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Regional Chief Terry Teegee
BC Assembly of First Nations
and
Cheryl Casimer
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and
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Chief Don Tom
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Dear First Nations Leadership Council:

Thank you for your July 29, 2020 letter to Premier Horgan regarding Bill 6 and Bill 17. As the Minister responsible for this legislation, I am pleased to respond on behalf of the Province to address the FNLC's concerns and the engagement processes that occurred prior to their introduction.

Bill 6 – Mines Amendment Act, 2020

The amendments to the *Mines Act* brought forward in Bill 6 date back to the findings of the Chief Inspector of Mines investigation into Mount Polley, the Office of the Auditor General's report on compliance and enforcement in the mining sector, and more recently the recommendations of the Mining Jobs Task Force (MJTF), of which the First Nations Energy and Mining Council (FNEMC) was an important member.

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Overall, the changes would strengthen oversight of the mining sector and implement the MTJF recommendations to “ensure clear(er) division of responsibility and resources between permitting functions and compliance and enforcement within EMPR” and “establish a compliance auditing and effectiveness monitoring function” (pp. 31-32).

The Ministry held forums on February 28, 2019 (Vancouver), April 16, 2019 (Kamloops), April 17, 2019 (Prince George) and June 26-27, 2019 (Richmond) to discuss and receive input in relation to proposed mining legislation and mining compliance activities. These forums included participation by FNEMC and representatives from a total of 41 First Nations.

On September 12, 2019, Minister Michelle Mungall sent a letter to FNEMC setting out the proposed next steps for legislative amendments. It specified the focus on short-term changes to the *Mines Act* and provided the Intentions Paper along with an invitation to meet to discuss the proposed changes in further detail.

On October 7 and 29, 2019 and November 28, 2019, Ministry staff met with FNEMC to discuss the details of the proposed *Mines Act* amendments. The *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act) was introduced and came into force concurrently with the work on the *Mines Act* amendments and discussions with FNEMC. At the November 28, 2019 meeting, FNEMC provided a written summary for discussion of the issues and concerns raised in response to the Intentions Paper and meetings with Ministry staff.

Based on this engagement with FNEMC and First Nations across the Province, Government recognizes that the scope of the amendments to the *Mines Act* do not fully address Indigenous expectations for overall mining reform. Specifically, FNEMC articulated that priorities relating to *Mineral Tenure Act* reform and reclamation securities are outstanding issues warranting attention. Nonetheless, in relation to the proposed amendments to the *Mines Act*, the changes to strengthen compliance and enforcement were welcomed.

FNEMC also raised concerns with ensuring the independence of the new Audit Unit within the Ministry. Discussions continue about how best to ensure Indigenous engagement in the audit process, and the Ministry has a contribution agreement with FNEMC for the specific purpose of engagement in the audit planning process. FNEMC is also advancing the proposal for a funded guardian program lead by an Indigenous organization to provide First Nations with additional opportunities for oversight on the land base overall. This is the subject of a broader discussion led by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development, which my Ministry supports.

Finally, in addition to the above, the Ministry of Indigenous Relations and Reconciliation provided a summary of the proposed *Mines Act* amendments to the FNLC on February 24, 2020 as part of engagement for the spring legislative session. At that time, there were no concerns raised regarding the proposed amendments.

Bill 17 – Clean Energy Amendment Act, 2020

In September 2019, the Province began engagements with First Nations and Indigenous organizations on Phase 2 of the Comprehensive Review of BC Hydro. Government released the Phase 2 Interim Report in early March 2020 that included the proposal to remove the self-sufficiency requirement from the *Clean Energy Act*.

The Ministry continued its engagement with First Nations on the Interim Report from March to the end of May 2020, extending the engagement period due to COVID-19. This engagement process included: one in-person regional session (Terrace) pre-COVID travel restrictions; five teleconference regional sessions (Kamloops, Kelowna, Prince George, Nanaimo and Vancouver); two webinars; 26 individual online meetings and teleconferences; and 22 written submissions. The materials presented throughout the engagement on the Interim Report included the proposal to remove the self-sufficiency requirement.

