



Hydropower Sustainability Assessment Protocol

Assessment Team Response to Public Consultation Comments on the Keeyask Protocol Assessment Report

Final

**Comments received by: the Royal Canadian Mounted Police, Northern
Regional Health Authority, Manitoba Wildlands and the Consumer
Association of Canada, Manitoba branch (see Annex I)**

Changes made to the final assessment report? No

03/12/2013

Client: Keeyask Hydropower Limited Partnership

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Please refer to Table 1 for assessors' responses to the comments and section 2 for the need to change/not change the report.

Please refer to Annex I for a complete set of original comments received.

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Introduction

The Keeyask Hydropower Project was assessed between 4th and the 10th of December, 2012, using the Preparation tool of the Hydropower Sustainability Assessment Protocol (“the Protocol”). The 695 MW project is planned on the Nelson River (Manitoba Canada), with an anticipated start of construction in mid-2014 and commissioning of the first unit by 2019.

The assessment report is available at:

<http://www.hydrosustainability.org/IHAHydro4Life/media/ProtocolAssessments/PDF%20Reports/Keeyask-Official-Assessment-18-July-2013.pdf?ext=.pdf>

Purpose of this Response Document

In accordance with paragraph 8 of the Terms and Conditions (T&C) for the use of the Protocol, “a 60 calendar-day period of Report revision by the accredited assessor in conjunction with the project sponsor is available”, following receipt of comments during the 60-day period available for public comments to the published assessment report. The accredited assessors are not obliged to respond to comments. In the event that the accredited lead assessor chooses to amend the Report in response to comments, the amended Report is published within the above-mentioned 60-day period, on both the Project Sponsor’s website and on a website designated by the Management Entity. The final Report must include an annex outlining the changes made/not made in response to comments received.

This response document represents compliance with paragraph 8 of the T&C.

Approach to Consultation

The final Keeyask Assessment report was published on the 20th of September, 2013 on the Protocol website <http://www.hydrosustainability.org/Protocol-Assessments.aspx> and on the Keeyask Hydropower Limited Partnership’s (KHLPP) website <http://keeyask.com/wp/news-information>. Hence, in accordance with the T&C for the use of the Protocol, the 60 calendar-day period for public comments on the Keeyask assessment report runs from the 20th of September, 2013 to the 19th of November, 2013. During the consultation period, comments could be submitted through the Protocol website or through the KHLPP.

Within the consultation period, four organisations, two governmental and two non-governmental, submitted comments on the Keeyask sustainability assessment report. One of the non-governmental organisations filed two sets of comments:

Royal Canadian Mounted Police (RCMP);

Northern Regional Health Authority (NRHA);

Manitoba Wildlands (MW); and

Consumer Association of Canada, Manitoba branch, (CAC), with two submissions

Layout of this Response Document

This document consists of two sections. Section 1 contains responses to comments related to specific topics of the Protocol in order of appearance in the Protocol’s Preparation tool; and Section 2 indicates whether the report needs amending. There were no comments directly related to the following topics: P-6 through P-17 and P-19 through P-23. The assessment report did not assess topic P-14 (Resettlement), as it was determined to be Not Relevant for the Keeyask Project. Annex I contains a full set of original comments received.

Responses to Topic-Related Comments

Table 1 below present's issues raised which are related to specific Protocol topics' findings. These are the comments that the Assessment Team can respond to. Comments made on general aspects of the Protocol itself, including the appropriateness of criteria, are handled by the Protocol Governance Committee.

Issues have been paraphrased; Annex I contains a full set of original comments received.

All five set of comments have implications for this more topic-specific section.

Table 1 – Responses to Issues Raised that are Protocol Topic-Related

Issue Raised	Assessor Response
Introduction	
CAC1: The inclusion of the superlative eminently requires further explanation. It is unclear what is meant by it, as well as why it was used.	Eminently, according to thesaurus definition, can mean e.g. notable, noted, outstanding. Given the conditions under which the site visit had to be planned and executed, the word is merited.
Introduction	
CAC1: A description should be included of who determined which interviewees had the most direct insights.	According to the Protocol methodology, this is a joint effort between the KHLP and the Assessment Team. The KHLP prepared a list of people they believed to be key informants. This was reviewed by the Assessment Team and more interviewees, covering a wider scope of organisations, were requested. In almost all cases, the KHLP were able to respond to these requests, except for a few cases of Government representatives who chose not to be interviewed/ involved due to a perceived conflict of interest.
Introduction	
CAC1: A description should be included of how many days were dedicated to the assessment, with the time being broken up into pre-site visits, site visits, preparation of draft report, and final editing of report.	This is not normally information disclosed in a report of this nature. Generally speaking the resource requirement for a Protocol Assessment is somewhat lower than for e.g. a due diligence of the same project, mainly due to the significantly more stringent methodology applied.
Introduction	
CAC1: A description should be included of the impact of not having access to the data room, particularly prior to on-site assessments. Clarification of how the assessors were able to prepare for the site visit should be included as well.	Again, this comment is made also in the other CAC document. The answer is that the assessors experienced problems, yes, but obviously the report was not filed before such problems had been resolved to the satisfaction of the assessment team and the Lead Assessor.
Introduction	

