous Peoples in the Peace Valley.” November 18, 2015.

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“BC Energy Minister Says Clean Power Projects Aren’t the Priority.” *Globe and Mail*, February 29, 2016

<http://ow.ly/4nvGiw>

“‘Dereliction of Duty’: Chair of Site C Panel on B.C.’s Failure to Investigate Alternatives to Mega Dam”. *DeSmog Canada*, March 11, 2015.

<http://ow.ly/4nvGxQ>

“Justice Minister, courts won’t derail Site C, Christy Clark says.” *Alaska Highway News*, April 7, 2016.

<http://ow.ly/4nvH7K>

UN Special Rapporteur on the Rights of Indigenous Peoples, *Extractive industries and indigenous peoples, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, Report to the Human Rights Council A/HRC/24/41*, 2013

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