

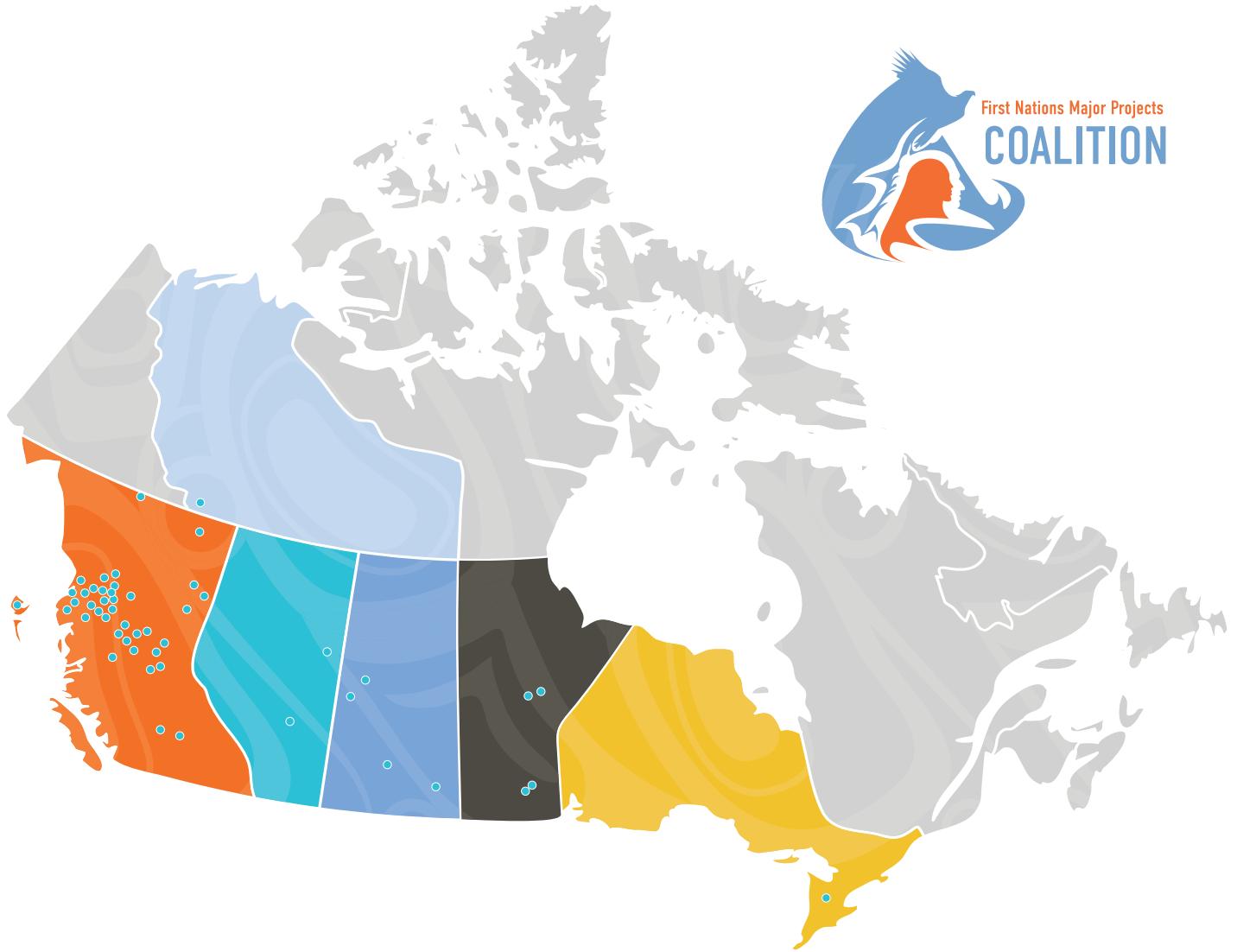


ESG-Indigenous Case Study: CASCADE POWER PLANT PROJECT ALBERTA, CANADA

*Prepared by Dr. Suzanne von der Porten and Mark Podlasly
Commissioned by The First Nations Major Project Coalition*