Issue Raised	Assessor Response
<p>CAC1: A description should be included of the impact of certain Government representatives on the availability and quality of data needed for the assessment.</p>	<p>Firstly, it is difficult for the assessors to determine the impact without knowing what evidence, verbal or documentary, such Government representatives would have provided, had they participated. Secondly, given that we did have the opportunity to interview one key Government representative, we are hopeful that the assessment was able to capture relevant information. To the extent that this was not the case, this round of public comments is one way to address such a gap. All documentary evidence used is listed in the report, so the absence of a document considered by anybody as key, is easily identified.</p>

Topic Title: P-1, Communications and Consultations	
CAC1: Management criterion: Grievance mechanism....	The Protocol defines Grievance Mechanisms as “processes by which stakeholders are able to raise concerns, grievances and legitimate complaints, as well as the project procedures to track and respond to any grievances”. This definition prompted the assessors to include the statement that “there do not appear to be any formal procedures to track and ensure a response to grievances raised”. The assessors must consider the significance of gaps that they identify, and they do so on the basis of the magnitude or severity of the risk or impact that has arisen, or will arise, from the gap, and they consider this magnitude or severity in relation to values, such as stakeholder values and corporate commitments. In this case, the assessors found that any grievances raised were responded to, and the absence of <i>formal procedures</i> to track and respond to grievances had not led to any risk or impact, and would not be likely to in future either.
Topic Title: P-1, Communications and Consultations	
CAC1: Management criterion: Quality of communications plan...	Under the Management criterion, the assessors seek to determine whether or not a communications plan has been developed which outlines communication needs for various stakeholder groups and topics (as in the scoring statement). They are therefore required to assess the quality of the plan, and this is conveyed in the paragraph quoted by CAC. Regarding “desirable outcomes”, the effectiveness of this (and all other plans and processes) for stakeholder engagement (and its quality) is set out in Section 1.2.3 Stakeholder Engagement.
Topic Title: P-1, Communications and Consultations	
CAC1: Management criterion: Justification for conclusion and “high level of sensitivity”.	Guidance included in the Protocol on this topic includes the statement “needs and approaches for stakeholder groups could include consideration of cultural norms, gender, literacy level, vulnerable social groups, disabilities, logistical constraints etc.”. So, the question is whether the approaches Keeyask used for communication and consultation are suitable for all stakeholder groups. The assessors found that a wide range of approaches were used, ranging from the direct participation of KCN leadership in the development of the project, to regular consultation with KCN members, to the PIP, for example. The first round of the PIP included determining how stakeholders would like to be involved in the PIP. The assessors did not find any evidence that any stakeholder groups were not able to participate in these processes. The interview and documentary evidence for this topic is referred to at the end of the topic. Protocol assessment reports do not include reference to evidence for each scoring statement separately or to the statements of any particular interviewee.
Topic Title: P-1, Communications and Consultations	
CAC1: Management criterion: Bipole III project....	The assessors make no judgement on the appropriateness or otherwise of conflating Keeyask and the Bipole III project. The assessors simply refer to this as an example of a risk for communications concerning the Keeyask project. Regarding “a response to the first two of these risks”, this is referring to the KHL partnership and its governance (see P-2) as a response to the risk that KCN community members and the public consider Keeyask as solely MH-driven and consultation

	fatigue amongst KCN communities. The assessors identified these as risks for communication and consultation, and were satisfied that the KHLP partnership responds to these risks.
Topic Title: P-1, Communications and Consultations	
CAC1: Stakeholder Engagement criterion: Justification why basic good practice only relates to directly affected stakeholders.... The meaning of “engagement is undertaken in good faith” requires elaboration.....	The assessors cannot comment on the definition of the scoring statements, which was carried out through negotiation amongst the Hydropower Sustainability Assessment Forum that developed the Protocol over the 2008-2010 period. The meaning of “good faith” is set out in the assessment guidance for this topic in the Protocol. It is clear from the description of these engagement opportunities that they concur with this definition of “good faith”. Consultation fatigue is mentioned as a risk, rather than an outcome. The assessors did not find any evidence of consultation fatigue. The ongoing processes are considered positive and appropriate.
Topic Title: P-1, Communications and Consultations	
CAC1: Stakeholder Engagement: PIP not being successful in other cases.....	The assessors found evidence that some communities, in fact those most distant from the project and least affected, had been approached, but had not responded. Given the success of the PIP in engaging with communities that are more affected, the assessors believe that this statement is fair. Some of the documentary evidence reviewed is publically available, for example PIP reports on http://www.hydro.mb.ca/projects/keeyask/env_public.shtml .
Topic Title: P-1, Communications and Consultations	
CAC1: Scoring Summary: Elaborate on the conclusion that stakeholder engagement is widely considered to have been successful...	The scoring summary is intended to provide a narrative overview of the findings on the topic. The statements that stakeholder engagement is widely considered to have been successful, and that KCN partners voice their opinion that MH has made great improvements, are included as part of that narrative, and are based on evidence provided in interviews. The statements on participation, inclusiveness and good faith follow from the findings provided under the Stakeholder Engagement section.
Topic Title: P-1, Communications and Consultations	
CAC2: Why is the absence of a stakeholder map not a significant gap?	This is a good question. The report states that KHLP (or MH) have not mapped stakeholders (other than community-level groups) such as NGOs and regulators. The assessment team do not consider this to be a significant gap, as the absence of a complete stakeholder-mapping exercise has not exposed Keeyask’s preparation to risks related to stakeholder relations, and in practice, stakeholders have been identified and grouped through a range of processes. The Protocol’s scoring methodology rests on the determination of significance of a gap in order to highlight gaps that have consequences, risks or impacts that are most extensive, severe, or irreversible. It would be counterproductive to identify gaps that have little consequence as on the same level of those with significant consequences. As previously stated, guidance on determining significance is provided to accredited assessors as part of their accreditation process.

