



**COMMENTS OF THE QIKIQTANI INUIT ASSOCIATION  
ON THE DRAFT DIRECTIVES FOR THE IMPACT  
STATEMENT OF THE EASTMAIN-1-A AND RUPERT  
DIVERSION PROJECT**

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## TABLE OF CONTENTS

INTRODUCTION.....	Page 3
QIKIQTANI INUIT ASSOCIATION: A BRIEF PROFILE.....	Page 4
INUIT OF QIKIQTAIT (BELCHER ISLANDS).....	Page 6
POTENTIAL IMPACTS OF THE PROJECT ON INUIT.....	Page 7
APPLICATION OF THE NLCA.....	Page 9
THE INUIT RIGHT TO PARTICIPATE.....	Page 11
CONCLUSION.....	Page 13

## INTRODUCTION

This paper is submitted by the Qikiqtani Inuit Association (QIA) on behalf of Inuit of Qikiqtait (Belcher Islands) in response to the Canadian Environmental Assessment Agency's invitation to the public to comment on the draft directives for the Impact Statement of the Eastmain-1-A and Rupert Diversion Project.

From the Inuit perspective, two questions arise at the mention of the Eastmain-1-A and Rupert Diversion Project: Will it impact on the Inuit way of life in the Hudson Bay Bioregion? Do Inuit have the right to participate in the social and environmental impact assessment process? The answer to both questions is Yes.

This brief is divided into five parts. Part one provides a profile of Qikiqtani Inuit Association. Part two discusses Sanikiluaq, where most Qikiqtait Inuit reside. Part three focuses on the potential impacts of the Eastmain-1-A and Rupert Diversion Project on Qikiqtait Inuit. Part four shows the applicability of the Nunavut Land Claims Agreement to the Project's social and environmental assessment processes. Part five identifies the legal basis for the Inuit right to participate in the environmental and social assessments leading to the preparation of the Impact Statement for the Project, and in the design and development of the Impact Statement itself.

## QIKIQTANI INUIT ASSOCIATION: A BRIEF PROFILE

Qikiqtani Inuit Association (QIA) represents the approximately 12,000 Inuit of the Baffin Region, High Arctic and Belcher Islands.

The Mission Statement of QIA is *Protecting and Promoting Inuit Rights and Values*.

The Qikiqtani Inuit Association was formed as a non-profit land claim and community organization in 1996 and registered as a society in 1997. Its predecessor, Baffin Regional Inuit Association (BRIA), was formed in 1975 and registered as a society in 1977.

QIA is one of the three Inuit organizations affiliated with the Nunavut Tunngavik Incorporated (NTI). The Board of Directors of NTI is drawn from the three Regional Inuit Associations accountable to Inuit Beneficiaries. QIA does not take the roles of federal or territorial government, but works with them and other partners to ensure that Inuit are being adequately served by these governments.

Now that the Nunavut Land Claims Agreement is in force, QIA has taken on new responsibilities and executes its mandate through its community directors and staff in Iqaluit and Igloolik to fulfill its mandate. The majority of QIA's funding comes from the Nunavut Tunngavik Incorporated. It is also funded by Heritage Canada to a limited degree. QIA has been successful in obtaining other funding on a project basis from various organizations and government agencies.

There are two other organizations operating under the QIA umbrella. These are: Kakivak Association (KA), responsible for Community Economic Development and Small business; and Qikiqtaaluk Corporation (QC), the Development Corporation of QIA.

Qikiqtaaluk Corporation was established in 1987 to manage economic development on behalf of the QIA. QC is involved in offshore shrimp and turbot fishing, airport management, DEW Line Cleanups, environmental services, mineral development activities, helicopter operations, heavy equipment sales and services, petroleum distribution and real estate construction management activities.

Kakivak Association is QIA's Community Economic Development Organization and Small Business Arm. Its mandate is to help Inuit in the Baffin Region own and develop their own businesses. KA also provides training contributions and sponsorships to individuals, organizations and businesses.

Qikiqtani Inuit Association has a 19-member Board of Directors, consisting of the following:

- A President (elected Baffin-wide),
- A Vice-President (elected Baffin-wide),
- A Secretary-Treasurer (elected Baffin-wide),
- Thirteen elected representatives, one each from the Baffin communities, the High Arctic and the Belcher Islands,
- An Elders' Representative,
- A Women's Representative, and
- A Youth Representative.

QIA has an Executive Committee comprised of a President, Vice-President, Secretary-Treasurer with three Members-at-Large appointed by the Board.