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The First Nations Major Project Coalition (Canada) is a national 70+ Indigenous nation collective working towards the enhancement of the economic well-being of its members, understanding that a strong economy is reliant upon a healthy environment supported by vibrant cultures, languages and expressions of traditional laws, and in particular to:

- a) Safeguard air, land, water and medicine sources from the impacts of resource development by asserting its members' influence and traditional laws on environmental, regulatory and negotiation processes;
- b) Receive a fair share of benefits from projects undertaken in the traditional territories of its members, and;
- c) Seek ownership opportunities of projects proposed in the traditional territories of its members, such as pipelines and electric infrastructure.

FIRST NATIONS MAJOR PROJECT COALITION

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Environmental, Social and Governance (ESG) investments in Canada ought to meaningfully include Indigenous nations, but what does operationalizing this actually look like? When Indigenous nations hold equity investment shares in development projects, and when their own leadership and communities decide what investments they do and don't want to have a stake in, everybody wins. The \$1.5-billion Cascade Power Plant project in Alberta, Canada, a deal that closed in August 2020 and is now under construction, included an investment by a consortium of six First Nations (via the Indigenous Communities Syndicate LP) and other investors. The Cascade Power Plant is an example of what Indigenous-approved ESG investments could look like going forward, including the feasibility and benefits of a multi-First Nation equity stake in energy infrastructure.



Indigenous History

Prior to European contact in the late-1700s, the Indigenous peoples in what is now known as Alberta, Canada had already been living there for at least 11,000 years. In southern Alberta, now known as Treaty 7, ancestors of Algonquian-speaking peoples were nomadic, and they hunted bison and harvested plants in sophisticated and cooperative societies, following the opportunities that different seasons brought.¹ The diverse landscape of central Alberta, now known as Treaty 6, is the ancestral home to many different Indigenous nations such as the Cree, Nakota Sioux, Blackfoot, Tsuu T'ina, Dene and Saulteaux. Trade, ceremony, gathering, negotiation and sharing occurred over millennia among these Indigenous nations. Northern Alberta, now known as Treaty 8, has also been continuously occupied for millennia, in part by the Dene in the subarctic and Woodland Cree, Indigenous peoples who also thrived with the mastery of following the seasons through plant gathering and hunting.² For each of these diverse Indigenous nations, ingenuity and an age-old connection to their lands and waters has allowed them to succeed through millennia.

By around 1780, European diseases came via the fur traders to Alberta, including smallpox which killed thousands – claiming the lives of up to half of Indigenous peoples alive at the time.³ In the years following the 1867 Canadian federation, Treaty 6 (signed by representatives of the Crown and Cree, Saulteaux, Nakota, Dene, Assiniboine and Ojibwa leaders in 1876), Treaty 7 (an agreement between Queen Victoria and several, mainly Blackfoot, First Nations bands in southern Alberta in 1877), and Treaty 8 (between Queen Victoria and various First Nations, including the Woodland Cree, Dunne-za (or Beaver) and Denesuline (Chipewyan) in northern Alberta, northeastern British Columbia, northwestern Saskatchewan and the southern Northwest Territories in 1899), were established.

In the years prior to and after these three treaties, Indigenous peoples of Alberta continued to be disenfranchised by the colonial government, including through *Indian Act* policies stripping them of their inherent rights, personhood, and nationhood; the taking of their ancestral lands and waters; the Reserve System; the forced removal of Indigenous children from their families into abusive, state-funded Residential Schools; the forced removal of Indigenous children from their families into foster care; outlawing ceremonies; and the denial of voting rights. Perhaps most relevant to the subject of this case study are Canada's restrictions on Indigenous nations' abilities to conduct commerce and to own land in - what has always been, and what never stopped being – Indigenous ancestral homelands and waters.

TRUTH AND RECONCILIATION CALL TO ACTION #92

TRC Call to Action 92 states:

“We call upon the corporate sector in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources.”