Topic Title: P-1, Communications and Consultations	
RCMP: The RCMP filed a letter describing its relationship to the hydropower developments in northern Manitoba in general, and the Keeyask project in particular.	<p>This is interpreted as partly a response to topic P-1.</p> <p>We welcome the additional information provided by RCMP, and agree that Manitoba Hydro’s consultation with RCMP during the preparation of the Keeyask project, as well as RCMP’s ongoing consultation with community leaders on policing issues are processes for communication and consultation.</p>
Topic Title: P-1, Communications and Consultations	
<p>MW: Section 1.2.2 Management: Concern over whether consultations re the KCNs fulfilled the government’s (provincial and federal) requirements...</p> <p>The understanding of the PIP is weak....</p>	<p>This section of the report addresses the requirements of the Management criterion only, which refers to communication and consultation plans and processes. The question of the quality of consultations is addressed under the Stakeholder Engagement section, which sets out a range of previous and ongoing consultation processes. The question of compliance with Government of Manitoba and Federal requirements is addressed under Conformance / Compliance section, which describes how the assessment team did not find any non-compliances on the basis of interviews with the regulatory agencies.</p> <p>This section of the report describes the PIP briefly, as one of KHL P’s plans for communication and consultation. It is described more fully in the section on Stakeholder Engagement.</p>
Topic Title: P-1, Communications and Consultations	
<p>MW: “Section 1.2.3, References to directly affected stakeholders are confusing:”</p> <ol style="list-style-type: none"> 1) First Nations are NOT stakeholders..; 2) The KCNs are business partners in this hydro project....; 3) Other First Nations....; 4) The proponent.....; 5) Consultation language...; 6) Only the Crown.....; 7) Confusion in the language...; 8) Manitoba Hydro is a public....; 9) IHA may be ignoring...; 10) IHA appears to be....; 11) There is a reference here... 12) External interviewees.....; 13) The assessors....; 14) It is evident from content...." 	<p>The Protocol is a methodology that has been agreed by a multistakeholder group involving the hydropower industry, NGOs, government representatives and financial institutions, following an intensive period of negotiation over 2008-2010, and it may be the case that its requirements are different from legal requirements in any particular jurisdiction, or the terminology used differs in its meaning from legally-defined terms in any particular jurisdiction. The Protocol includes definitions of the terms used in the “assessment guidance” on each topic, and a glossary.</p> <p>In response to certain specific comments:</p> <p>1 to 3) <i>Stakeholder</i> in the Protocol means: “One who is interested in, involved in or affected by the hydropower project and associated activities”. <i>Directly-affected stakeholders</i> are defined as “stakeholders with substantial rights, risks and responsibilities”. This clearly includes the KCNs and their members (it is correct that the KCN are business partners in the Keeyask project – this makes them a very important stakeholder by Protocol definition). The Background section on this topic sets out the assessors’ interpretation of which groups meet this definition, and which groups are stakeholders that are not directly-affected. The Stakeholder Engagement section then describes the engagement that has been carried out, initially for directly-affected groups, and then for other groups;</p> <p>3) the aspect was reviewed during the assessment and is covered by the ongoing environmental review process. The KHL P continues to work with non-KCN indigenous groups such as MMF, the Pimicikamak Cree Nation and the Shamattawa First Nation;</p> <p>5) the meaning of the comment is not clear to the assessors. It appears that MW does not accept the definition of the word</p>

	<p>“consultation” as used by the Protocol. The assessment report clearly describes the assessment team’s understanding as part of topic P-1;</p> <p>6) This is correct as far as effects on treaty or aboriginal rights are concerned. This is, however, not all consultation needed for the development of a project the size and scope of Keeyask.</p> <p>10) there is no question of IHA endorsing or not endorsing any particular process. The assessment is carried out by independent assessors, not by the IHA as an organisation. The processes we believe MW are concerned with were between the partners in the KHLP such as workshops, technical working groups etc. The outcomes of these processes are reflected in the EIS, and the assessors also had the opportunity to review minutes from such meetings;</p> <p>11) annual Wuskwatim reports refers to the “Year in Review” and Monitoring Overview reports that are available on http://www.wuskwatim.ca/reports.html;</p> <p>12) the assessors found that all external interviewees questioned on this agreed that feedback has been thorough and timely;</p> <p>13) we see no reason not to regard the disclosure of reports on PIP as a form of feedback, whether or not it is a regulatory requirement;</p> <p>14) this is correct, as can be seen from the appendix listing all interviewees; inevitably there are constraints on the number of interviews that it is practically feasible to hold during an assessment; a paragraph in the report describes the bilateral processes being conducted by the KHLP.</p>
<p>Topic Title: P-1, Communications and Consultations</p>	
<p>MW: Section 1.2.4 Conformance / Compliance: The assurance that there were no non-compliance for Section 35 is in error, cont.....</p> <p>We would expect the assessors to be aware that there are more than one set of Crown consultations required...</p> <p>It appears that the assessors went on verbal information, and did not interview First Nation experts in Manitoba on these matters.</p>	<p>The report states that there are no non-compliances “to date”. The assessors were aware that Section 35 consultations were not complete, and made reference to Section 35 consultation as an example of stakeholder engagement that will take place during the remainder of the preparation stage (page 13, under Stakeholder Engagement). It is true that the assessors’ findings on compliance were based on verbal evidence from regulatory agencies. We did not find any evidence (verbal or documentary) that the project is not in compliance with Section 35 at the time of our assessment.</p> <p>If it is the Northern Flood Agreement that is described as “treaty regarding hydro damages”, it is the understanding of the assessment team that those consultations are not done primarily by the Crown, but by Manitoba Hydro, separate from e.g. Section 35 processes.</p> <p>The assessment have conducted extensive interviews with members of all four KCN.</p>
<p>Topic Title: P-2, Governance</p>	
<p>MW. The 1 \$B CDN transmission line to the US is left out of the description of the PUB</p>	<p>This statement is not correct. The Assessment text states “The project will also be included in review of the need for and alternatives to Manitoba Hydro’s major new projects, including</p>