The Board of Directors provides strategic direction to the organization and has overall responsibility for Qikiqtani Inuit Association and its controlled organizations – Qikiqtaaluk Corporation, and Kakivak Association.

## INUIT OF QIKIQTAIT (BELCHER ISLANDS)

Qikiqtait (Belcher Islands) is located in eastern Hudson Bay, about two hundred (200) kilometres north of the entrance to James Bay, and approximately four hundred (400) kilometres from where the Eastmain River empties into James Bay.

Qikiqtait is home to approximately seven hundred and fifty (750) Inuit, most of who reside in the community of Sanikiluaq. Qikiqtait Inuit are an integral part of the Hudson Bay Bioregion. There is evidence of their existence as a people in Qikiqtait over a period of at least 600 years. They are part of the land and the water. There is a hunting-fishing-gathering society whose culture reflects an intimate bond with the natural environment. The close connection between Qikiqtait Inuit and the Hudson Bay Bioregion is described in detail in the 1997 report of the Canadian Arctic Resources Committee and Environmental Committee of Municipality of Sanikiluaq entitled *Voices from the Bay*, a "must" read for anyone assessing the social and environmental impacts of the Eastmain-1-A and Rupert Diversion Project.

While Qikiqtait Inuit may appear at first glance to be on the periphery of the Eastmain-1-A and Rupert Diversion Project, a study of the food web in the Hudson Bay Bioregion (*Voices from the Bay* is such a study) discloses that Inuit (and Cree) are at the center of the web.

QIA submits that the Qikiqtait Inuit are relevant to the environmental and social assessment processes leading to the preparation of the Impact Statement for the Eastmain-1-A and Rupert Diversion Project for at least two reasons: (1) as an integral part of the Hudson Bay Bioregion, the Qikiqtait Inuit way of life will be directly affected by the project; (2) Qikiqtait Inuit are an important source of traditional ecological knowledge, a form of knowledge which the draft directives on the Project requires be incorporated into the Impact Statement.

Therefore, QIA submits that the draft directives should be amended to expressly include the participation of the Qikiqtait Inuit in the environmental and social assessment processes leading to the preparation of the Impact Statement.

## POTENTIAL IMPACTS OF THE PROJECT ON INUIT

The natural feature of the land that first defined the location of the Eastmain-1-A and Rupert Diversion Project are the Eastmain and Rupert Rivers. These rivers are in north west Quebec, in Cree land claims settlement areas, governed by the agreement for a new relationship between the Government of Québec and the Crees of Québec of February 7, 2002, the Boumhounan and Nadoshtin Agreements, as well as relevant past agreements such as that of Lake Sakami which became Complementary Agreement # 5 of the James Bay and Northern Québec Agreement. But the Eastmain and Rupert Rivers are also connected to the Qikiqtait Inuit by the currents of the Hudson Bay Bioregion (Hudson Bay, James Bay, Hudson Strait, and all interconnecting channels). See “Figure 3: Surface Current Activity and Changes in Hudson and James Bays” in *Voices from the Bay*. It is this connection – river, bay, currents – that brings Qikiqtait Inuit within the circle of people who it is reasonably foreseeable could be directly affected by the Project. It is this connection that engages the Nunavut Land Claims Agreement.

Inuit have observed in the past how human alteration of rivers that are part of the Hudson Bay Bioregion, e.g. the La Grande River, have weakened currents along the east coast of James Bay up into eastern Hudson Bay. Rivers flowing into Hudson and James Bay – the two rivers that are the subject of the Eastmain-1-A and Rupert Diversion Project are prime examples – are important generators of marine currents. Currents give life to everything that lives in the Hudson Bay Bioregion. Marine mammals, including beluga, ringed seal, harp seal, bearded seal, and walrus, depend on currents to feed and travel. Birds depend on currents for feeding. Inuit rely on currents for hunting (and when the term “hunting” is used, it refers to the totality of the Inuit social and cultural connection with the land and the water). Weaker currents bring fewer ice-packs, which in turn bring fewer polar bears.

Sea ice is essential to Inuit. They rely on it for travelling and hunting. Since the La Grande River was damned, near-shore sea-ice conditions have changed. The sea-ice doesn't freeze as hard, and areas of open water are found in unexpected places. The ice in the off-shore current moves at a much faster pace.

Reduced river flow resulting in weakening of the currents could cause the floe-edge not to break or to break farther away than usual. Extended sea-ice cover could result in reduced habitat for eider ducks. Lack of current may result in polynyas completely freezing over.

