

9 The Site C Dam and the Political Barriers to Renewable Energy

Overview

Before entering politics, Andrew Weaver was a University of Victoria climate scientist with a considerable global reputation. When the government of British Columbia was making plans to announce its intention to proceed with a large hydroelectric dam in northeastern British Columbia in 2010, staff invited Weaver to attend the elaborate 2010 media event in Hudson's Hope, in the Peace River region. As a climate expert who was an enthusiastic supporter of the project, the staging put Andrew Weaver just behind the premier. But he changed his position upon becoming British Columbia's first elected legislator from the Green Party.

Weaver gave two reasons for the change. First, he said that the economic case has changed as the project has become more expensive, demand growth has not materialized as predicted, and the costs of alternatives have fallen. Second, he developed an appreciation of the impacts on the region's Indigenous people. He told *Globe and Mail* reporter Justine Hunter: "To be blunt, one of the things I didn't consider back when I was a climate scientist, thinking about nothing but climate science, was the issue of First Nations' rights and title" (Hunter 2017b).

Addressing the climate crisis involves a rapid phaseout of carbon-emitting fossil fuels and an accelerated adoption of clean energy technologies. Environmentalists and First Nations have focused much of their energy on resisting new fossil fuel infrastructure, under the banner of "keep it in the ground." In the cases presented thus far in this book, these conflicts have pitted the government of Alberta and the oil sector, which seek expanded market access, against environmentalists and First Nations, who are concerned about climate change, local and regional environmental impacts, and

Indigenous rights and title. This coalition has proven to be surprisingly formidable at halting or delaying new pipelines.

But does this “keep it in the ground” movement, paradoxically, risk the unintended consequence of feeding place-based resistance to renewable energy infrastructure and thus to the necessary clean energy transition? Hydropower dams, utility-scale solar and wind facilities, and high-voltage transmission lines necessary to integrate renewables into the grid have all faced determined resistance from place-based groups (Cleland et al. 2016; Batel et al. 2013; Devine-Wright 2009; Fast 2013). Does the decision to ally so closely with place-based opponents risk creating a “resistance dilemma” by legitimizing place-based resistance that can then be mobilized to thwart needed clean energy infrastructure? This question is addressed in two parts. First, this chapter does a deep dive into one high-profile conflict that links the western Canadian pipeline conflicts to the clean energy transition debate. Second, chapter 11 will explore this potential resistance dilemma in more detail by examining a broader range of cases.

This chapter begins the exploration of this question by examining the case of a large “clean energy project,” the Site C Dam, which is a C\$10 billion, 1,100-megawatt project in northeastern British Columbia. Despite the potentially enormous benefit of producing low-carbon electricity for generations, this dam has been contested by virtually the same coalition that opposes new oil sands pipelines. Despite this opposition, the project was approved by the governments of British Columbia and Canada in 2014, and construction started in mid-2015. That approval was confirmed after the 2017 British Columbia election brought to power a new government highly skeptical of the Site C Dam that later went on to endorse the project. A number of legal challenges to the project have been rejected by Canadian courts. As of December 2020, the project was threatened by revelations of new geo-technical problems.

The first section of this chapter reconsiders the book’s analytical framework as focus shifts from oil sands pipelines to renewable energy projects. The second section provides a brief overview of the project and the underlying controversies. The third section provides an overview of the major actors in the controversy. In the fourth section, the content of ideas at work in this case is explored through a discussion of public opinion and media framing of the dispute, followed by an overview of the institutional rules and conflicts. The fifth section provides an analysis of how the environmental assessment

processes dealt with the most important economic and environmental issues. After that, the implications of the 2017 British Columbia election are addressed, along with the evolution and status of court cases against the project. The chapter concludes by considering what this controversy reveals about the political challenges of the clean energy transition.

Analytical Framework

One of the main ideas guiding this book is that, in the case of oil pipelines at least, it is most useful to think about the relative power of project opponents as a function of four variables:

1. The salience of place-based, concentrated risks and benefits;
2. Whether opposition groups have access to institutional veto points;
3. Whether the project can take advantage of existing infrastructure;
4. The geographical separation of risks and benefits.

Are these same four factors at work in the case of low-carbon energy infrastructure? For the first three factors, the answer is a definite yes. Whether renewable projects pose risks to salient, place-based values is also very relevant to the magnitude and intensity of opposition they could activate. As chapter 10 will show, much of the controversy regarding wind and transmission lines is precisely about how they would alter places valued by communities. Solar and wind plants have also generated opposition because of sensitive ecological habitats.

With respect to the accessibility of institutional veto points, the rules and decision-making structures surrounding clean energy projects are critically important. Indeed, as we'll see in chapter 10, one of the most important institutional conflicts over renewable energy projects has been whether local governments, which are understandably likely to be concerned about localized project impacts, have the ability to block projects through zoning or other policies. Third, like pipelines, if renewable energy projects can take advantage of existing infrastructure, their visual and landscape impacts are likely to be less.

The application of the fourth factor, the geographical separation of risks and benefits, is more complex but an important feature of the project's politics. Many renewable energy projects have the potential to be sited in proximity to where the power will be used, which would concentrate the

risks and benefits in the same place. But the desire to take advantage of the most favorable locations for renewable power generation means that they are often distant from the source of demand, which creates a clear and potentially divisive separation of risks and benefits.

Transmission lines are essentially pipelines for electrons. Their risks to water and land are much lower, but their aesthetic impacts, if they are built above ground, are typically much greater. Like oil pipelines, transmission lines are long, thin, linear projects that therefore affect a number of communities and potentially different subnational or even national jurisdictions. In many cases, transmission lines have attracted more resistance than new renewable power facilities themselves, so indeed all four of these factors are also very important in determining the strength of resistance to renewable energy infrastructure.

While many aspects of a large dam like Site C are different from the long, linear infrastructure of pipelines or transmission lines, this project is also characterized by opposition access to veto points; the presence of existing development and infrastructure; salient, place-based risks; and a significant geographic separation of risks and benefits. Project opponents worked hard to influence elections so that sympathetic parties could control the British Columbia government, lobbied relentlessly to have the project referred to an independent regulator, and made liberal use of the courts. In comparison to other renewable energy projects, big dams have a distinctively large impact in one region, potentially intensifying the degree of opposition from affected interests. The adverse environmental impacts of this dam are focused in the Peace River region of northeastern British Columbia, while the benefits will be felt in distant load centers. Unlike many of the pipeline projects, however, both the risks and benefits are largely felt within one subnational jurisdiction.

Background on the Project and Controversy

The Site C project would be the third dam in a system of hydro reservoirs on the Peace River in northeastern British Columbia (Cox 2018, 80–88). The WAC Bennett Dam was completed in 1968 and provides 2,730 megawatts of power. Downstream, a second dam, the Peace Canyon Dam, was completed in 1980 and provides 700 megawatts of power. The Site C Dam has been on and off the province's energy agenda several times since 1980, when BC Hydro first formally submitted an application to proceed with the project.