review.	Keeyask, Conawapa, and a new transmission interconnection to the United States, plus major export contracts”.
Topic Title: P-2, Governance	
MW. The assumption of partnership is in all of the language in this section The partnership is not explicitly described.....	The partnership arrangements are described in more detail on page 4 of the Assessment as follows: “Manitoba Hydro will provide administrative and management services for the KHL P and will own at least 75% of the equity of the partnership. The four Manitoba First Nations, known collectively as the Keeyask Cree Nations (KCN), through each of their respective investment entities, together have the right to own up to 25% of the partnership”.
Topic Title: P-2, Governance	
MW. The EIS was already available at the time of the assessment.....	The text in this section of the Assessment is largely an analysis of the governance of the Joint Keeyask Development Agreement (JKDA) of 2009, including arrangements for the future preparation of the EIS, which was issued in 2012 and which is extensively discussed in the Assessment report.
Topic Title: P-2, Governance	
MW. Endorsement of ratification votes that are not a majority of voters agreeing to the proposal? For the JKDA to acquire legitimacy in each KCN is not the point.	The assessment team does not endorse any votes. Constitutional procedures in any democratic jurisdiction are for their members to decide. The JKDA was signed on May 29, 2009 at the First Nation community of Split Lake. According to a press release, “Participating in the signing were the chiefs of Four First Nations (Tataskweyak, War Lake, York Factory and Fox Lake), the Hydro Minister (and now Premier) Greg Selinger of the Manitoba Provincial Government, the Manitoba Hydro Chairman, and the Manitoba Hydro President & CEO”. Information on the JKDA ratification process is included in Article 20 of the JKDA as well as Schedule 20-1; the process is described in detail under topic P-15 in the assessment report. The First Nation Referendum votes on the JKDA took place subsequent to an extensive information and consultation process. For example, according to the Fox Lake web site: “The vote heavily favoured our becoming a partner in the Keeyask Project and we did so by signing the JKDA. Nothing was more important than ensuring that our Members were fully informed about details and progress as the negotiations extended over many years and were fully consulted, which was the case”. Undertaking the First Nations referenda were conditions precedent to signing the JKDA. Finally, it bears noting that from a Governance viewpoint, it is critical that the JKDA has legitimacy in each of the KCNs.
Topic Title: P-2, Governance	
MW. The assessors are in error to say that it is not significant to be without a plan to manage the funds in the Partnership.....	This statement is not correct. The assessment text states that “there is a lack of a requirement that a plan be developed to manage the profits/dividends paid by the KHL P to the KCN based on consultations with the KCN Members.”, i.e. the Assessment refers to the management of funds after they leave the Partnership and are transferred to each individual KCN. The individual KCNs will have to each create their own arrangements for such revenues, a step that was not considered time-critical at the time of the assessment.

