

# DRAFT RESOLUTION # 12 / 2018

AFN Special Chiefs Assembly, December 4-6, 2018, Ottawa, ON

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**TITLE:** First Nations Full, Direct, and Unfettered Participation in Bill C-69 including Regulatory and Policy Co-Development

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**SUBJECT:** Bill C-69; Environment; Fisheries

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**MOVED BY:** Chief Archie Waquan, Mikisew Cree First Nation, AB

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**SECONDED BY:** Chief Calvin Sanderson, Chakastaypasin Band, SK

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## WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples states:
- i. Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters, and coastal seas and other resources and to uphold their responsibilities.
  - ii. Article 32 (2): States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
  - iii. Article 32 (3): States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measure shall be taken to mitigate adverse environmental, economic, social, cultural, or spiritual impact.
- B. The Assembly of First Nations (AFN) has passed eight resolutions concerning this process: Resolution 07/2018, *Addressing First Nations Rights, Title, and Jurisdiction in Bill C-69: Impact Assessment Act, Canadian Energy Regulator Act, and the Navigation Protection Act*; Resolution 73/2017, *Environmental and Regulatory Reviews – Phase 3*; Resolution 20/2017, *Respecting Inherent Jurisdiction over Waters Parallel to the Review of Canada’s Navigation Protection Act*; Resolution 19/2017, *Resetting the Role of First Nations in Environmental and Regulatory Review*; Resolution 86/2016, *Meaningful Consultation and Engagement with First Nations in the Environment and Regulatory Review*; Resolution 64/2016, *Support for Stk’emlupsemc te Secwepemc Nation Project Assessment Process*; Resolution 12/2016, *Moving Beyond Federal Legislation to Establish a Nation-to-Nation Relationship*; and Resolution 35/2016, *First Nations’ inclusion in the review of Environmental and Regulatory processes*.
- C. Prime Minister Justin Trudeau publicly committed “to a renewed nation-to-nation relationship with First Nations (...) one that is based on recognition of rights, respect, cooperation and partnership” and to “conduct a full review of the legislation unilaterally imposed on Indigenous peoples by the previous government.”

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- D.** On June 20, 2016, the Government of Canada announced a broad public review of various environmental and regulatory processes that includes:
- i.** Reviewing federal environmental assessment processes
  - ii.** Modernizing the National Energy Board
  - iii.** Restoring lost protections and introducing modern safeguards to the Fisheries Act and the Navigation Protection Act.
- E.** First Nations overwhelmingly participated in a two-year process involving two expert panels, a federal discussion paper, and in-person technical sessions that informed the preparation of Bill C-69, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*, which the Minister of Environment and Climate Change introduced on February 8, 2018.
- F.** Bill C-69 has passed through the House of Commons and is currently with the Senate. On September 18, 2018, the Bill began its second reading.. Following this stage, the Bill is expected to be referred to the Senate Committee on Energy, the Environment, and Natural Resources (ENEV), where the Committee will invite witnesses to appear.
- G.** The Canadian Association of Petroleum Producers and the Province of Alberta have launched significant public campaigns against Bill C-69. Premier Rachel Notley has expressed reservations about the Bill and its impact on Alberta's oil and gas industry.
- H.** The Province of Alberta has wrongly claimed it has a rigorous environmental assessment process, with good consultation and effective management of cumulative effects, so that industrial projects impacting Treaty rights do not need federal review. Therefore, Alberta is improperly requesting that in situ development not be included on the project list under Bill C-69.
- I.** The current approach to the project list is to include projects that have the potential to impact areas of federal jurisdiction; especially in areas where there is intense development and cumulative effects are significant and must be considered in decisions to designate projects. Triggers should include potential impacts to areas of federal jurisdiction including: Section 35 rights, reserves, water quality and quantity, migratory birds, species at risk, and impacts to Outstanding Universal Values of World Heritage Sites.
- J.** Since entering the Senate, Bill C-69 has received significant opposition, with opponents calling on Senators to either kill or delay the Bill in perpetuity. Due to this pressure, there is increasing risk that input from First Nations will be lost. If the Bill does not receive Royal Assent by March 2019, there will not be enough time to participate in the formal Regulatory process (Canada Gazette I and II) before the writ is dropped and an election is called.
- K.** At the same time, Canada is engaging in a process of reviewing policies, regulations and guidelines relating to Bill C-69. This process has started and is expected to take between twelve and eighteen months.
- L.** Canada has released consultative papers on two regulations pertaining to the Impact Assessment Act: Regulations Designating Physical Activities (Project List); and Information Requirements and Time Management Regulations. They have also released consultative papers on two regulations pertaining

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to the Canadian Energy Regulator Act: Designated Officer Regulation; and Damage Prevention Framework for Federally Regulated Power Lines.

- M.** First Nations expect to co-draft policies, regulations, and guidelines for the environmental and regulatory processes, at, or above, the precedent set in the development and eventual passage of the Species-at-Risk Act, which involved full, direct, and unfettered participation of First Nations (Resolution 07/2018).
- N.** The Athabasca Region First Nations (Athabasca Chipewyan First Nation, Chipewyan Prairie Dene First Nation, Fort McKay First Nation, and Mikisew Cree First Nation) have advocated for the passing of Bill C-69 and that federal assessment and oversight is required in the oil sands region, including in situ development.

#### **THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:**

- 1.** Direct the Assembly of First Nations (AFN) to urge the Senate to refer Bill C-69, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*, to the Senate Committee on Energy, the Environment, and Natural Resources and ensure that rights holders participate in the hearing process in a timely manner that is respectful of their unique protocols, and processes, in order to complete the process before the next federal election.
- 2.** Support the Athabasca Region First Nations (Athabasca Chipewyan First Nation, Chipewyan Prairie Dene First Nation, Fort McKay First Nation, and Mikisew Cree First Nation) position on the need for the ratification of Bill C-69 and for improvements to the Project List under Bill C-69 to include in situ projects and projects that may impact Section 35 rights, reserves, water quality and quantity, migratory birds, species at risk, and impacts to Outstanding Universal Values of World Heritage Sites.
- 3.** Call on Canada to engage in a focused dialogue with First Nations to substantively identify, recognize, and engage the protocols, elements, and processes to conduct joint regulatory and policy drafting.
- 4.** Direct the AFN to continue supporting and coordinating, where possible, the interventions and participation of First Nations, regional organizations, and provincial/territorial organizations in the joint drafting process. This could include creating regional-specific processes to address regions with specific concerns including support provisions as part of a Nation-to-Nation relationship.
- 5.** Call again on Canada to provide adequate funding directly to individual First Nations for their full, direct, and unfettered participation in the joint regulatory and policy drafting of Bill C-69.
- 6.** Call on Canada to ensure that regulatory and policy development fully respects the constitutional and other legal obligations of the Crown to First Nations and standards set by the United Nations Declaration on the Rights of Indigenous Peoples.
- 7.** Call on the AFN to continue conducting regional information-sessions to support First Nations, regional organizations, and provincial/territorial organizations in the process.