The Eastmain-1-A and Rupert Diversion Project has the potential to directly affect Qikiqtait Inuit in at least ten (10) ways:

1. Currents

2. Sea Ice
3. Floe-Edge
4. Loss of Polynyas
5. Pollution of the Hudson and James Bays
6. Increase in the Salinity of Hudson and James Bays
7. Decline in Wildlife
8. Decline in Fish and Shellfish
9. Airborne Pollution from the proposed Eastmain-1-A powerhouse
10. Health and Dietary Issues as a Result of Lack of Traditional Food

The above is just a partial list of Inuit concerns about possible impacts from the proposed Eastmain-1-A and Rupert Diversion Project. QIA takes note of the following provision at page 22 of the draft directives:

*The Proponents shall determine, justify and present in the form of maps a study area taking into account the extent of the anticipated impacts and the appropriate ecological and human boundaries for the various components of the environment related thereto. If necessary, this area may be composed of various sectors delimited according to the impacts studied. The sectors must cover all of the planned activities for the main works and the related components, including the other elements necessary to carry out the Project and to define all of the direct and indirect impacts of the Project on the biophysical and human environments. (Emphasis added)*

QIA submits that Qikiqtait should be included in the aforesaid study area, and for greater certainty, the draft directives should be amended to expressly include Qikiqtait Inuit as people who will be the subject of direct and indirect impacts of the Eastmain-1-A and Rupert Diversion Project.

## APPLICATION OF THE NUNAVUT LAND CLAIMS AGREEMENT

The key to understanding the Inuit position advanced in this submission is perception of the relational structure between the Eastmain and Rupert Rivers, Hudson and James Bay, and the currents. This relationship is well-described in both the text and the charts of *Voices from the Bay*, supra. This relationship forms the reality-base of the Inuit legal submission that they have a right – indeed, a constitutional right, as will be seen – to participate in the environmental and social impact assessments leading to the preparation of the Impact Statement for the Eastmain-1-A and Rupert Diversion Project, and in the preparation of the Impact Statement itself.

Please note that the Inuit submission herein is pitched to a higher level than just consultation. It is pitched to the level of participation.

The *Nunavut Land Claims Agreement* (NLCA) is an agreement between Inuit of the Nunavut Settlement Area (including Sanikiluaq) and the Government of Canada, which is raised to the imperative of a constitutional guarantee by virtue of section 35 of the *Canadian Charter of Rights and Freedoms*.

The NLCA contains three (3) provisions that apply to the Eastmain-1-A and Rupert Diversion Project:

- (1) Article 12.11.1 – “NIRB [Nunavut Impact Review Board] may upon request by Government or, with the consent of Government, upon a request by a DIO [Designated Inuit Organization], review a project proposal located outside of the Nunavut Settlement Area which may have significant adverse ecosystemic or socio-economic effects on the Nunavut Settlement Area.”
- (2) Article 13.10.1 – “Where a drainage basin is shared between the Nunavut Settlement Area and another jurisdiction, the Government of Canada and the Territorial Government, assisted by the NWB [Nunavut Water Board], shall use their best efforts to negotiate agreements with other jurisdictions concerned with the use and management of such drainage basins.”
- (3) Article 32.1.1 – “Without limiting any rights of Inuit or any obligations of Government, outside of the Agreement, Inuit have the right as set in this Article to participate in the development of social and cultural policies, and in the design of social and cultural programs and services, including their method of delivery, within the Nunavut Settlement Area [emphasis added].”

QIA submits that:

- Article 12.11.1 applies because the Eastmain-1-A and Rupert Diversion Project is a “project proposal located outside of the Nunavut Settlement Area which may have significant adverse ecosystemic or socio-economic effects on the Nunavut Settlement Area.”
- Article 13.10.1 applies because James Bay, into which the Eastmain and Rupert Rivers flow, is a drainage basin shared between the Nunavut Settlement Area and other jurisdictions.
- Article 32.1.1 applies because the Impact Statement for the Eastmain-1-A and Rupert Diversion Project is a policy or program within the meaning of the said Article that directly affects an Inuit community within the Nunavut Settlement Area, namely, Sanikiluaq.

Therefore, QIA submits that the draft directives must be amended to expressly require that the Impact Statement for the Project explain to what extent the rights guaranteed Inuit in the Nunavut Land Claims Agreement will be assured.

## THE INUIT RIGHT TO PARTICIPATE

The Inuit submission herein is pitched to a higher level than just consultation. It is pitched to the level of participation. The Inuit right to participate in the environmental and social impact assessments leading to the preparation of the Impact Statement for the Eastmain-1-A and Rupert Diversion Project, and in the preparation of the Impact Statement itself, originates in Article 32 of the Nunavut Land Claims Agreement.