Topic Title: P-2, Governance	
MW. It appears the assessors are only interested in internal to the Keeyask partnership reporting. Manitoba Hydro is not known in Manitoba for 'a high level of public reporting and disclosure'.	<p>Reviewing the text for the Governance topic and more generally for the Assessment, it would be fair to say that the document covers not only reporting by the KHLP but also by Manitoba Hydro. While there is always room for improvement in any institution's performance, the Assessment provides ample evidence to support the statement that "there is a high level of public reporting and disclosure".</p> <p>Compare also the comment and response about transparency under P-5.</p>
Topic Title: P-2, Governance	
CAC2: A general concern regarding public availability of reports on aspects of sustainability	<p>Additional guidance, beyond that included in the Protocol, on what constitutes evidence for the various scoring statements being met, as well as for determining significance, is provided to accredited assessors as part of their accreditation process.</p> <p>On the specific issue of making reports on sustainability issues publicly available, it has been covered in detail in the Assessment report. The JKDA constitutes the key project document in relation to Governance, and it is a document developed jointly by the partners in KHLP. The KHLP includes all directly-affected First Nations.</p>
Topic Title: P-3, Demonstrated Need and Strategic Fit	
CAC1: Many comments are made to the effect that elaboration of various issues is needed.	The Protocol criteria have been determined by a multi-stakeholder process involving representatives with very different interests. The criteria are set to allow an assessment to capture the key issues relevant to sustainability performance. The Assessment Team have tried to respond closely to the criteria for scoring, in order for the report to have a manageable volume. It is never intended to provide a written description of e.g. all (key) stakeholders or processes under each topic. Stakeholders, as one example, is covered on a general level by Topic P-1 and by its own criteria for most Topics.
Topic Title: P-3, Demonstrated Need and Strategic Fit	
CAC1: A precise definition of 'demonstrated' is required.	Demonstrate: "to show".
Topic Title: P-3, Demonstrated Need and Strategic Fit	
CAC1: It is unclear whether demonstration requires wide agreement.	The Assessment Team used, among others, documents produced by authorities who are guided by a democratically elected Government.
Topic Title: P-3, Demonstrated Need and Strategic Fit	
CAC1: "meaning these criteria are on track to be met". Justification is required as to how this could have met good practice if they have yet to be met, proven or accepted by the NFAT or CEC hearings.	A Protocol Assessment is done for the situation at the time of assessment. The scoring criteria of the Protocol are defined to describe the end of each individual project-development stage (Early Stage; Preparation; Implementation; and Operation). Hence, when assessing a project which still has some time to go before the end of the Preparation stage, as in the case of Keeyask, the concept of "on track" is used to describe a situation where there is no gap at the moment, but where the lack of certain developments until and in time for the end of the Preparation stage, would develop into a gap at that time.

Topic Title: P-3, Demonstrated Need and Strategic Fit	
CAC1: several comments are made demanding that the Assessment Team provides an evaluation of the merits and methods of Government planning.	We have partly addressed these comments above – we have relied on documents produced by authorities who are guided by a democratically elected Government, but also relied on Manitoba Hydro’s and the Manitoba Government’s long experience of power development in general, and hydropower development in particular.
Topic Title: P-3, Demonstrated Need and Strategic Fit	
MW: What 'strategic planning exercise for both water and energy sectors'?	The strategic planning was described to the assessor in interviews with both KHP-internal and external interviewees. Documents in support are e.g. 119, 124, 137, 138 (this one having been viewed under confidentiality), 159 and 163. With the exception of document 138, these are all publicly available documents. Many of the planning processes are also conducted with on-line access to key documents as well as a channel for the provision of comments.
Topic Title: P-3, Demonstrated Need and Strategic Fit	
MW: It is inaccurate to state that the minister responsible for Manitoba Hydro is the minister for the Energy Division in this department.	At the time of the assessment, the description was accurate.
Topic Title: P-3, Demonstrated Need and Strategic Fit	
MW: The PUB process does NOT include public consultation.... No previous NFAT of a hydro project	It was confirmed in interviews with a Government representative that the process would indeed be public. There is also a precedent in the Wuskwatim NFAT.
Topic Title: P-3, Demonstrated Need and Strategic Fit	
CAC2: Concern regarding the lack of public involvement in needs assessment.	<p>The CAC report states that “the WCD’s framework has provisions for including the public and disseminating results which may be useful to include in the Protocol”. They have been, as part of all the scoring statements.</p> <p>As stated above in the general comments, this entire section misunderstands the use of clear scoring statements in the Protocol's methodology in order to avoid discussion on subjective terms such as “need”.</p> <p>Further, the comments show a lack of understanding of the separate criteria for Assessment, Stakeholder Engagement and Outcomes, and the specific requirements of some clauses within the scoring statements, such as social- and environment-related needs at level 5.</p>
Topic Title: P-4, Siting and Design	
CAC2: the main concern raised under this topic concerns stakeholder involvement and consent.	As evidenced elsewhere, it is apparent that CAC has misunderstood the entire approach to dealing with stakeholder engagement and support in the Protocol. Stakeholders who are not directly affected and the issue of consent by directly-affected stakeholders are covered elsewhere in the Protocol.

Topic Title: P-4, Siting and Design	
MW: The KCN are not stakeholders	As explained also under P-1 above: The Protocol’s definition of the word stakeholder is based on an internationally recognised definition. As such, <i>Stakeholder</i> in the Protocol means: “One who is interested in, involved in or affected by the hydropower project and associated activities”. <i>Directly-affected stakeholders</i> are defined as “stakeholders with substantial rights, risks and responsibilities”. This clearly includes the KCNs and their members. The Background section on topic P-1 sets out the assessors’ interpretation of which groups meet this definition, and which groups are stakeholders that are not directly-affected. The Stakeholder Engagement section (P-1) then describes the engagement that has been carried out, initially for directly-affected groups, and then for other groups.
Topic Title: P-5, Environmental and Social Impact Assessment and Management	
MW: Access to information about Hydro projects in our province is difficult.....	<p>Under P-5, access to information is addressed against the scoring statement: “The environmental and social impact assessment and key associated management plans are publicly disclosed.” They are available, for example, under http://keeyask.com/wp/ and http://www.gov.mb.ca/conservation/eal/registries/5550keeyask/.</p> <p>The scoring statement does not address what MH may or may not be using in the United States (presumably MW are referring to documents disclosed to customers, although it is uncertain how MW would know what these are).</p> <p>The Background section under P-5 states that “Canada and the province of Manitoba have well developed regulatory systems that include public access to information...” Canada and Manitoba have long-standing access to information laws. According to a comparative Right-to-Information report, they may, however, have significant opportunities for improving their regulations (http://www.law-democracy.org/live/wp-content/uploads/2012/08/Canada-report-on-RTI.pdf), but Manitoba scores relatively highly compared to other provinces.</p> <p>Further information about transparency is provided under P-2.</p>
Topic Title: P-5, Environmental and Social Impact Assessment and Management	