But that effort was rebuffed when the project was rejected by the British Columbia Utilities Commission in 1982 because BC Hydro had not provided “(1) an acceptable forecast that demonstrates that construction must begin immediately in order to avoid supply deficiencies and (2) a comparison of feasible alternative system plans demonstrates, from a social benefit-cost point of view, that Site C is the best project to meet the anticipated supply deficiency” (British Columbia Utilities Commission 1983, 9–10).

Formal interest in the project was rejuvenated by Premier Gordon Campbell in the 2007 Energy Plan, which said the province “will enter into initial discussions with First Nations, the Province of Alberta and communities to discuss Site C” (Government of British Columbia 2007). In April 2010, Campbell announced that he was instructing BC Hydro to move forward with the project (Government of British Columbia 2010; Cox 2018, 7–17). BC Hydro submitted its project description to the British Columbia Environmental Assessment Office (BC EAO) in May 2011, and in August 2011 both the BC EAO and the Canadian Environmental Assessment Agency accepted the project for review.

Extensive hearings conducted by the Joint Review Panel revealed three significant sources of opposition. First, Aboriginal groups in the region have long been strongly opposed to the project and have raised concerns in multiple venues about whether the decision process that led to the project’s approval is a violation of their treaty rights. Second, local and provincial environmental groups have opposed the project because it would flood regionally valuable agricultural land and have significant impacts on fish and wildlife habitat in the region. Third, a variety of groups, including clean energy firms, major industrial consumers, environmental groups, opposition Members of the Legislative Assembly (MLAs), and a variety of independent experts, have raised concerns about whether the project is justified, given future projections of electricity demand, and whether it is excessively costly in comparison to alternatives (Behn and Bakker 2019).

The Joint Review Panel issued its report on May 1, 2014. Both the federal and the provincial governments issued approvals for the project in October 2014, and the British Columbia government approved the project for construction in December 2014 (Government of British Columbia 2014). Despite a number of legal challenges, BC Hydro initiated construction in late July 2015, with an expected completion date of 2024. Premier Clark, who was in power at the time, famously vowed to push the project “past

the point of no return” (Palmer 2017). A significant number of legal challenges to the approval decision have been dismissed. Despite the defeat of the Clark government, the New Democratic Party (NDP) agreed to continue construction after an agonizing period of review. However, one First Nations’ claim in court that their treaty rights have been infringed has yet to be resolved.

Actors

The political economy of this project is distinct from many others because the proponent, BC Hydro, is a wholly state-owned enterprise of the government of British Columbia. This makes the government the primary proponent. In addition to the usual critics of megaprojects within the environmental and Aboriginal communities, the project has also been opposed by private-sector industrial interests.

Government

The most important government actor in this case is the government of British Columbia, as both the authoritative decision-maker for the project and owner of BC Hydro. The core interest of the political branch of government is reelection. An affordable, reliable electricity supply is critical to maintaining public confidence in the government. As the project proponent, the provincial government has a vital stake in the economic benefits flowing from the project and the avoidance of negative financial, environmental, or social impacts that could provoke voter backlash. In its modern incarnation, the project was proposed by Premier Gordon Campbell, who had an ambitious agenda to be a recognized leader on climate change and clean energy (Cox 2018, 80). When Clark took over in 2013, she didn’t advance the climate agenda but enthusiastically embraced the Site C Dam.

When Clark’s BC Liberals fell from power after the May 2017 election, the position of the government of British Columbia softened. The NDP, skeptical of the project’s economic merits, campaigned to have the project reviewed by the British Columbia Utilities Commission, an independent regulatory body. Their minority government was supported by the British Columbia Green Party, which wanted the project canceled outright (Hunter 2017a). The Confidence and Supply Agreement between the two parties sided with the NDP position (BC Green Caucus and BC New Democrat Caucus 2017),

but in the end, as will be discussed, the NDP reluctantly chose to continue with the project.

The government of Canada has jurisdiction over fisheries and navigable waters, so it shared regulatory responsibility for the project's review and approval. Given its stance favoring resource development, the Harper government was generally supportive of the project, and it never became a source of tension between the federal and provincial governments. The government of Alberta has stakes in the project because of the potential for downstream impacts to the spectacular Peace-Athabasca Delta. While it did register as an intervenor, significant interprovincial conflict never emerged. The province's submission raised concerns about downstream changes in hydrological flows and impacts on fish, but these concerns were addressed through required minimum flow requirements and commitments to consultation (Joint Review Panel 2014). Antidam opponents sought to elevate the importance of the downstream impacts of the project on Wood Buffalo National Park, a UNESCO World Heritage Site (Cox 2018, 108; UNESCO 2017). But neither the government of Alberta nor the federal government were sufficiently concerned about those impacts to challenge the project's approval. Local governments in the Peace region have stakes in the project but have not emerged as antagonists in this case.

Environmentalists

The core interest of environmentalists is to minimize the environmental effects of providing energy services. The Site C project had the potential to be a divisive wedge within the British Columbia environmental community. On the one hand, it is a renewable, non-fossil fuel energy source that has the potential to generate large quantities of low-carbon electricity, with the added benefit of being able to store electricity to help manage intermittent renewables. For that reason, it could attract support from climate activists and clean energy advocates, which play a substantial role in the British Columbia environmental movement (Shaw 2011). But it is also a large dam that inevitably alters river flow and habitat for both aquatic and terrestrial species, so it is no surprise that many environmentalists would have significant concerns about it (Cox 2018, chapter 4).¹

However, Site C has not created these divisions. Despite being a "clean energy" project, Site C has provoked widespread opposition from many of the same actors that oppose new "dirty energy" oil sands pipelines. Table 9.1 lists the main British Columbia environmental groups opposing the

Table 9.1

Environmental groups opposing the Site C Dam, March 2017

| Group name | Facebook likes | Twitter followers |
|---|----------------|-------------------|
| Peace Valley Environmental Association | 2,538 | 3,088 |
| Sierra Club of British Columbia | 9,813 | 7,705 |
| David Suzuki Foundation | 480,977 | 146,000 |
| Wilderness Committee | 7,924 | 9,519 |
| British Columbia Sustainable Energy Association | 3,254 | 5,669 |
| West Coast Environmental Law | 6,493 | 13,200 |
| Pembina Institute | 5,737 | 20,576 |
| Dogwood British Columbia | 30,963 | 12,354 |

project. The lead local group in opposition is the Peace Valley Environmental Association, which receives strong support from the broader British Columbia environmental community.² The project is also opposed by the Wilderness Committee, Sierra Club of British Columbia, LeadNow, the David Suzuki Foundation, and the British Columbia Sustainable Energy Association. In an email to supporters, LeadNow denounced the project this way: “Government and industry are calling this dirty energy export strategy a ‘clean’ energy plan. In reality, it’s anything but clean. Their plan would use taxpayer dollars to flood critical wildlife habitat, destroy prime agricultural land, poison groundwater across BC and drive up our province’s dangerous carbon pollution.” The Wilderness Committee’s statement of opposition reads as follows: “We can’t let this happen. The Site C Dam would destroy critical ungulate habitat that has sustained wildlife that has supplied generations of First Nations people with food and cultural sustenance for thousands of years. It will destroy one of the largest and most important wildlife corridors on the continent, and submerge valuable carbon sinks instead of promoting food security and the need to adapt to climate change” (Wilderness Committee, n.d.).