¹ Siksikáí'powahsin: Blackfoot Language, The Canadian Encyclopedia, <https://www.thecanadianencyclopedia.ca/en/article/siksikai-powahsin-blackfoot-language>

² *Timeline of Indigenous History: Walking Together, Education for Reconciliation*, The Alberta Teacher's Association, <https://www.teachers.ab.ca/SiteCollectionDocuments/ATA/For%20Members/ProfessionalDevelopment/Walking%20Together/PD-WT-16e%20-%20Timeline.pdf>

³ *Timeline of Indigenous History: Walking Together, Education for Reconciliation*, The Alberta Teacher's Association, <https://www.teachers.ab.ca/SiteCollectionDocuments/ATA/For%20Members/ProfessionalDevelopment/Walking%20Together/PD-WT-16e%20-%20Timeline.pdf>

Indigenous Peoples and Commerce

Given this history and connection of Indigenous nations in Alberta to their lands, today's interest in sustainable and ethical investments by investors helps to illuminate how land-based energy infrastructural investments might take shape. While the interest in ESG-conscious investment standards are quickly becoming the norm among the largest and most influential investors, what sustainable and ethical investing in Indigenous landscapes looks like is still taking shape. In Canada, where the Federal Government called for the full implementation⁴ of all 94 of the Calls to Action of the *Truth and Reconciliation Commission* (TRC)⁵, and where the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP)⁶ is expected to be enshrined by the Federal Government in 2021, there is no question that Indigenous nations having a say and sway in project developments is quickly becoming (or arguably has already become) the norm and perhaps the only way forward for projects in Canada.

Beyond the public sector, this trend is growing in the private sector where there is an ever-growing list of examples around the world of Indigenous equity ownership in major projects, including energy infrastructure. Many Indigenous nations who were previously relegated to minor or non-existent roles in project development on their own lands and waters have increasingly become equity owners in projects impacting their lands and waters. Over the last 50 years, and more so in the past decade, Indigenous nations have been pursuing equity ownership of major projects and infrastructure – a pursuit seen by Indigenous people as a means to pro-actively exercise their rights, to protect community interests, and to share the economic benefits derived from development in their territories.⁷ In pursuing equity investments, Indigenous nations are working to counter impacts on their cultures, lands, waters, languages, traditions, cohesion, nationhood, governance systems, ways of living, knowledge, and freedoms. Capitalizing on policy and societal changes to pursue opportunities that are beneficial to their people/nation members is one way in which Indigenous nations are working to counter these impacts.

UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES #4

UNDRIP Article 4 states:

“Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.”

⁴ Liberal Party of Canada, June 2015, *Liberals call for full implementation of Truth and Reconciliation Commission recommendations*, <https://liberal.ca/liberals-call-for-full-implementation-of-truth-and-reconciliation-commission-recommendations/>

⁵ TRC call to action 92 states “We call upon the corporate sector in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources.” http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf

⁶ https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

⁷ The Role of Indigenous People in Major Project Development: Paths for Indigenous Participation in Electricity Infrastructure, First Nations Major Project Coalition - Prepared by Mark Podlasly and Suzanne von der Porten, July 2019, <https://bit.ly/3rNlvWI>

Where Investors Come In

ESG- and Indigenous rights-conscious investors are now beginning to navigate the intersection between sustainable investment/ESG standards and Indigenous rights, including rights to UNDRIP-defined self-determination. Historically excluded from a meaningful say on developments on their lands, Indigenous peoples have often been denied significant (or in some cases any) input or benefits from developments on their lands. These investors face investment risk by not gaining the consent and project buy-in by Indigenous nations.

Many ESG-aware investors are coming to the conclusion that Indigenous equity ownership in projects, investments, or infrastructure is the best way to reduce this investment risk. The recent closing of the deal for the Cascade Power Plant Project in Alberta, Canada illustrates what it means to operationalize an Indigenous equity ownership investment.



In pursuing equity investments, Indigenous nations are working to counter impacts on their cultures, lands, waters, languages, traditions, cohesion, nationhood, governance systems, ways of living, knowledge, and freedoms.