<p>MW: Why does everything in this assessment assume a licence will be issued? It is incorrect to state that a licence for Keeyask will not be issued before the resolution of the PUB process. Our regulatory system does not require this.</p>	<p>The assessment report states in multiple places that reviews of the EIA/NFAT are still ongoing. Irrespective of the outcome of those processes, which are entirely at the discretion of the relevant authorities, the assessment report provides outlooks in numerous places on how the project would appear to perform, if licenced, against international basic good and proven best practices.</p> <p>Section 3.2.2. of the report indeed presumes that in order for the project to proceed, the NFAT process would have to conclude with a positive outcome. Our understanding is that there are three criteria that have to be fulfilled before a license can be issued: 1) that the KHLP receive approval of the environmental review process (both the federal and provincial ones); 2) that the provincial government issues an order after receiving the PUB recommendation on the NFAT; and 3) that the government (federal and provincial) complete their consultations with Aboriginal People to fulfil their constitutional obligations in this regard.</p>
<p>Topic Title: P-5, Environmental and Social Impact Assessment and Management</p>	
<p>MW: Commentary about human rights being better in Canada ignores the reality of First Nation and Aboriginal Rights in Canada. We suggest that a conversation with the UN Rapporteur, and a review of his reports on Canada would be in order.</p>	<p>The assessment report makes a relative statement. Surely most observers would agree and many indicators could show that land rights and other key human rights of indigenous peoples are <u>better</u> protected by the rule of law and social policies in Canada than in most other countries with indigenous populations. Whether they are <u>sufficiently</u> protected is entirely another matter.</p>
<p>Topic Title: P-5, Environmental and Social Impact Assessment and Management</p>	
<p>MW: The rights of First Nations who are NOT KCNs must be upheld also. Those consultations are not complete yet either.</p>	<p>The assessment report does not presume any consultations to be complete. Rather it describes the consultation processes that are underway. Under P-5, specifically the consultations with directly-affected stakeholders are analysed. Indigenous groups other than the KCN are addressed under P-1 and P-15.</p>
<p>Topic Title: P-5, Environmental and Social Impact Assessment and Management</p>	
<p>MW: The statement that 'baseline data are well documented' is odd also.....</p>	<p>The documentation of baseline data in the Keeyask EIAs is more comprehensive than the assessors have seen, in their considerable professional experience, in most hydropower projects. The geographical scope of baseline studies appears broadly reasonable, given that conditions upstream and downstream of Keeyask are well known through long-term operational monitoring of other generating stations on the Nelson River. The value added - for licensing and management purposes - of additional baseline data in a broader geographical scope is unclear. More resources should only be spent on data acquisition where this serves a clear purpose.</p>
<p>Topic Title: P-5, Environmental and Social Impact Assessment and Management</p>	
<p>MW: None of the studies (there were references to 70 different studies in the CEC hearings) are online. The utility should be making the historic studies and their range of studies available. Commitments in the BP3 hearings were made to do this.</p>	<p>It is unclear which studies MW is specifically referring to that would not be online. The assessment report described the situation as of December 2012, not the CEC or PUB/NFAT hearings. The CEC and PUB/NFAT websites provide links to numerous documents.</p>

Topic Title: P-5, Environmental and Social Impact Assessment and Management	
MW: The statement that the project followed Canadian and international best practices....is one that the assessors and IHAP have to be able to verify.	Regarding international best practice, the statement follows from the definition in the Hydropower Sustainability Assessment Protocol and the evidence reviewed against that definition. With regards to Canadian best practice, the statement follows from comparative evidence with regards to the assessment, avoidance, mitigation and compensation of environmental and social impacts in other Canadian hydropower projects. If MW doubts that Keeyask represents Canadian best practice it would be useful to know of examples with better practices.
Topic Title: P-5, Environmental and Social Impact Assessment and Management	
MW: The CEC hearings will have 3 weeks of presentations from independent experts who in their areas of expertise, will dispute this statement.	It is considered by the assessment team a sign of the maturity of the Canadian licensing system, that public hearings with independent experts can challenge and improve the outcomes of the project-design process, ensuring that the project does indeed either reflect best practices, or does not proceed. This is not the case in most countries. It is particularly unusual and positive, that interested parties can obtain public funding to work with their own consultants and review project proponents' arguments.
Topic Title: P-5, Environmental and Social Impact Assessment and Management	
CAC2: An issue is raised regarding cumulative assessment, and there is a statement (page 21) regarding the WCD report's approach to cumulative assessment. CAC2: concern is raised regarding only directly-affected stakeholders being included.	Cumulative assessment is clearly covered as part of the analysis for topic P-5. Cumulative impacts on individual topics are also covered on several other topics, e.g. 18, 20 and 21. "The WCD approach" quoted on page 21 states that cumulative assessment is a requirement. This is true for the Protocol as well, as evidenced by the criteria for Assessment at the level of basic good practice. Under topic P-5, the stakeholder engagement (directly-affected) refers to the ESIA process. General stakeholder issues are covered first in Topic P-1, then for topic-specific purposes under each of the 14 topics in the Preparation Protocol which have stakeholder scoring criteria.
Topic Title: P-16, Labour and Working Conditions	
CAC2: In which ways are labour practices inconsistent with labour rights, and how would the proponent remedy this?	The report does not state this. In the analysis against basic good practice the report states: "There are no identified inconsistencies of labour management policies, plans and practices with internationally recognised labour rights." In the analysis against proven best practice the report states: "Labour management policies, plans and practices are not demonstrated to be consistent with internationally recognised..." The difference is in the scoring statements which, at the level of basic good practice ask whether there are any identified inconsistencies and at the level of proven best practice ask for a demonstrated consistence.
Topic Title: P-18, Public Health	
CAC2: The significant gaps on public health are not clear.	The excerpt in the CAC report is taken out of context. In the report, the first sentence leads on from the preceding paragraph, and the second sentence concludes the entire paragraph. The findings describe the gap in sufficient depth and provide justification for the conclusion that it is significant.

