


Clean Energy Strategy for First Nations and British Columbia

June 2015





This document contains the reflections and intentions of four First Nations who have been actively engaged in the clean energy industry for much of the last ten years. We have formed a coalition to strengthen our voices. We have formalized our cooperation with a Memorandum of Understanding. What we have learned, we want to share; what we want to accomplish, we cannot do alone. We welcome feedback from everyone.

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A large school of red fish, possibly salmon, swimming in dark water. The fish are densely packed and moving in a coordinated pattern, creating a vibrant red streak against the dark background. The water is dark and slightly rippled, with some light reflecting off the surface.

clean energy

Energy derived from renewable resources used with the free, prior and informed consent of the First Nations whose territories supply the resources.

Renewable energy resources include biomass, biogas, geothermal, heat, hydro, solar, ocean and wind. We do not consider natural gas or other fossil fuels to be sources of clean energy. Nor do we consider hydro projects that are built without the free, prior and informed consent of First Nations to be sources of clean energy.



Our vision for BC's electricity future

We see BC taking responsibility for its people, the environment and the global climate by choosing to derive all new electricity generation from clean energy as we define it: **from renewable resources with the free, prior and informed consent of First Nations.**

We see BC ensuring that electricity is generated with **as little impact as possible on the environment and on the title and rights of First Nations.**

We see BC adopting an electricity planning framework that **maximizes public benefit.**

We see BC's First Nations **participating in all aspects** of the clean energy development.

We see BC's First Nations, through title-based decision-making, implementing environmental assessment processes that **address and manage cumulative effects and improve monitoring and compliance**, thereby benefiting all British Columbians.

First Nations and clean energy development in British Columbia

Since 2001, several policy and regulatory changes have been implemented that have rapidly accelerated the development of independent power projects in BC.

86 projects in BC are operated by the independent clean energy sector

21 additional projects are under construction

20% of the province's electricity is delivered by the clean energy sector through BC Hydro

As BC's clean energy sector has taken shape, First Nations have gradually taken a greater role in the development of these projects. As different companies pursued development and engaged in discussion with us, we have embraced the premise of the industry: electricity is generated from a renewable resource whose development need not come at heavy cost to the environment; it provides the Province a much needed commodity and the developer with dependable returns – returns that are shared with First Nations. The clean energy industry has provided benefits to First Nations communities including revenue sharing, equity participation, and employment. The industry came of age in an era where aboriginal title and rights are increasingly well understood - as court case after court case affirmed aboriginal rights and title and its consequences for resource development.

We have become adept at negotiating with clean energy developers to ensure we participate in an appropriate manner in clean energy projects. Our ambitions, however, reach beyond that. As stewards of our lands we want to develop our resources based on our values – values that we believe we share with the majority of British Columbians. We have great respect for our environment and know that we depend on its integrity. We want to create wealth that benefits our communities. We want to create a future that holds promise for our children because we have planned development carefully and have added value where it was responsible – and foregone

development where it would have taken away options for our children.

First Nations are working hard to ensure that the processes that regulate the development of clean energy are mindful of these values. The Provincial government and BC Hydro did, to their credit, engage with First Nations in the process of drafting the Clean Energy Act and two Integrated Resource Plans. At the same time we want to be clear that in recent years the decisions made by the Provincial government and BC Hydro regarding clean energy are moving the province further away from our vision: the development of clean energy as we define it – with our participation.

First Nations have been keen supporters of the development of an industry that is critical to the future of British Columbians. We hope to continue offering our support and aim to play a key role in what should be a thriving sector. We have very specific ideas on how that can be accomplished.