The British Columbia environmental community is not opposed to new energy projects, clean or dirty, across the board. Indeed, in 2009, a conflict erupted among British Columbia environmentalists over small “run of river” hydro projects proposed by the private sector. Many groups opposed the new “independent power projects,” both because they threatened public control over the electricity system and because of their risks to fish habitats and recreational resources. But when the 2009 provincial election campaign

started, a coalition of three influential environmental groups—ForestEthics, the David Suzuki Foundation, and the Pembina Institute—made statements supporting the climate policies of Gordon Campbell. Tzaporah Berman, of then ForestEthics, explicitly endorsed the need for some new energy projects to foster the clean energy transition (Berman 2011, 253–259). This came as a huge surprise to many other British Columbia environmentalists who were launching campaigns to support the British Columbia NDP because of Campbell's support for independent power projects and created a significant rift within the environmental community (Shaw 2011).

But Site C is different for three reasons. It is a large dam that concentrates environmental effects in one area. As a result, it magnifies place-based impacts more than smaller independent power projects did. Second, at various times British Columbia government officials justified the project as a source of power for expanded fossil fuel production, either liquefied natural gas (LNG) within British Columbia (Cox 2020a) or the oil sands across the border in Alberta (Linnitt 2016). It is strongly opposed by the local First Nations. In their pipeline resistance campaigns, environmentalists have regularly used the threat to First Nations rights and title as a critical argument against the projects. It would undermine their credibility, and their alliance with First Nations, if they turned a blind eye to the same concerns expressed about a clean energy project (as several people told me in personal interviews).

Industry

Industry interests in energy projects are divided between those who supply energy services and those who are large consumers. Suppliers in the energy industry have an interest in expanding revenues and profits. For major electricity consumers, their core interest is in minimizing the cost and maximizing the reliability of energy services. The Site C Dam comes with a different political economy than industry-led energy projects. In this case, the project's proponent is the government of British Columbia, through BC Hydro. Major industry groups, in contrast, have either been generally skeptical or explicitly opposed.

The province's construction industry has been understandably enthusiastic about the project (Penner 2014). The project was a major blow to the clean energy industry, which had benefited so strongly from Premier Campbell's promotion of independent power projects throughout the first decade of the new millennium (Hoberg 2010). Premier Clark's choice to privilege a government-led project over soliciting proposals from the private sector

virtually eliminated the prospects for new independent power projects for the foreseeable future. This sector's trade association, Clean Energy BC, has been strongly opposed to the dam project from the outset. It commissioned and publicized several studies emphasizing the economic and social benefits of relying on dispersed renewables instead of a hydro megaproject (Palmer 2014; London Economics International 2014). The Association of Major Power Customers of British Columbia, which represents "about 20 of the largest employers and industrial customers in the province," has strongly opposed the project out of concern that its high costs will put further pressure on electricity rates (Lavoie 2014).

First Nations

The Site C Dam has been strongly opposed by area First Nations for some time. The affected region is covered by Treaty 8, established in 1899. Both the Treaty 8 Tribal Association and individual First Nations under the treaty have undertaken legal action against the project. The two most active groups have been the Prophet River First Nation and the West Moberly First Nation. The treaty provides for the Aboriginal right to hunt, trap, and fish throughout the territory but also provides for land to be "taken up from time to time for settlement, mining, lumbering, trading or other purposes" by the Crown (Treaty 8 Tribal Association 1899).

The Treaty 8 Tribal Association issued a declaration opposing Site C in 2010 (Treaty 8 Tribal Association 2011). Prophet River and West Moberly have challenged the approval decision in both provincial and federal courts, but thus far with no success (see the discussion of court actions). West Moberly has also been very concerned about the pace of natural gas development in the Fort St John region of the province as a result of the Clark government's aggressive push to establish an LNG industry. West Moberly's chief, Roland Willson, has sought to leverage the Supreme Court's *Tsilhqot'in* decision to issue an ultimatum to the British Columbia government. He explained that his people are not opposed to resource development but that the province was pushing too many projects in his territory: "I've said you can't have both. If you want to push Site C, we're not going to be in favour of any LNG projects, any of the pipeline projects up there. We don't want to be there but if that's the case, we don't have any other choice" (Moore 2014).

The provincial and federal governments did carry out an extensive consultation process with First Nations in the area, beginning before the environmental assessment process was triggered and continuing through the

approval decisions by the two governments. A summary of the governments' efforts is contained in the joint Consultation and Accommodation report, released in September 2014 (Government of Canada and Government of British Columbia 2014). The report describes the Crown's obligation in these terms: "When intending to take up lands, the Crown must exercise its powers in accordance with the Crown obligations owed to the Treaty 8 First Nations, which includes being informed of the impact of the project on the exercise of the rights to hunt, trap and fish, communicate such findings to the First Nations, deal with the First Nations in good faith, and with the intention of substantially addressing their concerns" (Government of Canada and Government of British Columbia 2014, 29).

The report concluded that "consultation has been carried out in good faith and that the process was appropriate and reasonable in the circumstances." It argues that accommodation has been provided through project modification and conditions, and offers of impact-benefit agreement that include land transfers and multimillion-dollar compensation payments. BC Hydro claims that "these measures would offset the residual effects of the proposed Project if it is authorized by Governments to proceed" (Government of Canada and Government of BC British Columbia 2014, 67).

Despite the extensive engagement with First Nations, there is no indication in the record that the government ever offered area First Nations leadership or equity in the project. It is not clear whether such efforts would have changed the position of the most affected First Nations, but a comparative study of contested energy infrastructure projects across Canada concluded that, of the projects it considered, one of the few projects to gain social acceptance gained this acceptance because the government proponent made local First Nations partners in the project. In developing the Wuskwatim hydroelectric project, the government of Manitoba was able to shift the position of the Nisichawayasihk Cree Nation from strongly opposed to accepting of the project by making them partners and co-owners in the project (Cleland et al. 2016).