Topic Title: P-18, Public Health	
<p>NRHA: the NRHA filed a letter detailing its planned management of certain aspect of public-health delivery in the project area. It's not clear to the Assessment Team whether the letter is intended as a comment on the Keeyask report as there was no specific issue raised. No reference is made to specific findings on topic P-18, Public Health, in the report. Our responses to the right are based on the assumption that it is a comment on findings regarding Topic P-18 in general.</p>	<p>This is interpreted as a response to the two gaps against Proven Best Practice identified by the assessment team for Topic P-18.</p> <p>It is the opinion of the Assessment Team that:</p> <p>NRHA's letter describes the appointment of a public nurse, to be based at the Keeyask site with time also spent in Gillam and Fox Lake, funded by Manitoba Hydro. This plan was not mentioned to the assessors at the time of the assessment, and we assume it is a new development, agreed since the time of the assessment. Whilst we welcome this development, if our assumption is correct, we would not consider amending the assessment report in response, as the assessment applies to conditions in December, 2012.</p> <p>If the assessment team were to be asked to re-assess topic P-18, we would consider whether the appointment of this additional public-health nurse meets the scoring criteria of "provides for enhancements in pre-project public-health conditions or contribute to addressing public-health issues beyond those impacts caused by the project" (a criterion for "Outcomes" to be assessed on the topic of Public Health in the Protocol's methodology). We would look into the details of this plan (including for example the stationing of the nurse at the Keeyask site, and the details of the awareness-raising and screening activities referred to in the letter) to reach a judgement on whether the plan can be confidently predicted to provide these enhancements.</p> <p>The letter states that "current utilisation data describes an environment with capacity to adequately respond to the anticipated increase in demands in acute care services". It is not clear to the team if this refers to a particular part of our findings, but we would like to note that the significant gap concerning "processes to respond to an increased incidence and severity of non-communicable diseases" concerns an increase in demand that is beyond the level that is currently anticipated (i.e. an emerging risk rather than an anticipated one) and, importantly, also includes chronic illnesses. If the assessment team were to be asked to re-assess topic P-18, we would ask for this data as an item of evidence, and investigate this question of capacity for acute or chronic care.</p>
Topic Title: P-18, Public Health	
<p>RCMP: The RCMP filed a letter describing its relationship to the hydropower developments in northern Manitoba in general, and the Keeyask project in particular.</p>	<p>This is interpreted as partly a response to the gaps against the Management criterion at the level Proven Best Practice identified by the assessment team for Topic P-18.</p> <p>The assessment team welcome the additional information provided by RCMP, and agree that the Detachment Commanders' ongoing engagement with community leaders, monthly reports, and annual plans provide processes to respond to emerging increases in crime caused by an increase in substance abuse. They also may provide a process to prevent the supply of illegal drugs. However, they do not provide processes to anticipate or respond to all public health issues, or to treat substance abuse, which would be the responsibility of the health authorities.</p>

Topic Title: P-19, Biodiversity and Invasive Species	
<p>CAC2: As part of the comments on “contested outcomes” in section 4.2.2 of the CAC report, there are several questions raised regarding biodiversity-related issues.</p>	<p>Regarding sturgeon, there are indeed different opinions and the assessor had to balance the evidence. The decision to conclude that on balance, the project as currently designed with all its mitigation and compensation measures is more likely to benefit sturgeon was based on the overall assessment by a neutral expert not associated with the project. Sturgeon populations are depressed, and the project will support management efforts that could not otherwise be implemented. This directly addresses the scoring statement “plans provide for enhancements to pre-project biodiversity conditions or contribute to addressing biodiversity issues beyond those impacts caused by the project”. Note that there is a difference in weight in our statements where “sturgeon are expected to benefit”, rather than “we expect sturgeon to benefit” or “sturgeon are going to experience a net increase in stocks”, indicating that it is the opinion given that appeared most convincing by the assessor that has been quoted, but that it is, still, regarded as an opinion, not an established fact.</p> <p>Regarding caribou, the Boreal Woodland Caribou is indeed discussed in several places in the Assessment report, and a status report on this sub-species is included as evidence.</p>

PGC response to CAC comments on Keeyask Assessment

The Protocol Governance Committee (PGC) of the Hydropower Sustainability Assessment Protocol has noted the comments received regarding the Protocol assessment of the Keeyask Hydropower Project, conducted in Manitoba, Canada, December 2012.