Photo by Tyler Lillico on Unsplash

CASCADE POWER PLANT PROJECT

ALBERTA, CANADA

The Cascade Power Plant Project, worth \$1.5 billion and now under construction, is to be a 900-megawatt combined-cycle natural gas fired power generation facility near Edson, Alberta, Canada (Figure 1). Combined-cycle plants generate power from both (a) natural gas-fueled turbines and (b) a heat recovery steam generator that captures the exhaust heat. Combined-cycle plants generate approximately 50% more power per unit of fuel than a conventional natural gas fired power plant.

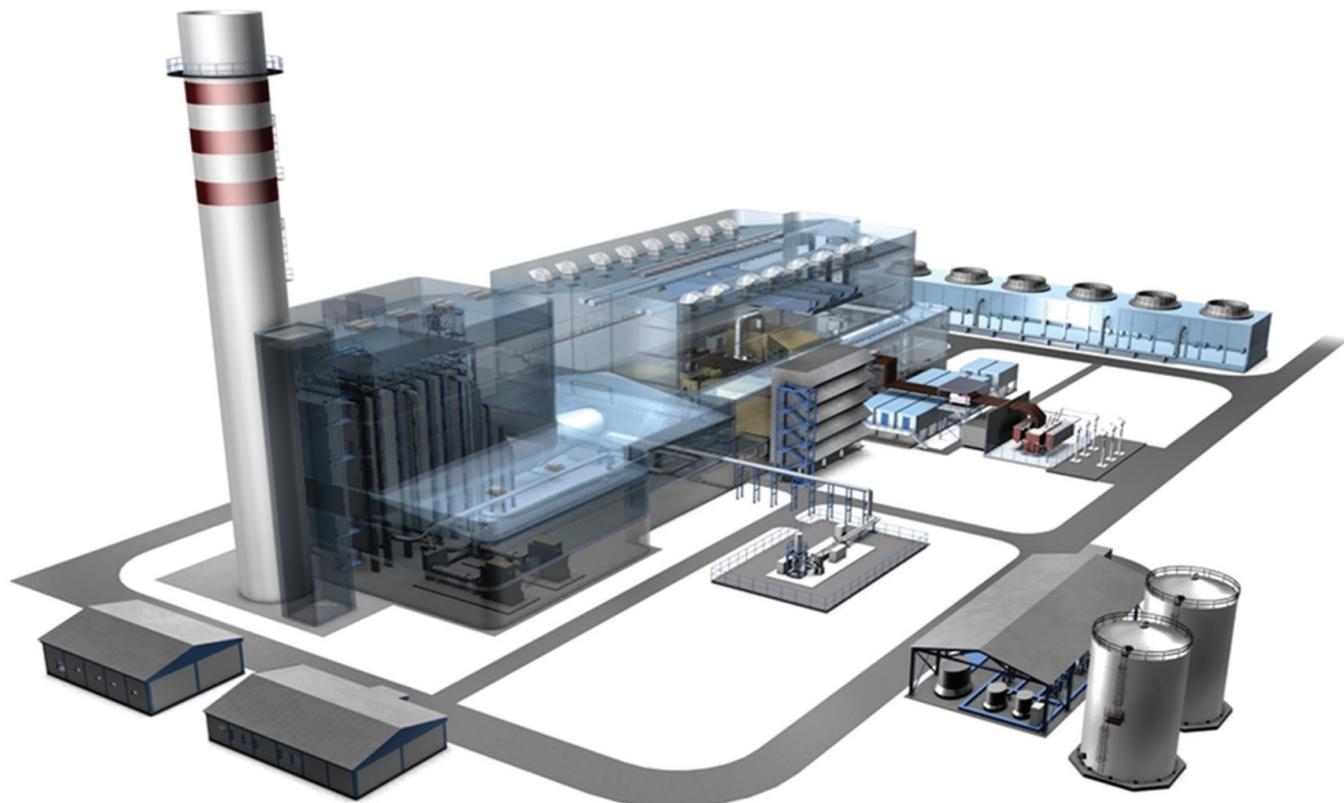


Figure 1. Artist's rendering of the Cascade Power Plant, Alberta, Canada. Source: Backwoods Energy Services.