In the case of the Site C Dam, the West Moberly was not moved by the government's offers of compensation. Chief Roland Willson responded that, "We maintain our view that it is simply not possible to adequately compensate our community for the permanent destruction of the Peace River Valley" (Government of Canada and Government of BC British Columbia 2014, 67). Some First Nations, however, have accepted compensation packages. In March 2017, BC Hydro announced it had entered agreements with the Doig River

First Nation and Halfway River First Nation, both of which had originally opposed the project. The agreements include “a lump sum cash payment, a payment stream over 70 years, procurement opportunities, the selection and transfer of provincial Crown lands and commitments respecting certain land management initiatives” (BC Hydro 2017). Similar agreements have been signed with the McLeod Lake Indian Band, Saúlteau First Nations, and Dene Tha’ First Nations (BC Hydro 2016a; BC Hydro 2016b; BC Hydro 2015).

Academics

As is becoming increasingly common in the contested sphere of Canadian energy and environmental politics, groups of academics have also chosen to weigh in on the Site C controversy, with strong opposition to the project. An initiative was led by University of British Columbia (UBC) professor of geography Karen Bakker, who chairs the Program on Water Governance. Working with several consultants and UBC law professor Gordon Christie, Bakker was able to assemble over 200 scientists to sign a letter opposing the project. The statement focused mostly on issues of Aboriginal rights and the economic justification for the project. It called for the federal government to revisit its decision and to make a determination on whether Aboriginal treaty rights were infringed and, if so, whether that infringement was justified. It called on “both governments to explain why the unprecedented imposition of numerous significant adverse environmental effects is justified by a Project whose electricity output is presently unnecessary and for which less expensive and less environmentally damaging alternatives exist.” It called on the British Columbia government to refer the project for review to the British Columbia Utilities Commission, and it urged both governments to suspend issuing any additional permits until the First Nations’ challenges have been resolved by courts (Site C: Statement by Concerned Scholars 2016).

In what seems to be an unprecedented move, the Royal Society of Canada added its weight to the letter. The supporting letter to Prime Minister Trudeau is authored by Maryse Lassonde, the president of the Royal Society, and states: “A group of Canadian scholars, including several members of the Royal Society of Canada, have raised serious concerns regarding the process used for approval. . . . As President of the Royal Society, I am in agreement with the key issues they raise” (Lassonde 2016). That letter suggests her support was as an individual in her capacity as society president, but another page on the society’s website suggests that it is an action of the society as a whole: “A group of leading Canadian scholars has raised serious concerns regarding

the process used to approve the mega dam called Site C. The Royal Society of Canada has taken the unusual step of issuing a separate supporting letter addressed to Prime Minister Justin Trudeau" (Royal Society of Canada, n.d.).

While it is always a challenge to assess the influence of such letters, the statement was widely reported in the media and added weight to the message of environmentalists, First Nations, and local activists questioning the project's justification.

Public Opinion

While opposition to the Site C project among First Nations and environmentalists has been very strong, that opposition does not seem to have resonated with the British Columbia public in the same way that the oil sands pipelines have. Unfortunately, there does not seem to be any publicly available polling on Site C that is independent of the proponents or known critics prior to the 2017 election. However, BC Hydro commissioned surveys from Abacus from 2013 to 2016. As figure 9.1 shows, awareness of the project has been relatively high, especially since it was authorized in late 2014. Figure 9.2

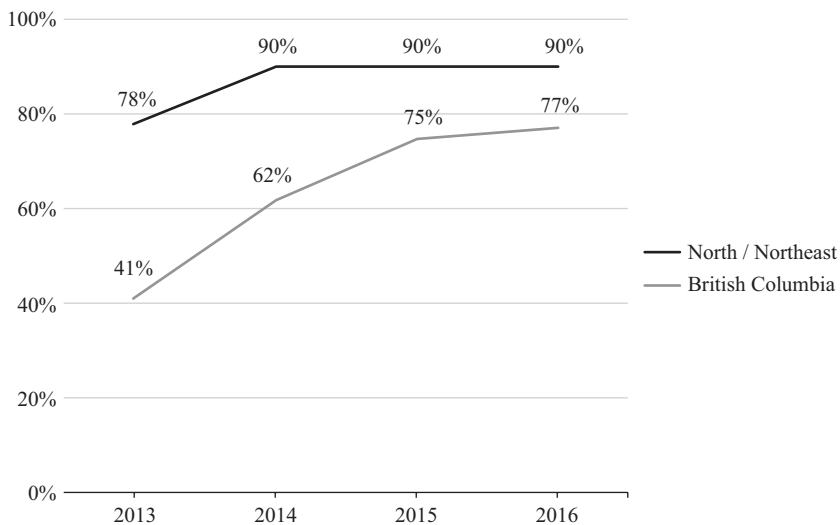


Figure 9.1

Awareness of Site C Dam project measured by responses to the following question: "Have you seen, read or heard anything about BC Hydro's proposed new dam, known as Site C, near Fort St. John?" *Yes Only.

Source: Abacus Data (2016b).

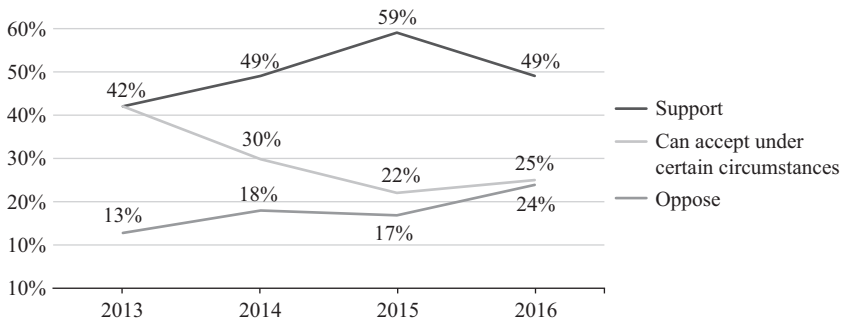


Figure 9.2

Support for Site C Dam project measured by responses to the following question: “Is the idea of building Site C, a new hydroelectric dam, to help meet the rising demand for electricity in BC, an idea you support, can accept under certain circumstances, or oppose?”
Source: Abacus Data (2016b).

shows levels of support. The project received support from 59% of the public in 2015, although it dropped back down to 49% in 2016. Opposition rose slightly from 18% in 2014 to 24% in 2016 (Abacus Data 2016b).

The other pre-2017 publicly available poll was commissioned by DeSmog Canada, an environmentally oriented online news magazine. Figure 9.3 shows its core result. When respondents are informed about changes in BC Hydro’s demand projections, support for referring the project to independent review was quite high. Province-wide, 73% supported an independent review, while only 18% opposed it (Insights West 2016b).

The poll “found more British Columbians outright oppose the dam (44 per cent, 21 per cent strongly) than support it (39 per cent, 11 per cent strongly)” (Insights West 2016b). BC Hydro issued a media release denouncing the poll for errors. In particular, it challenged the core framing of the question that new power would not be needed until 2028, saying, “In fact, our load forecast indicates that without Site C, British Columbia would already have a capacity deficit of 8-per cent and an energy deficit of 2-per cent within 10 years” (BC Hydro 2016c).