Political and Regulatory Context

In 2010, the Clean Energy Act received Royal Assent in the BC Legislature. The Province of British Columbia now has a dedicated piece of renewable energy legislation, rather than a set of well-intentioned plans and policies. The Act put into law key objectives of the government's 2002 and 2007 Energy Plans and its 2008 Climate Action Plan. A number of these objectives were welcomed by First Nations, notably:

- to generate at least 93% of the electricity in British Columbia from clean or renewable resources and to build the infrastructure necessary to transmit that electricity;
- to use and foster the development in British Columbia of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources;
- to reduce BC greenhouse gas emissions;
- to reduce waste by encouraging the use of waste heat, biogas and biomass;
- to encourage economic development and the creation and retention of jobs; and
- to foster the development of first nation and rural communities through the use and development of clean or renewable resources.

We applauded the provision in the Act for revenue sharing with First Nations through the creation of the First Nations Clean Energy Business Fund. While revenue sharing with First Nations exists as policy in other sectors such as mining and forestry, clean energy is the only sector where revenue sharing has been made law. This represents one step forward in the relationship between the Crown and First Nations when it comes to the development of British Columbia's resources.

“[T]he minister, in accordance with a spending plan approved by Treasury Board, may pay an amount of money out of the special account for any of the following purposes: (a) to share the revenues referred to in subsection (4) (b), up to a prescribed percentage of the revenue, under an agreement or agreements with one or more first nations; (b) to facilitate the participation of first nations and aboriginal people in the clean energy sector”

- *BC Clean Energy Act*

Five years have gone by since the BC Legislature passed the Clean Energy Act. There remain issues that have not been addressed following this piece of enabling legislation.

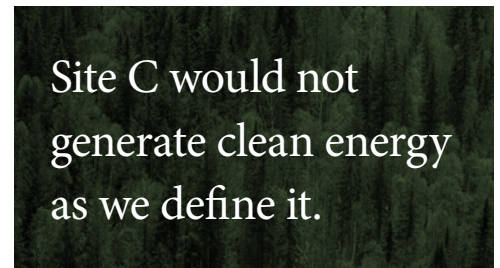


Site C

The 2002 Energy Plan stated that all new electricity generation would be developed by independent power producers, with exception of Site C, if approved by Cabinet. The Act did not change that and Site C has now been approved. The approval was granted notwithstanding the Joint Review Panel's cautions:

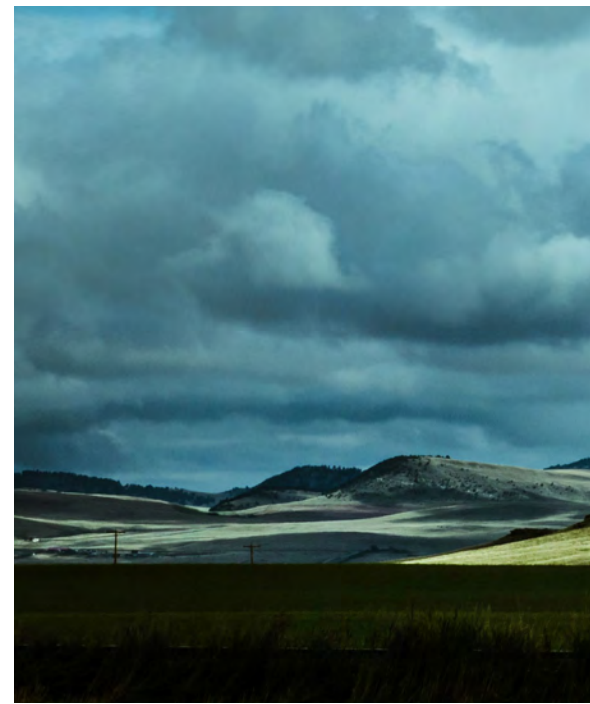
- The Joint Review Panel (JRP) concluded that Site C would likely, for First Nations represented by Treaty 8 Tribal Association, for Saluteau First Nation and for Blueberry River First Nation, cause:
 - “significant adverse effect on fishing opportunities practices” and that “these effects cannot be mitigated”;
 - “significant adverse effect on hunting and non-tenured trapping” and that “these effects cannot be mitigated”;
 - “significant adverse effect on other traditional uses of the land” and that “some of these effects cannot be mitigated”; and
 - “significant adverse cumulative effects on current use of lands and resources for traditional purposes.”
- The JRP could not conclude “on the likely accuracy of the Project cost estimates because it does not have the information, time or resources. This affects all further calculations of unit costs, revenue requirements, and rates.”
- The JRP concluded that BC Hydro has “not fully demonstrated the need for the Site C on the timetable it proposed.”