Overall, the Ministry heard from over 80 First Nations and Indigenous organizations and the engagement revealed a diversity of views. There was some support for the removal of self-sufficiency and the potential to access affordable power with the goal of keeping rates low for communities, and some opposition citing concerns over the competitiveness of local procurement with out-of-province resources. All of this input was considered in the final decision to proceed with the proposal to remove the self-sufficiency requirement through Bill 17.

Bill 17 would allow BC Hydro to consider sourcing clean, affordable electricity from out-of-province – as one option to meeting future demand – with savings passed on to all BC Hydro customers. Keeping rates low also supports our CleanBC goals to increase the use of clean electricity throughout the economy.

This proposed change would have no impact on current contracts that Independent Power Producers (IPPs) have in place with BC Hydro. More than 120 IPP projects will continue to supply around 25 percent of BC Hydro’s energy supply at an average price of \$100 per mWh, representing around \$50 billion in future financial commitments.

Bill 17 would not impair the ability of First Nations to develop independent power projects or participate in any future BC Hydro calls for power.

It is important to note that BC Hydro is currently in a long-term surplus and not anticipating it will need to acquire energy from any sources – inside or outside BC – until the 2030s. When BC Hydro does need to source more energy, eliminating the self-sufficiency requirement does not mean that BC Hydro will necessarily import more power, but simply that it has the flexibility to consider both domestic and out-of-province options. It is anticipated that BC-based resources will have a cost-advantage because they do not face the external transmission costs needed to imported electricity.

Phase 1 of the Comprehensive Review of BC Hydro restored independent oversight of BC Hydro by the BC Utilities Commission (BCUC). As a result of the changes made by Bill 19-2019, BC Hydro's next Integrated Resource Plan (IRP) must be submitted to the BCUC. Any new investment in, or acquisition of, generation resources will be subject to review and approval by the BCUC. In determining whether BC Hydro's IRP is in the public interest, the BCUC must consider a wide range of factors, including BC's energy objectives listed in the *Clean Energy Act*.

Bill 17 was introduced during the compressed summer session so that BC Hydro can consider these changes in developing its IRP, which will be submitted to the BCUC in 2021. I understand that First Nations and Indigenous organizations have been invited by BC Hydro to participate in this process, which will begin in the fall.

Government fully recognizes that many First Nations view clean energy as a community and economic development opportunity, and we continue to provide direct funding through programs like the BC Indigenous Clean Energy Initiative, the First Nations Clean Energy Business Fund and the Renewable Energy for Remote Communities Program. One area we are focusing on as part of CleanBC is to support remote, off-grid communities in reducing their reliance on diesel, generating their own renewable power, and becoming energy independent.

The Province remains committed to meaningful and lasting reconciliation with Indigenous peoples and working in collaboration as we advance our work to implement the Declaration Act. On June 30, 2020, the Province released the first annual report on progress for implementing the Act, which was developed in consultation and co-operation with Indigenous peoples.

Initial steps on the alignment of laws with the UN Declaration has involved early discussion to set out the Government's legislative priorities and discussions on how to gather input from First Nations on their priority areas for legislative development or amendment. Processes and policy mechanisms are being explored to ensure Indigenous engagement in the various facets of this work – from identifying legislative priorities, to developing tools to assess alignment with the UN Declaration, to new processes for developing and amending legislation in consultation and co-operation with Indigenous peoples.

The work ahead to align provincial laws with the UN Declaration requires BC and Indigenous peoples to determine an approach for the review and development of legislation that is collaborative, constructive and efficient. As you are aware, the Province expects the Action Plan to implement the UN Declaration will be released before the end of the year, which will set out short, medium, and long-term actions that reflect the priorities identified in collaboration with Indigenous peoples and the FNLC through recent and future engagement.

Thank you, again, for writing.

Sincerely,



Bruce Ralston
Minister