The dueling polls demonstrate the obvious fact that survey responses are highly dependent on how the questions are posed. When the support/oppose question is framed in terms of meeting future electricity needs, support can be quite high. When the question is framed in a way that suggests the electricity will not be needed, support can be exceeded by opposition. In comparison to the pipeline cases, only the most critical framing can get

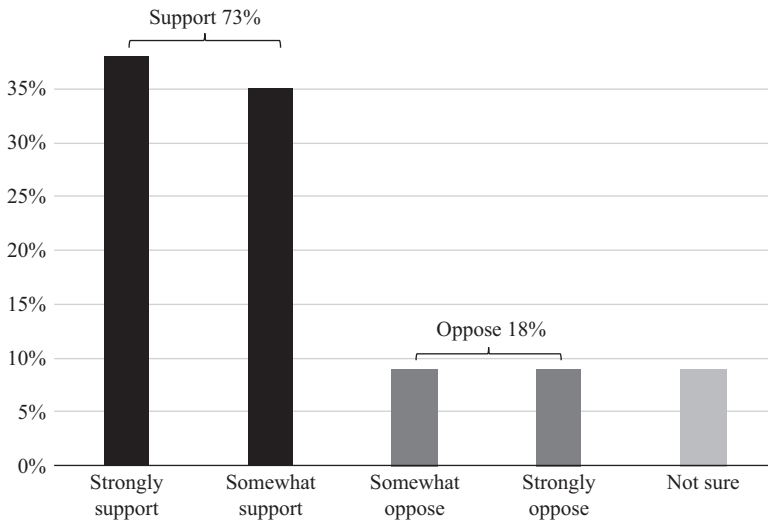


Figure 9.3

Results of DeSmog Canada poll of support for independent review of Site C Dam in response to the following question: “BC Hydro’s projections indicate that the province will not need new power until 2028 at the earliest. The panel that reviewed Site C called for the demand case and cost to be examined in detail by the province’s independent regulator. Thinking about this, do you support or oppose sending the Site C dam for an independent review of both costs and demand?”

Source: Insights West (2016b).

opposition up to levels found in more “neutral” surveys about the pipelines. Opposition to the Trans Mountain Expansion Project has vacillated between 36% and 57% (Insights West 2018).

After the 2017 provincial election, a plurality remained in favor of continuing construction. A September 2017 poll showed those in favor of completing the project exceeded those opposed by a 45% to 27% margin (Angus Reid Institute 2017). A poll shortly after the NDP’s decision to continue with the project showed that 52% thought the government made the right decision and 26% thought it was the wrong decision (Angus Reid Institute 2018a).

Issue Framing

Like the two West Coast oil sands pipelines, Site C has been a major issue in provincial politics and has received an enormous amount of media

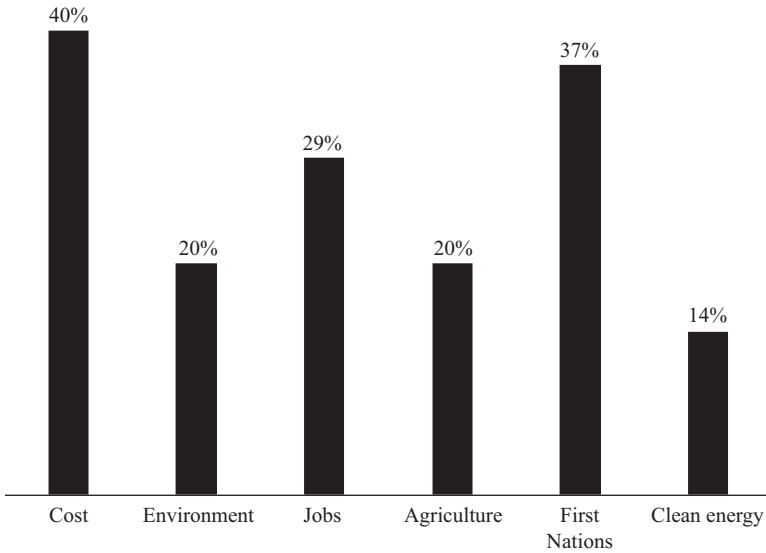


Figure 9.4

Percentage of total media mentions of the Site C Dam that name specific issues.

attention. The highest number of annual Site C mentions in the Canadian Newsstream database was 1,166 in 2016. That's very close to how prominent the Trans Mountain Expansion Project was in its peak year (1,860 mentions in 2016) but not nearly as prominent as Northern Gateway was at its peak in 2012, at 6,842 mentions.

Figure 9.4 analyzes what issues have been emphasized by the media in its reporting on Site C. The figure shows the percentage of media stories in the Canadian Newsstream database mentioning Site C that also mention six categories of issues: "cost"; "environment" or "environmental"; "agriculture," "agricultural," or "farm"; "First Nations"; and "clean energy." The results show that the two most prominent issues for the media have been project costs and issues with First Nations, with job benefits coming in third. Issues about environmental impact and loss of farmland were about half as prominent compared to costs and First Nations.

Institutions and the Politics of Structure

As discussed in previous chapters, institutional arrangements are critical to the balance of power over public policy because they specify who has

decision-making authority and the rules of decision-making and participation. Because of their importance, strategic actors frequently struggle to reshape institutions to advance their interests (Baumgartner and Jones 2010). In the case of Site C, this “politics of structure” (Moe and Wilson 1994) centered around three major institutional issues: (1) the allocation of authority between the province and the federal government, (2) whether the project would be subject to review by an independent regulator, and (3) First Nations rights and title.

Interjurisdictional Agreement

The Site C Dam project was reviewed and approved in the Harper era. That government’s emphasis on “responsible resource development” encouraged interjurisdictional cooperation in the regulatory review of major energy projects (Hoberg 2016). In the case of Site C, there was an agreement that the British Columbia Environmental Assessment Office and the Canadian Environmental Assessment Agency would cooperate on the project’s review. In February 2012, the two agencies signed an intergovernmental agreement to conduct a joint review of the project.

The Joint Review Panel agreement provided that the provincial and the federal governments would each appoint one member, and the two governments would jointly agree on the chairperson. The terms of reference charged the panel with, among other things, assessing

- the purpose of and need for the project;
- alternatives to the project; and
- the environmental, economic, social, health, and heritage effects of the project, including the cumulative effects.

The agreement required the panel to report on issues of Aboriginal concern but expressly forbade the panel from making any findings about Aboriginal rights and title and the government’s duty to consult. Section 2.5 of the agreement states:

The Joint Review Panel will not make any conclusions or recommendations as to:

- (a) the nature and scope of asserted Aboriginal rights or the strength of those asserted rights;
- (b) the scope of the Crown’s duty to consult Aboriginal Groups;
- (c) whether the Crown has met its duty to consult Aboriginal Groups and, where appropriate, accommodate their interests in respect of the potential adverse effects of the Project on asserted or established Aboriginal rights or treaty rights;

- (d) whether the Project is an infringement of Treaty No. 8; and
- (e) any matter of treaty interpretation. (Minister of the Environment, Canada and Minister of the Environment, British Columbia 2012)

Because the risks and benefits of the project are largely contained within the province of British Columbia, intergovernmental conflicts have not emerged as a significant issue on the project.