In view of these reservations by the JRP, we do not think Site C should go ahead. A solid argument can and has been made by a number of parties (including Clean Energy BC and the Pembina Institute) that it would be more prudent and quite likely less costly for the Province to meet its need for power by adding incremental capacity developed by independent power producers, among whom we count ourselves, as power is needed.



LNG

The Act made a provision for the Minister to prescribe resources for the purposes of the definition of “clean or renewable resource”. In 2012 the Minister did so and deemed natural gas, when used to liquefy gas, a clean resource. We see this new definition as running counter to the intent of the Act. It represents a missed opportunity to indeed make BC's LNG industry the cleanest in the world, as the Premier once vowed it would be, and as she accordingly instructed her Ministers.



Integrated Resource Plans

Integrated Resource Plans (IRP), according to the Act, set out how BC Hydro intends to implement the government's energy objectives and meet the province's future electricity needs for the next 30 years. BC Hydro is to develop its IRPs with input from the public, stakeholders and First Nations; however, the Act does not establish the process for how BC Hydro will obtain, or how stakeholders, ratepayers, First Nations and others might provide this input or be involved in the process.

When BC Hydro presented its draft 2013 IRP and found no room in it for clean energy or for First Nations, we made representations to the Minister. We were gratified to see our representations result in the inclusion of Chapter 8 in the IRP. In this Chapter, BC Hydro commits to:

- “Engage First Nations and IPPs on how to introduce new elements to the SOP to encourage First Nations participation.
- As the need for the next major call for power emerges, engage First Nations and the clean energy sector on how to encourage First Nations participation in that new call for power. Outside of the SOP, when BC Hydro procures new clean resources it typically does so through a competitive bid process. The evaluation of the bids in a competitive process considers financial, technical, environmental and other factors. Going forward, BC Hydro intends to put greater emphasis on First Nations participation in clean energy projects, and will consult with First Nations and the clean energy sector on how best to do so.
- (H)onour prior commitments to explore clean energy development with First Nations and agreements to negotiate EPAs with First Nations.”

First Nations have been in discussion with BC Hydro on changes to the SOP. We have not yet been engaged by BC Hydro on the matter of future energy calls, about which we certainly have ideas. We express those ideas elsewhere in this paper.

Meanwhile, we question the effectiveness of the IRP process. While many First Nations commented on the draft IRP, it does not seem as if the concerns expressed found reflection in the final plan. We would like to see changes implemented to the process of drafting the 2015 IRP so that the plan is developed in collaboration with First Nation. Our views should contribute to the shape of the IRP.



First Nations engagement in the clean energy sector

First Nations participation in the clean energy industry through partnership negotiation and acquisition

First Nations have invested untold hours in the negotiation of dozens of agreements with the clean energy industry. In almost all cases, the resulting partnerships allow for expedient construction of projects that operate according to plan. The agreements contain provisions for royalties and options to acquire equity. Ownership is an important component of partnership. Most First Nations strive to own the means of production premised on resources in their territories, both as a matter of principle and as a practical means of wealth creation. A renewable energy utility is a particularly attractive vehicle of wealth creation.

Examples of FNCEE partnerships:

- **Sechelt Creek project**, located in the territory of the shíshálh Nation. The award winning project is a 16 MW facility developed by Regional Power.
- **Sakwi Creek project**, located in the territory of Sts'ailes Nation. Sts'ailes acquired a 30% interest in the project. The project was developed by Windriver Power and generates 5.5MW.
- **The Upper Lillooet River Hydro project**, located in the territory of the Lil'wat Nation. The project was developed by Innergex and Ledcor and has an installed capacity of 113MW.
- **East Toba River/Montrose Creek project** (pictured at opposite) located in the territory of the Klahoos, Sliammon, and shíshálh Nations. The project was developed by Plutonic Power and has an installed capacity of 196MW.
- **Box Canyon Hydro project**, located in the territory of the Squamish Nation. Box Canyon is developed by Elemental Energy and has a capacity of 16 MW.