The Cascade Power Plant will use local natural gas reserves, and is slated to contribute to the supply of electricity to the Alberta power grid. In supplying this energy, the power plant will play a part in displacing coal-fired power which the Province of Alberta and Canada are trying to move away from.



Figure 2. Alberta, Canada: six First Nations of the Indigenous Communities Syndicate LP.

participation of other First Nations and establishing taxation and corporate structuring. These two First Nations, along with four other Nations, then acquired an ownership interest in the Cascade Power Project via a created Indigenous Community Syndicate LP. Joined by other investment partners, including OPTrust, Axium Infrastructure and DIF Capital Partners (Figure 3), and supported by a group of 10 international financial institutions, the project achieved financial close in August 2020.

What stands out about the Cascade Power Project are the six First Nations who own an equity stake in it. These six First Nations, the Alexis Nakota Sioux Nation, Enoch Cree Nation, Kehewin Cree Nation, O'Chiese First Nation, Paul First Nation and Whitefish Lake First Nation, have together created a consortium, the Indigenous Communities Syndicate LP, the vehicle through which they hold this equity stake.

This Indigenous part-ownership was backed by a \$93 million loan guarantee from the Alberta Indigenous Opportunities Corporation (AIOC), a Crown Corporation created by the Alberta Provincial Government, whose investment supports are available for “natural resource projects in Canada that have at least one Alberta-based Indigenous group as an investor”⁸. The AIOC was created in order to support commercially-viable partnerships with First Nations and Métis Settlements on energy related infrastructure (in both renewables and in oil and gas), mining, and forestry. The AIOC supports Indigenous investments by way of loan guarantees which are backed by the Government of Alberta.

In late 2019, Chiefs from Alexis Nakota Sioux Nation and Enoch Cree Nation met with the CEO of Backwoods Energy Services to build a plan to leverage the opportunity tabled to Alberta Indigenous Nations by the AIOC. These three engaged in a strategic process to evaluate potential transactions, and determined Cascade Power Plant would be the target. Following negotiations on structure and terms with the developer sponsor and private sector equity participants, they then approached the AIOC and worked on meeting their requirements in the coming months. Securing this deal meant soliciting finance arrangements, gaining the