Insulation from Independent Regulator

In electricity regulation, the respective roles of elected politicians and independent regulators in energy planning and regulation are frequently fought over. British Columbia has an independent regulatory agency, the British Columbia Utilities Commission, charged with reviewing rates, long-term plans, and project justification and financing. As mentioned, the British Columbia Utilities Commission reviewed and rejected the Site C Dam in 1982. The agency became a thorn in the side of the government of Premier Gordon Campbell when it rejected the government's Long Term Acquisition Plan (LTAP) in 2008. The British Columbia Utilities Commission ruled that several critical parts of the plan were not adequately supported by rigorous economic analysis (Hoberg 2010).

Campbell responded by stripping the British Columbia Utilities Commission of much of its authority in the 2010 Clean Energy Act. The commission's authority to review electricity rates and long-term plans was removed, as was its authority to review several major projects—among them the Site C Dam. Because of this, the government has more discretion to move ahead with desired projects even if they can't be justified on economic grounds. Understandably, since costs have been such a dominant issue for the project, project opponents have been highly critical of this decision and have demanded that the project be submitted to the British Columbia Utilities Commission for review. But Premier Clark maintained her predecessor's position of refusing to have the project reviewed by the commission. When the NDP came to power in 2017, it made good on its campaign commitment to refer the project for a nonbinding review by the British Columbia Utilities Commission.

Shifting the Venue to the Courts

As in most major energy infrastructure issues in Canada, the role of First Nations in project decision-making has been enormously controversial in

the case of the Site C Dam. Several of the region's First Nations remain adamantly opposed to the project and are challenging it in court. The evolution and status of these cases is discussed later in the chapter.

Project Decision-Making and Status

The Joint Review Panel's review process was highly formal and involved extensive documentation and detailed hearings. Recall that three major issues have dominated the Site C controversy: environmental impacts, including the loss of farmland, the economic justification for the project, and First Nations issues. This section reviews how environmental and economic issues were addressed throughout the project review process. First Nations issues were dealt with earlier, in the section on actors, and will be revisited in the section on litigation.

Environmental Impacts

Large dams flood valley bottoms and inevitably cause significant environmental impacts. There's no denying that fact, and BC Hydro did not deny this. Their environmental impact statement states that, "The conclusion of the substantial work undertaken to date indicates that the effects of the Project can largely be mitigated through careful project planning, comprehensive mitigation programs and ongoing monitoring during construction and operations. As a result, the Project is unlikely to result in a significant adverse effect on most of the [valued components—VCs]. However, a determination of significance has been made for the following VCs." The environmental impact assessment then lists the following significant adverse environmental effects:

- Fish and fish habitat, particularly to three distinct sub-groups of species, "the migratory Arctic grayling in the Moberly River, the migratory bull trout that spawn in the Halfway River and mountain whitefish that rely on Peace River habitat"
- Wildlife Resources Habitat for certain endangered migratory birds: Canada, Cape May and Bay-breasted Warblers, Yellow Rail and Nelson's Sparrow
- Vegetation and Ecological Communities including a marl fen, tufa seeps, old and mature riparian and floodplain forests, and species at risk plants

- Current Use of Lands and Resources for Traditional Purposes including “the loss of some important multi-use, cultural areas and valued landscapes, including sites at Attachie, Bear Flats and Farrell Creek.” (BC Hydro 2013, 34)

The Joint Review Panel received a number of submissions that emphasized the severity of the environmental impacts of the dam. For the most part, the panel supported BC Hydro’s conclusions about whether effects were significant. One exception was on wetlands. In that case, the panel disagreed with the proponent’s claims that effects would not be significant (Joint Review Panel 2014, 64). The panel also concluded that the project was likely to pose significant risks to more sensitive and migratory species than BC Hydro claimed. In no case did the panel downgrade BC Hydro’s assessment of significance, and it upgraded it several times.

Economic Justification

BC Hydro centered its argument for the project on a forecast that electricity demand is “expected to increase by about 40 per cent over the next 20 years” and that Site C was required to meet this demand, even taking into account the province’s ambitious requirement of meeting two-thirds of new demand with conservation and efficiency. BC Hydro’s environmental impact statement compared the Site C option with two other portfolios: a “clean generation” portfolio consisting of wind, biomass, and run-of-the-river power and a “clean+thermal generation” portfolio that would build new natural gas plants. Its cost analysis concluded that the “Site C portfolio provided material ratepayer savings” compared to the two other options. Adjusted unit energy costs for Site C were C\$110 per megawatt-hour (2013 dollars) compared to the “clean generation” portfolio costs of C\$181 per megawatt-hour and “clean+thermal generation” costs of \$156 per megawatt-hour.

BC Hydro summarized the economic benefits this way:

As a clean, renewable resource, the Project would deliver electricity with very low GHG emissions per unit of energy produced. Emissions would be comparable to other renewable sources such as wind and run-of-river hydro. As such, the Project will support both provincial and federal GHG reduction strategies. In addition, the dependable capacity provided by the Project will facilitate the integration of additional renewables into BC Hydro’s system, supporting the Province’s clean energy strategy. (BC Hydro 2013, 37)

The utility made the case for the net benefits of the project as follows:

BC Hydro concludes that while the Project has the potential to result in some significant residual effects, they are justified by (1) the public interest served by delivering long term, reliable electricity to meet growing demand, (2) the employment, economic development, ratepayer, taxpayer, and community benefits that would result, (3) the ability of the Project to meet this need for electricity with lower GHG impact than other resource options, and (4) because the Project would take advantage of water already stored in the upstream reservoirs to generate over 35 per cent of the energy generated by BC Hydro's largest facility with only 5 per cent of the reservoir area. (BC Hydro 2013, 37)

It is important to note that neither of these concluding statements emphasizes the potential for Site C to add to British Columbia's capacity to support the integration of renewables in neighboring jurisdictions. The Joint Review Panel, however, did note these benefits at one point in describing BC Hydro's case for the dam's benefits (Joint Review Panel 2014, 273).³

The Joint Review Panel summarized the participants' views of the justification for the project, many of them critical. In a stunning assertion, it stated that "the Panel cannot conclude on the likely accuracy of 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." It seems that it was the panel's job to perform this analysis, but they clearly felt the capacity to do so was limited. This conclusion was used as a justification for its recommendation 46: "If it is decided that the Project should proceed, a first step should be the referral of Project costs and hence unit energy costs and revenue requirements to the BC Utilities Commission for detailed examination" (Joint Review Panel 2014, 280).