Article 32.1.1 provides:

*Without limiting any rights of Inuit or any obligations of Government, outside of the Agreement, Inuit have the right as set in this Article to participate in the development of social and cultural policies, and in the design of social and cultural programs and services, including their method of delivery, within the Nunavut Settlement Area. [emphasis added]*

QIA submits that Article 32.1.1 applies because the Impact Statement for the Eastmain-1-A and Rupert Diversion Project is a policy or program within the meaning of the said Article that directly affects an Inuit community within the Nunavut Settlement Area, namely, Sanikiluaq.

Therefore, QIA submits that, pursuant to Article 32 of the Nunavut Land Claims Agreement, the draft directives should be amended to expressly include the participation of the Qikiqtaaluk Inuit in the environmental and social assessment processes leading to the preparation of the Impact Statement, and in the drafting of the Impact Statement itself.

In addition, both the Proponent and the Crown have a duty to consult Inuit with respect to the environmental and social impact assessments leading to the preparation of the Impact Statement for the Eastmain-1-A and Rupert Diversion Project.

The duty to consult in the context of this Project stems from two sources:

- Common law – The Supreme Court of Canada has repeatedly held that the Crown is under a duty to consult with Aboriginal people when it proposes to engage in an action that threatens to interfere with existing Aboriginal or treaty rights. See for example: Delgamuuk v. British Columbia, [1997] 3 S.C.R. 1010. QIA submits that the Eastmain-1-A and Rupert Diversion Project constitutes such an action. The Inuit rights threatened by the Project include the Inuit right to fish and hunt, and the Inuit cultural interests based

on a way of life tightly interwoven with the natural environment of the Hudson Bay Bioregion.

- The Draft Directives for the Impact Statement of the Eastmain-1-A and Rupert Diversion Project, particularly page 4, where it states:

*In preparing an Impact Statement, proponent shall first consult with residents and organizations in affected communities, other interested regional and national organizations, resource users and relevant government agencies.*

Summing up on this point, QIA submits: (1) pursuant to Article 32 of the NLCA, there is a duty on the Crown to provide an opportunity to Inuit for participation in the environmental and social assessment processes leading to the preparation of the Impact Statement, and in the drafting of the Impact Statement itself; (2) pursuant to common law, there is a duty on the Crown to provide an opportunity for consultation regarding the said processes (and a correlative right on Inuit to be extended the opportunity to consult); (3) pursuant to the Draft Directives, there is a duty on the Proponent to consult Inuit.

## CONCLUSION

In conclusion, QIA's submission on behalf of Qikiqtait Inuit, can be summarized as follows:

- From the Inuit perspective, two questions arise at the mention of the Eastmain-1-A and Rupert Diversion Project: Will it impact on the Inuit way of life in the Hudson Bay Bioregion? Do Inuit have the right to participate in the social and environmental impact assessment process? The answer to both questions is Yes.
- QIA submits that the Qikiqtait Inuit are relevant to the environmental and social assessment processes leading to the preparation of the Impact Statement for the Eastmain-1-A and Rupert Diversion Project for at least two reasons: (1) as an integral part of the Hudson Bay Bioregion, the Qikiqtait Inuit way of life will be directly affected by the project; (2) Qikiqtait Inuit are an important source of traditional ecological knowledge, a form of knowledge which the draft directives on the Project requires be incorporated into the Impact Statement.
- QIA submits that Qikiqtait should be included in the Project study area, and for greater certainty, the draft directives should be amended to expressly include Qikiqtait Inuit as people who will be the subject of direct and indirect impacts of the Eastmain-1-A and Rupert Diversion Project.
- QIA submits that the draft directives must be amended to expressly require that the Impact Statement for the Project explain to what extent the rights guaranteed Inuit in the Nunavut Land Claims Agreement will be assured.
- QIA submits that, pursuant to Article 32 of the Nunavut Land Claims Agreement, the draft directives should be amended to expressly provide for the participation of the Qikiqtait Inuit in the environmental and social assessment processes leading to the preparation of the Impact Statement, and in the drafting of the Impact Statement itself.
- QIA submits: (1) pursuant to Article 32 of the NLCA, there is a duty on the Crown to provide an opportunity to Inuit for participation in the environmental and social assessment processes leading to the preparation of the Impact Statement, and in the drafting of the Impact Statement itself; (2) pursuant to common law, there is a duty on the Crown to provide an opportunity for consultation regarding the said assessment processes (and a correlative right on Inuit to be extended the opportunity to consult); (3) pursuant to the Draft Directives, there is a duty on the Proponent to consult Inuit.