⁸ Alberta Indigenous Opportunities Corporation, <https://www.theaioc.com/>

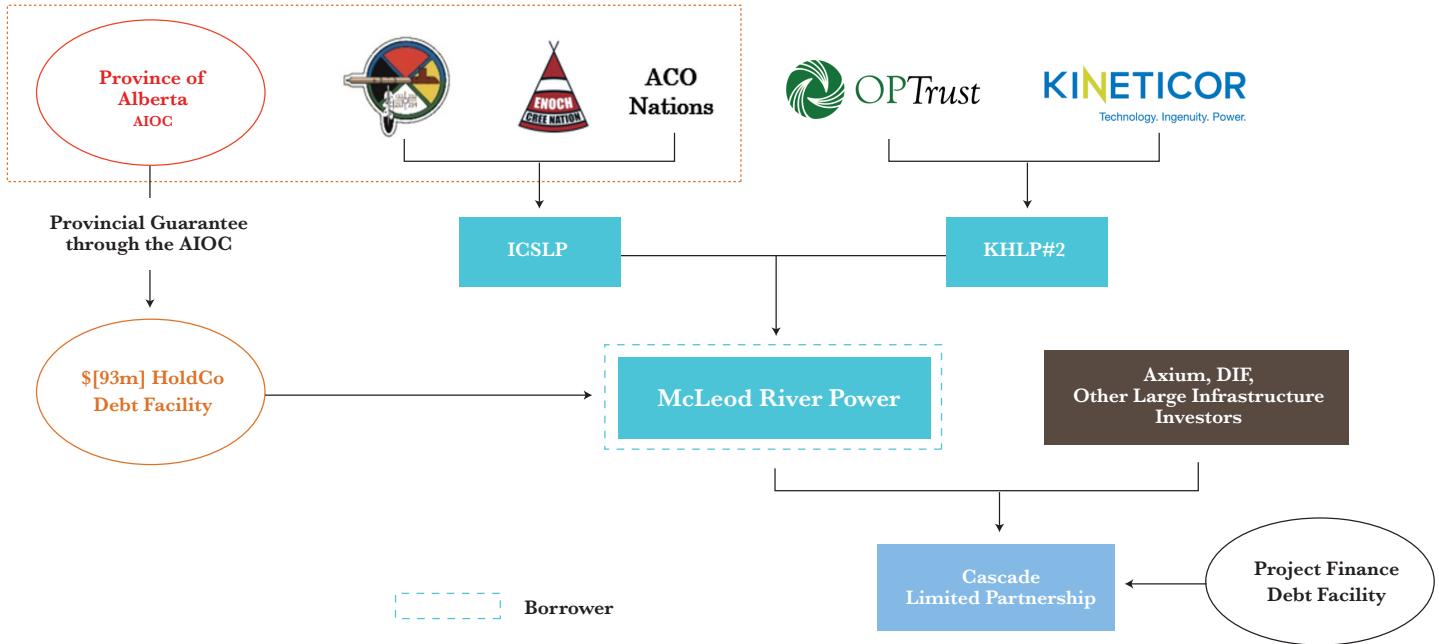


Figure 3. Organizational Chart for the Cascade Power Plant Project. Source: Backwoods Energy Services.

The percentage of equity stake held by the six First Nations in the Cascade Power Plant has not been made public, but it gives the Indigenous Communities Syndicate LP a “meaningful minority stake” in the \$1.5-billion project.⁹ The Cascade Power Plant is on track to commence commercial operations by the fall of 2023.

⁹ Cryderman, K. (2020). Alberta to give First Nations loan guarantee for power plant project: The Province announced Wednesday it will provide a loan guarantee for a First Nations investment in a natural gas-fired generating facility, *The Globe and Mail*.

Win-Win-Win

When asked during the research for this case study if the Cascade Power Plant could be considered a win-win for Indigenous nations and investors, Chief Tony Alexis of the Alexis Nakota Sioux Nation said “it’s more like a win-win-win all around for all people involved.” The Cascade Power Plant Project appears to be a “win” for many of the players involved in it, in particular, First Nations governments, the Alberta Government, and investors.

FIRST NATIONS

Typically, First Nations governments and businesses have had trouble raising capital at reasonable interest rates because lenders tend to assess them as higher-risk borrowers. This risk assessment, coupled with more the limited excess capital for investment and/or balance sheets that make it difficult to support material securitization, stems from the colonial legacy borne by First Nations of being denied the use of their assets as collateral: any assets “owned” by a First Nation or a “Status Indian”¹⁰ are “held in Trust by Her Majesty for use by Indians”¹¹. This Crown assertion of holding any and all assets in trust includes any relevant collateral – reserve lands, cars, personal property, even income.

“Ultimately, this is not about just revenue and business. This is about that reinvestment in the community.”

- Treaty Six Grand Chief and Enoch Cree Nation Chief Billy Morin

Since a bank or investors cannot foreclose on Her Majesty’s property, First Nations assets cannot be collateralized for a loan. For many First Nations governments who are trying to create sustainable revenue streams to support their members, and much-needed programs to help their members thrive, this assessment by lenders makes it difficult for them to raise capital for investments, and thus excludes them from equity benefits on their own lands where development projects are taking place.

However, when backed by a government or other loan guarantee¹², for example here in the case of the Cascade Power Plant from the AIOC, First Nations governments and their members “win” by being able to access capital for the purpose of investing in the projects of their choosing, creating revenue streams, and being able to exercise their inherent right to self-determination in making choices for their people. Ultimately, the resulting “own source” revenue streams that come from investments in these projects enable the Indigenous economy and the ability to bolster and reinvigorate services to their First Nations members. Finally, First Nations are also expected to benefit from the development of the Cascade Power Plant Project through procurement opportunities, employment, skills, and training.