The panel viewed BC Hydro's load forecasting as "sound" but was critical of the fact that it was not accompanied by a "long-term pricing scenario for electricity and its substitutes" (Joint Review Panel 2014, 287). Reminiscent of the British Columbia Utilities Commission's critique of the 2008 LTAP, the panel also concluded that "demand management does not appear to command the same degree of analytic effort as does new supply" (Joint Review Panel 2014, 291). On balance, the panel did raise questions about the methodology used to compare alternatives but seemed satisfied in the end with the strength of the economic argument for the project, saying that "in the long term, Site C would produce less expensive power than any alternative" (Joint Review Panel 2014, 298).

The panel's final conclusions were, depending on your perspective, either contradictory or nuanced. On the one hand, the panel emphasized the

economic need for and benefit from the project: “The Panel concludes that B.C. will need new energy and new capacity at some point. Site C would be the least expensive of the alternatives, and its cost advantages would increase with the passing decades as inflation makes alternatives more costly.” On the other hand, it questioned the timing of the decision: “The Panel concludes that the Proponent has not fully demonstrated the need for the Project on the timetable set forth” (Joint Review Panel 2014, 305–306).

Government Response

Despite the mixed blessing of the Joint Review Panel, both the federal and the provincial governments issued approvals for the project. The British Columbia government issued an environmental assessment certificate in October 2014, and approved the project for construction in December 2014 (Government of British Columbia 2014). It did so despite the Joint Review Panel’s acknowledgment that it did not have the capacity to scrutinize the economic justification for the project and its recommendation to refer it to the British Columbia Utilities Commission. The government of Canada approved the project (with 80 conditions) in October 2014 (Canadian Environmental Assessment Agency 2014). As is now customary in federal government decisions on major projects where the assessment concludes that there are significant environmental impacts, the decision statement simply asserts that the adverse effects are “justified in the circumstances.” Despite a number of legal challenges, BC Hydro initiated construction in late July 2015, with an expected completion date of 2024.

2017 Election and the NDP Government

The May 2017 election produced a minority NDP government, supported by the three-member caucus of the Green Party. Acting on its campaign commitment and postelection agreement with the Greens, the government referred the project to the British Columbia Utilities Commission to perform an independent review in August 2017. The British Columbia Utilities Commission was not asked to redo a full assessment of the project’s merits but rather to assess the economic consequences of three options: (1) completing the project as planned, (2) suspending construction with the option to resume it later, and (3) terminating construction and remediating the site.

Despite the compressed timeframe, the commission heard from 304 speakers and received 620 written submissions. The process revealed the same

pattern of interests and positions as the Joint Review Panel had found. Environmentalists (and the academics supporting their arguments) emphasized that BC Hydro's demand forecast was outdated and exaggerated, and that the cost of alternatives had declined significantly. The clean energy industry pushed the same arguments, and major power consumers continued to stress their opposition to the project because of concerns about increased industrial rates. The construction industry continued its enthusiastic support for the project, and BC Hydro did its best to defend the project's merits.

As anticipated, the commission was not impressed with the project's economics. It did not think the project would be completed on time or within its C\$8.3 billion budget, projecting that completion would cost over \$10 billion. It warned against taking the suspend-and-restart option seriously, concluding that it was by far the least desirable of the options economically and practically. The costs to terminate and remediate were calculated to be C\$1.8 billion, on top of which the costs of replacement energy would need to be added. The commission agreed with many of those submitting evidence that BC Hydro's demand forecast was "excessively optimistic." The key conclusion, and the closest it came to a recommendation, was the statement that "the Panel believes increasingly viable alternative energy sources such as wind, geothermal, and industrial curtailment could provide similar benefits to ratepayers as the Site C project at equal or lower Unit Energy Costs" (British Columbia Utilities Commission 2017, 3).

Making the Best of a Bad Deal: The NDP Government Commits to Site C Completion

In the wake of the British Columbia Utilities Commission's report, a number of commentators were confident it gave the NDP government the ammunition it needed to terminate the project (Cox 2018, 250). But on December 11, 2017, NDP premier John Horgan, appearing uncharacteristically dour, announced that his government had decided to complete the Site C Dam project.⁴ In making the announcement, Horgan made clear his opinion of the previous government and the "terrible situation" in which his government found itself:

It's clear that Site C should never have been started. But to cancel it would add billions to the Province's debt—putting at risk our ability to deliver housing, child care, schools and hospitals for families across B.C. And that's a price we're not willing to pay.

We will not ask British Columbians to take on \$4 billion in debt with nothing in return for the people of this province and, even worse, with massive cuts to the services they count on.

The old government recklessly pushed Site C past the point of no return, committing billions of dollars to this project without appropriate planning and oversight. Our job now is to make the best of a bad deal and do everything possible to turn Site C into a positive contributor to our energy future. (Government of British Columbia 2018)

Critics objected to Horgan's assertion that the project's sunk costs (C\$2.1 billion spent and \$1.8 billion in remediation costs) would need to be imposed on ratepayers or taxpayers in the short term, but Horgan obviously felt boxed in by how far the project had progressed before he formed a government. Politically and fiscally, Christy Clark had succeeded in pushing the project "past the point of no return." Andrew Weaver of the Green Party opposed the decision but decided not to remove the Greens' support for the NDP minority government (Bailey 2017).

The Enduring Battle in the Courts

Site C opponents have filed multiple lawsuits against the approval decisions by the governments of British Columbia and Canada, but thus far Canadian courts have been decidedly unfriendly to project opponents. Table 9.2 provides an overview of the litigation and its status. Thus far, all lawsuits, whether by First Nations or environmental groups, that challenged the project's approval have been dismissed. The only case decided for the plaintiff was when BC Hydro applied to have an injunction enforced to remove protesters from disrupting construction.

The Peace Valley Landowner Association challenged the British Columbia government's decision not to, among other things, refer the project to the British Columbia Utilities Commission, but the British Columbia Supreme Court and Court of Appeal ruled it was within the cabinet's prerogative to decide. The group also challenged the federal government's decision for not sufficiently justifying its finding that the "significant adverse environmental effects were justified in the circumstances" (*Peace Valley Landowner Association v. Canada (Attorney General)* 2015 FC 1027). But as in other cases that have sought to challenge terse federal cabinet decisions under the Canadian Environmental Assessment Act, the Federal Court ruled that the cabinet's justification was sufficient.