First Nation development of clean energy projects

There is a growing list of First Nations that have developed, or are developing, their own projects.

- **Hupacasath First Nation** was a forerunner: under Judith Sayers as Chief, the nation responded to the 2002 Call for Clean Energy and built a 6MW project that has been in operation since 2005. Hupacasath owns 72.5% of the project; Ucluelet First Nation owns 10%.
- **Taku River Tlingit First Nation** owns 100% of a 2 MW plant that, in 2009, helped the town of Atlin to turn off the diesel engines used for electricity generation.
- **Kanaka Bar Indian Band** obtained the water license on Kwoiek Creek in the late 1990s. It invited a developer and struck a partnership. Kanaka Bar now owns 50% of a 50MW run-of-river project that went into commercial operation in 2014.
- **Tla-o-qui-aht** owns 75% of Canoe Creek, a 5.5 MW run-of-river project that went into commercial operation in 2010. It owns 85% of Haa-ak-suk, a 6MW project that went into commercial operation in 2014, and is currently developing Winchie Creek, a 4.4 MW project that it will own outright.
- **Gitga'at First Nation** will commence construction this year of a 1MW hydro project that will replace diesel generation. Gitga'at owns 100% of the project.
- **Tseshaht, Toqat, Ditidaht and Uchucklesaht First Nations** all have run-of-river hydro projects under development.



Goals

1. *No Site C*

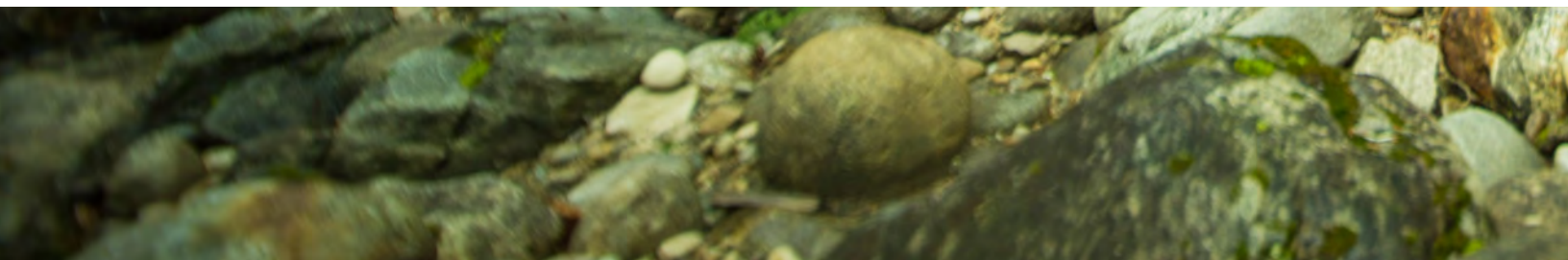
We demand the Province reconsider its decision to approve Site C, in view of the impact on the environment and on First Nations rights, in view of the lack of demonstrated need and in view of the existence of clean energy alternatives that pose less financial risk.