¹⁰ “Indian Status” refers to the legal identity of Indigenous people in Canada. With the creation of the *Indian Act* in 1876, the Canadian government developed criteria for who would be legally considered a status Indian.

¹¹ *Indian Act* (R.S.C., 1985, c. I-5) “Reserves to be held for use and benefit of Indians 18 (1) Subject to this Act, reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used is for the use and benefit of the band.”

¹² Access to capital does not require a loan guarantee necessarily and government is not the only source of capital. There are other ways to structure a transaction, or access new capital markets to provide capital.



Figure 4. First Nations Chiefs and equity shareholders in the Cascade Power Plant Project, Alberta, Canada. Source: AIOC.

GOVERNMENT OF ALBERTA

Provincial governments in Canada are increasingly being held to account to honour their commitment to uphold a Nation-to-Nation commitment to First Nations governments. While this commitment dates back at least as far as the *Royal Proclamation of 1763*¹³, Federal and Provincial governments in Canada are only now beginning, in earnest, to consult with diligence and more meaningfully as a result of the increasingly public recognition of Indigenous rights and title and the growing number of precedent-setting court cases¹⁴. For provincial Crowns, such as the Government of Alberta, “consulting” First Nations about projects on their lands has created much uncertainty surrounding adequate consultation and consent. In the case of the AIOC, it does not participate in formal Indigenous consultation processes because the formal consultation process is a formal component of the early-stage regulatory project approval process takes place far before the AIOC gets involved in supporting Indigenous investment in the project.¹⁵

With notable exceptions¹⁶, the uncertainty risk related to consultation is decreased when a First Nation government is financially invested in an equity ownership arrangement for a development project. In this respect, the First Nation alone determines whether a given project meets their own internal environmental standards and values, whether its members are supportive of the project, and then the First Nation government can choose to consent and invest, or not. In the Alberta context specifically, and with the Cascade Power Plant Project, the AIOC-backed investment allows the Province to create more certainty in the market, to operate on a Nation-to-Nation relationship with First Nations, and to build its own political capital in doing so. The Cascade Power Plant is the first “real-world example” of the current Alberta Government’s new political push for Indigenous nations to play a bigger role in energy development¹⁷. This push is important for attracting investment at a time when the precipitous drop in the price of crude oil has negatively impacted the Albertan economy and will be relevant in the event of a recovery if new projects are contemplated.¹⁸

¹³ Royal Proclamation, 1763, https://indigenousfoundations.arts.ubc.ca/royal_proclamation_1763/

¹⁴ e.g., *R. v. Sparrow*, *Haida Nation v. British Columbia*, *Delgamuukw v British Columbia*, and *Tsiltqot'in Nation v. British Columbia*.

¹⁵ Dubois, A. (2021) Alberta Indigenous Opportunities Corporation. [Personal communication.]

¹⁶ The Unist'ot'en hereditary leaders disagreement with the elected Wet'suwet'en governments over oil and gas pipelines is an example of how some First Nations do not have unanimous views about development on their traditional lands and waters, <http://unistoten.camp/>

¹⁷ Cryderman, K. (2020). Alberta to give First Nations loan guarantee for power plant project: The Province announced Wednesday it will provide a loan guarantee for a First Nations investment in a natural gas-fired generating facility, *The Globe and Mail*.

¹⁸ Graney, E. (2021). In budget U-turn, Alberta to promote ESG measures in oil patch, *The Globe and Mail*.