Table 9.2
Status of Site C litigation

| Case | Court and citation | Subject | Most recent action |
|--|---|---|--|
| <i>Prophet River First Nation and West Moberly First Nation v. British Columbia et al.</i> | British Columbia Supreme Court | Civil claim that Site C would infringe on Treaty 8 rights; request for permanent injunction | Request for interim injunction denied October 25, 2019; negotiations under way while parties prepare for trial |
| <i>Prophet River First Nation and West Moberly First Nation v. BC Hydro</i> | British Columbia Court of Appeal (on appeal from British Columbia Supreme Court), 2017 BCCA 58 | Lack of an unjustified infringement determination and adequacy of consultation | Dismissed February 2, 2017 |
| <i>West Moberly First Nation and Prophet River First Nation v. BC FLNRO</i> | British Columbia Supreme Court, 2016 BCSC 2007 | Adequacy of consultation | Dismissed October 13, 2016 |
| <i>Prophet River First Nation v. Canada</i> | Federal Court of Appeal (on appeal of Federal Court decision), 2017 FCA 15 | Whether the federal cabinet was required to consider whether environmental effects constitute infringement | Dismissed January 23, 2017 |
| <i>BC Hydro v. Ken Boon et al.</i> | British Columbia Supreme Court, 2016 BCSC 355 | Injunction against protesters blocking construction | Injunction granted February 29, 2016 |
| <i>Peace Valley Landowner Association v. British Columbia Ministry of Environment</i> | British Columbia Court of Appeal, 2016 BCCA 377 (on appeal from the British Columbia Supreme Court) | Whether the government of British Columbia could choose not to consider Joint Review Panel recommendations for future government regulation of BC Hydro | Dismissed September 15, 2016 |
| <i>Peace Valley Landowner Association v. Canada (Attorney General)</i> | Federal Court, 2015 FC 1027 | Whether the federal cabinet sufficiently justified the significant adverse effects | Dismissed August 28, 2015 |

The Prophet River First Nation and West Moberly First Nation challenged the British Columbia and federal decisions on the grounds that the environmental effects of the dam infringed on their treaty rights and that the governments did not consult sufficiently. Four decisions, two in British Columbia courts and two in federal courts, completely rejected the First Nations' arguments in the form in which they had been presented. On the question of infringement, the courts ruled that in making its decision the cabinet (in the federal case) and ministers (in the provincial case) were under no obligation to make a determination of infringement on treaty rights. The courts ruled that the proper vehicle for considering the question of infringement was through a civil action, not a judicial review.

Several of the decisions did carefully scrutinize the record on consultation and ruled that it was sufficient, rejecting what they saw as the First Nations' effort to transform the duty to consult into a veto of the project. The British Columbia Court of Appeal's decision ruling is worth quoting at some length:

The duty to consult and accommodate does not afford First Nations a "veto" over the proposed activity: Mikisew at para. 66. Here, the appellants have not been open to any accommodation short of selecting an alternative to the project; such a position amounts to seeking a "veto." They rightly contend that a meaningful process of consultation requires working collaboratively to find a compromise that balances the conflicting interests at issue, in a manner that minimally impairs the exercise of treaty rights. But that becomes unworkable when, as here, the only compromise acceptable to them is to abandon the entire project. (*Prophet River First Nation v. British Columbia (Environment)* 2017 BCCA 58)

The two First Nations applied for leave to appeal to the Supreme Court of Canada, but in June 2017 those applications were rejected, bringing that line of litigation to finality. These decisions revealed again how far current Canadian law is from the standard of consent many First Nations expect from the Crown's commitments to fully implement the UN Declaration on the Rights of Indigenous Peoples.

After the NDP government's decision to proceed with the Site C Dam project, Prophet River and West Moberly launched a new line of legal attack. In January 2018, the two groups filed a notice of civil claim, arguing that the dam would be an infringement on their Treaty 8 rights and asking for a permanent injunction. The proceedings would involve a lengthy trial process, so the two groups applied for an interim injunction as well. The injunction request was denied on October 25, 2018. The judge ruled that the First

Nations' request failed the "balance of convenience" test, arguing that "the massive scale of the Project—that is, the very thing that makes its impact on West Moberly's treaty rights so significant—also amplifies commensurately the harm weighing on the other side of the scales if the Project were to be enjoined" (*West Moberly First Nations v. British Columbia*, paragraph 334).

Conclusion

Keeping global warming within manageable limits requires a massive and rapid transformation of the energy system to virtually eliminate greenhouse gas emissions, yet renewable energy projects are frequently stymied by conflict and delay. This chapter has examined the case of a large "clean energy project," the Site C Dam, a C\$10 billion, 1,100-megawatt project in north-eastern British Columbia. Despite the potential benefit of producing low-carbon power for generations, the project has been vehemently opposed by a broad coalition of environmental groups, First Nations, and academics. Even if some environmentalists might have been inclined to support the project because of its contribution to the clean energy transition, their ideological and strategic commitment to honoring First Nations' demands for consent on major project decision-making prevented them from doing so.

While BC Hydro unquestionably engaged in extensive discussions with First Nations, there is no evidence that their engagement efforts went deep enough to be successful with the most directly affected First Nations. While it may be that no offer could have overcome the opposition of the West Moberly and Prophet River First Nations, it is telling that there is no indication in the record of discussions about providing First Nations partnership or equity in the project, a strategy that has been successful in other highly contentious resource projects. First Nations' lawsuits trying to block the project have received one setback after another.

While Site C would unquestionably result in significant environmental impacts in the Peace River region, it is striking how little recognition there has been of the project's contribution to the broader decarbonization agenda. What's missing in much of the opposition critiques, especially with respect to economic justification, is the broader continental view. The fact that power may not be needed in British Columbia at the time of project completion misses the point about the project's broader potential contribution to decarbonization. British Columbia is part of the Western Electricity Coordinating

Council, which includes Alberta and the western United States. Site C's most valuable contribution might well be to provide storage to firm up intermittent renewables as their penetration increases to replace polluting fossil fuel power plants (Jaccard 2017). While passingly mentioned in the Joint Review Panel report, this benefit was barely mentioned in BC Hydro's submissions and was completely ignored by environmental critics of the project.

The case is a likely indication of the power that committed governments retain to overcome resistance to new infrastructure. Given the analytical framework used in this book, project opponents would be expected to be quite formidable. Risks were highly concentrated in the Peace River region. Opponents had access points, first to the courts and then to the Horgan government after 2017. They put their case to every potential obstacle available to the project—the review itself, the courts, the British Columbia Utilities Commission, and a new, more environmentally oriented government. While it was downstream from two large dams, significant new infrastructure was required: a valley needed to be flooded, and a large dam had to be constructed with associated turbines, substations, and high-voltage transmission lines. The risks to the Peace River region are clearly separated from the benefits of faraway power consumers.

The Site C Dam seems to have overcome the political and legal resistance to it. Christy Clark gave the Site C project such enormous momentum that the May 2017 election had limited impact on its trajectory. One advantage that the BC Liberals had is that Site C resistance—virtually the same coalition of actors fighting the pipelines in British Columbia—has not been able to capture mass public opinion in the same way that the campaigns against Northern Gateway and Trans Mountain did. That made it easier for Christy Clark's government to forge ahead despite the resistance campaign and, once construction outlays had gotten big enough, for the Horgan government to reluctantly continue. Delays have already cost the project at least four years, and new revelations of geo-technical risks in the summer of 2020 created new concerns about the viability of the project. After another investigation, Horgan announced again that he would continue the project, now with a staggering C\$16 billion cost and a delay of completion by one year, till 2025.

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