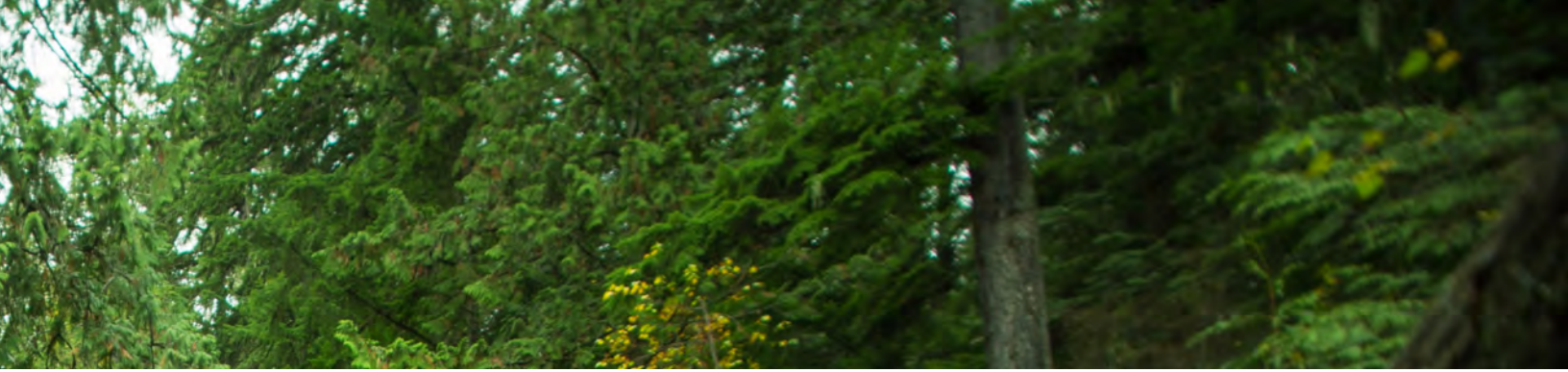
2. *Electric drive compressors for BC's LNG industry*

Where LNG extraction, its transport through pipelines and its liquefaction have received the consent of all affected First Nations, we advocate that BC hold to its intent to have the industry supply “*the cleanest natural gas that is produced for export anywhere in the world*” by mandating the use of electric drive compressors that in turn run on a combination of new renewable power, existing British Columbia grid electricity, and efficient combined-cycle natural gas generators.

3. *A standing offer program that gives priority to projects with the highest degree of First Nations economic interest*

Economic interest of a First Nation we define as the NPV of the total of all payments (including lump sum and royalty payments) and entitlements to cash distributions (as a shareholder, unitholder, or subordinated debtholder) accruing to the First Nation over the life of an Electricity Purchase Agreement *divided* by the NPV of the total of all cash available for distribution to equity holders and subordinated debt holders after the payment of operating expenses and senior debt over the same period.





4. Clean energy calls with clean energy principles

We propose these principles be the following:

- Energy resources include biomass, biogas, geothermal, heat, hydro, solar, ocean and wind
- Projects demonstrate free, prior and informed First Nation consent
- Projects offer equity opportunities for First Nations and rural communities
- Calls are framed in regional strategies to ensure cumulative impact can be assessed, minimized, mitigated, and compensated. Transmission lines are developed and maintained in a coordinated manner.

In 2013 Hydro Quebec announced its intent to acquire 800MW of wind power, including a 150 MW block reserved through a dedicated purchase program for the three Mi'gmaq First Nations of Québec and a 450 MW block to be awarded through a request for proposals process targeting projects developed by local communities and cooperatives in partnership with private developers. We would like to see BC Hydro think along these lines.

5. First Nations enhance their capacity to derive benefit from clean energy projects

- First Nations need to improve their access to capital to invest in clean energy projects
- First Nations need to ensure they enter into good agreements with industry proponents
- First Nations need to network to gain a shared understanding of the potential and pitfalls of clean energy projects