INVESTORS

With increasingly publicized and effective campaigns which oppose some energy and infrastructure projects in Canada, investors are increasingly wary of investments where Indigenous peoples have not explicitly given free, prior, and informed consent to projects that effect their ancestral lands and waters.¹⁹ And yet, in order to create cash flow and growth for their clients and portfolios, investors need to diversify their investments in revenue-generating projects such as in the area of energy infrastructure. When First Nations have an equity stake in a project, the “win” for investors is that their risk assessment of whether that same First Nation will oppose the project is likely to be greatly mitigated. In the case of the Cascade Power Plant Project, investor’s risk exposure is yet further reduced by the Alberta Government’s \$93 million loan guarantee on the project. Finally, investors who include Indigenous-owned equity in their investments have the potential to differentiate themselves from other investors, giving them a potential strategic advantage, especially where reconciliation or Indigenous lands and waters are a consideration such as in Canada.



“It’s a pretty exciting blueprint or template that could be used for other deals.”

- Simon Moody, Director, Private Markets Group, OPTrust

Photo by bantersnaps on Unsplash

¹⁹ e.g., UNDRIP Article 32.

Precedent-Setting Project

As ESG-interested investors seek out examples of how their investments can dovetail with Indigenous rights, projects like the Cascade Power Plant are likely to be the ones that will raise the bar. That bar is Indigenous equity investment: the fact that the six First Nations who have an equity stake in the Cascade Power Plant ostensibly puts to rest the question of whether the First Nations want the project to proceed and succeed. Indigenous equity stakes in projects may ultimately become the new bar minimum. Additionally, the syndicate arrangement of the First Nations owners of the Cascade Power Plant signals to major institutional investors and governments alike the feasibility and benefits of a multi-First Nation major equity stake in energy infrastructure.

The Cascade Power Plant in Alberta has demonstrated that where there are willing players, which in this case was a government backing First Nations investments²⁰ coupled with investors (Kineticor and OPTrust) who understand the benefits of an Indigenous syndicate, Indigenous equity can be achieved despite the odds stacked against First Nations by the *Indian Act* and other factors related to the colonial legacy of the taking of Indigenous lands. Given the shift in the investment landscape, there no longer exists a defensible position as to why projects in Canada should proceed on Indigenous lands without an Indigenous equity stake.



Figure 5. Artists rendering of the Cascade Power Plant, Alberta, Canada. Source: Backwoods Energy Services.

²⁰ In the case of the AIOC, investments with a \$20 million minimum investment by a single Indigenous nation or groups/syndicate of Indigenous nations.

What about ESG?

Importantly, ESG standards need to consider the environmental (E), social (S) (the category into which Indigenous equity investment most tidily falls) and governance (G) aspects of investments. While Indigenous investors may approve projects based on their own internal environmental standards and values, projects which are fossil-fuel based may still not meet the global standards which are fast moving toward net zero greenhouse gas emissions. Similarly, an equity stake does not equate to meaningful Indigenous (women and men) representation on boards making corporate-level governance decisions about the investment, assets, risks, and challenges. Given this, the Cascade Power Plant project answers the question of how Indigenous equity stakes can be fully supported (S = social), but leaves the remaining questions about the intersection between Indigenous peoples/rights and ESG standards (namely E = environmental and G = governance). Some questions that warrant further discussion include:

- Is the journey taken by Cascade Power Plant project case be one that is generalizable in terms of learning to successfully integrate Indigenous “I” into ESG? Are there other examples that also answer this question?
- How do we bridge the cultural and capacity realities of First Nations with how the mainstream corporate sector operates?
- If ESG investments in places such as Canada ought to meaningfully include Indigenous peoples, what percentage of Indigenous ownership constitutes/counts as ESG-compliant?
- If an investment is in the fossil fuel industry, but includes a meaningful percentage of Indigenous ownership and board representation, does that still constitute as a positive ESG impact?
- Is there evidence that pressure will start to mount on trusts and investors to include Indigenous ownership (as with climate-related divestment pressure on investors)?
- How does a project proponent or investment syndicate, signal the positive materiality of their company-Indigenous corporate partnership to the ESG rating agencies?

“First Nations peoples are becoming masters of the institutions. We take elements from the western world and combine our cultural teachings to maximize our benefit from the institutional structures in place while staying grounded and true to who we are. This includes building a team of allies who are experts to help us learn, build and grow on our path to wealth creation.”

- Chief Tony Alexis, Alexis Nakota Sioux Nation