General comments relating to the Protocol

The comments process¹ is in place to ensure that all information regarding a project is brought to light, and that any errors on the part of the assessors conducting the assessment are addressed where appropriate. Commenting on broader issues around the Protocol, rather than about a specific project, detracts from the intent behind the process. This is particularly the case because the assessors involved are not in a position to respond meaningfully to general criticism of the Protocol. The Protocol was formed and is now governed by a multi-stakeholder process and any changes or adaptations to it must be made through the same process. The PGC has agreed that a process to consider appropriate revision of the Protocol document should be put in place, but this will only occur after there have been sufficient applications to allow a broad understanding of the current version and its implementation.

It is not the position of the PGC to involve itself in the assessment results or comment process. However, a number of the comments received, most notably those of the Consumers Association of Canada (CAC) do not regard the results of the Keeyask assessment, but are directed at the Protocol generally, and the PGC will offer these brief responses.

There are channels in place by which suggestions for changes to the Protocol can be made. The seven chambers of the protocol governance council are open to all applicants and provide a forum where issues regarding the protocol are discussed. Changes to the Protocol will be developed through engagement with these chambers and the PGC welcomes participation of all interested stakeholders. Engaging with a chamber of the council allows all opinions about Protocol content to be addressed in a meaningful and constructive manner, and the PGC respectfully requests that where stakeholders generally wish to contribute comments and thoughts on the Protocol generally, they engage in this process. The PGC uses the opportunity to invite CAC to join an appropriate chamber and use this forum to contribute to further Protocol development.

It should be noted that the authors based much of their criticism on outdated references, and often commented on superseded versions of the Protocol (pre 2010). As such, many of the comments are irrelevant to the Protocol in use today and for the Keeyask assessment.

The Protocol was written over a period of ten years, through a number of iterations, and with input from a diverse group of stakeholders, some of which were closely aligned with the World Commission of Dams. Furthermore, the Protocol was not written in a vacuum, but with clear reference not only to the WCD, but also to other frameworks in existence including the multilateral banks' safeguard policies and the Equator Principles. It is worth bearing in mind that the WCD stands as a framework for decision-making, whereas the Protocol is an assessment methodology.

¹ provided for in paragraph 8 of the Protocol Terms and Conditions

Assessment Methodology

The CAC comments criticise the process used for Protocol assessments. CAC would prefer to see a more academic approach to substance, evidence and referencing. However, the approach taken by the Protocol is based on standard auditing practise. This approach was taken to come up with a practical, widely usable assessment tool. Following the suggestions made by CAC would make assessments prohibitively expensive, assessments would not happen and the potential guidance for improved sustainability management practices would be lost.

CAC's four 'general concerns with the HSAP framework' are not based on a correct understanding of how the protocol is used. When undertaking an assessment, an assessor is guided by the protocol document, rigid methodology, scoring statements and reference manuals. All of these are designed to support objective, informed, consistent interpretation of the Protocol based on recognised auditing principles, often within the framework of ISO 19001. Judgments by the assessors as to whether Protocol criteria are met are based on documentary, visual and verbal evidence. In addition to extensive document review and site visits, assessors interview a broad range of internal and external stakeholders with diverse views on the project.

It should also be noted that all assessors are independent of the Protocol and the projects that they assess. Assessors are subject to a rigorous series of qualification criteria and examination before becoming accredited to use the Protocol.

Pass/Fail Mark

CAC suggest that the Protocol is weaker than other assessment methodologies because it does not provide a pass / fail result. The Protocol is not intended as a standard, but rather a standardized assessment tool. This decision was deliberately taken after much consideration by the HSAF. The question of whether a standard or certification system might evolve from the current Protocol is something that can be considered in the future.

The Protocol provides a globally applicable, objective analysis of all aspects of a project's performance, in a transparent manner. It provides a mechanism for continuous improvement in project sustainability. A project can receive a low score in one area, learn from identified gaps and address these, make changes, reassess the project and note improvement. Rather than limiting its direction to a pass or a fail mark, the Protocol provides guidance to developers/NGOs/financiers about international basic good practice and proven best practice, as agreed upon by a multi stakeholder forum.

The PGC hopes with this note to clarify the idea and purpose behind the comments process. It is our hope that this process will be used to improve individual assessments and address any areas of weakness in individual assessments, rather than as a means of raising general issues around the Protocol. At the same time, it is not intended to reject constructive criticism of the tool- to the contrary, this is welcomed through the chamber process, and we invite all interested in contributing to Protocol development to join one of the chambers.

Conclusions

The Lead Assessor has concluded that the assessment report does not need any amendments. The assessment report will remain available on the Protocol website www.hydrosustainability.com in its original form and this report will be available on that web site as well.

Annex I: Original Comments Received

A: Consumers Association of Canada (I)

B: Consumers Association of Canada (II)

C: Manitoba Wildlands

D: Northern Regional Health Authority

E: Royal Canadian Mounted Police