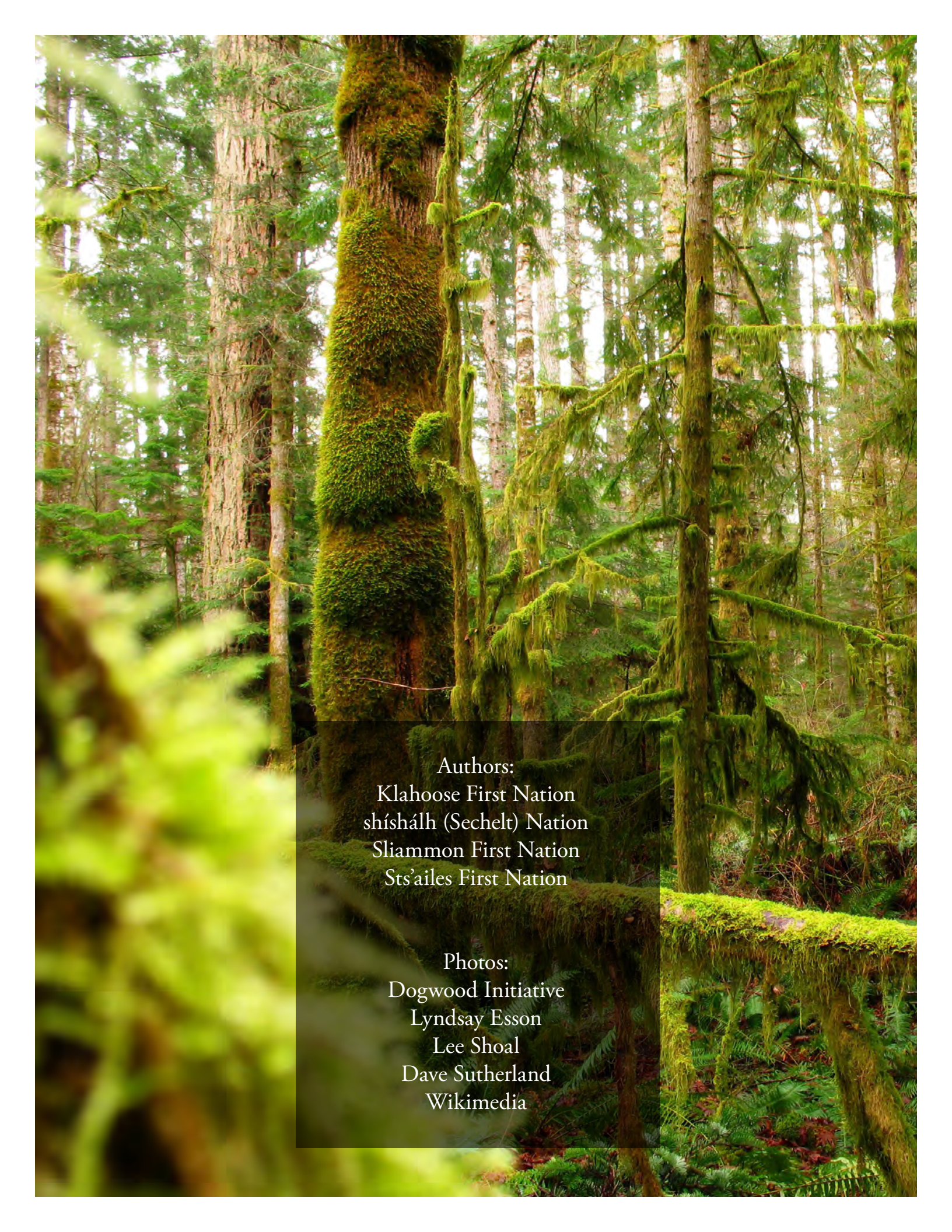


Action

We call on the First Nations of this province, and all British Columbians, to join us as we put forward our clean energy vision to the government. The public is best served if BC's electricity needs are fulfilled incrementally by clean energy projects rather than by embarking on a mega-project that will inundate the fertile plains of the Peace River Valley. If BC is to host an LNG industry, then let us hold the Premier to her promise to make it the cleanest in the world.

The clean energy projects that can supply the electricity the Province requires must be constructed with the consent and participation of First Nations. BC Hydro's Standing Offer Program and its Clean Energy Calls need to be structured so that our consent and participation are facilitated meaningfully.

First Nations in British Columbia will work with each other and with all those who support us to ensure that our lands and waters are protected, that our resources are developed responsibly and that the benefits of development are distributed fairly.

A photograph of a dense forest with moss-covered tree trunks and branches. The scene is lush and green, with a mossy log in the foreground. The text is overlaid on a semi-transparent dark grey box in the lower center of the image.

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