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## ACO Hearing Report

November 26, 2018

Tara Wheaton, Hearing Coordinator  
Alberta Energy Regulator  
Suite 1000, 250 – 5 Street SW  
Calgary, Alberta T2P 0R4  
Sent via Email: <email address removed>  
No original to follow

Melody Lepine  
Director, Mikisew Cree Government  
and Industry Relations  
<contact information removed>

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No original to follow

Dear Ms. Wheaton and Ms. Lepine:

**RE: Joint Review Panel Hearing for Teck Resource Limited Proposed  
Frontier Oil Sands Mine Project Environmental Enhancement Protection  
Act Application File No. 001-00247548 and Water Act File No. 00303079**

### Background

This ACO Hearing Report was prepared in accordance with the Aboriginal Consultation Office's (ACO) role at Joint Review Panel (JRP) Hearing established through *Energy Ministerial Order 105/2014*, *Environment and Sustainable Resource Development Ministerial Order 53/2014* (October 31, 2014), and the *Joint Operating Procedures for First Nations Consultation on Energy Resource Activities* (June 10, 2015).

In the June 21, 2018 letter, the ACO informed the Joint Review Panel of its intent to attend the Frontier Oil Sands Joint Review Panel Hearing commencing September 25, 2018 in Fort McMurray. The purpose of the ACO's attendance was to observe the Hearing, consider all relevant evidence submitted during the proceedings, and address adequacy of consultation and whether actions may be required to address potential adverse impacts on Treaty rights and traditional uses from Teck Resource Limited

(Teck) proposed Frontier Oil Sands Mine Project (The Project) associated with *Environmental Enhancement Protection Act (EPEA) Application File No. 001-00247548 and Water Act (WA) File No. 00303079*.

## **First Nation Consultation**

The Consultation Plan for the integrated application combining all information required under the EPEA and WA Application was approved on June 12, 2008 by the then Alberta Environment (AENV). Teck was directed to conduct consultation with Mikisew Cree First Nation (MCFN) in line with *The Government of Alberta's First Nations Consultation Policy on Land Management and Resource Development* (May 16, 2005) and *Alberta's First Nations Consultation Guidelines on Land Management and Resource Development* (Updated November 14, 2007).

The August 24, 2018 ACO Report determined that consultation with MCFN for the EPEA and WA Applications was adequate pending the outcome of the Alberta Energy Regulator (AER) process (JRP Hearing). As stated in the August 24, 2018 ACO Report, MCFN raised some concerns that were suggestive of site-specific concerns. However, the August 24, 2018 ACO Report concluded that these concerns did not constitute site-specific concerns.

The ACO has subsequently reviewed the First Nation's written hearing submission of August 31, 2018 and the First Nation's evidence at the JRP Hearing and the ACO finds that MCFN did not identify any specific sites requiring avoidance and/or mitigation. The ACO also advises the AER that the JRP Hearing did not reveal new information or concerns regarding potential site-specific impacts of the proposed Project on the continued exercise of MCFN's Treaty rights and traditional uses.

ACO notes that the proponent has successfully completed an agreement with MCFN.

Mikisew Cree First Nation's did note other concerns captured in the following Table 1. Broad Concerns. The ACO finds that these concerns are better addressed outside of a) project-specific consultation; or (b) outside the scope of *The Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management 2005 (Policy)* and *The Government of Alberta's Guidelines on Consultation with First Nations on Land and Natural Resource Management 2007 (Guidelines)*.

**Table 1 – Broad Concerns**

<b>Concerns Expressed by MCFN</b>	<b>Response to Concern</b>
<p><b>Impact on Aboriginal and Treaty Rights</b></p> <p>MCFN states that Mikisew has certain outstanding concerns with respect to the project that relate to adverse effects that cannot be address by Teck or which are better addressed through government action. These relate to MCFN’s concerns around bison, the outstanding universal value of Wood Buffalo National Park, and their treaty rights and culture. The ACO notes that MCFN did not identify specific sites that require mitigation.</p>	<p><b>Impact on Aboriginal and Treaty Rights</b></p> <p>ACO has considered MCFN’s hearing evidence with respect to cumulative effects concerns and the LARP and took these concerns into account in considering consultation adequacy.</p> <p>The ACO notes that these concerns are general policy proposals, which are more appropriately considered in forums other than the project specific consultation process.</p> <p>The ACO recommends that the AER consider this evidence to the extent that this may inform the AER’s regulatory decision.</p>
<p><b>Biodiversity Stewardship Management Area</b></p> <p>MCFN states that they have developed a proposal called the Ronald Lake Biodiversity Stewardship Area to limit cumulative impacts and to ensure that no other industrial projects will take place close to Wood Buffalo National Park.</p> <p>MCFN recommends the following:</p> <p>Recommend that the Governments of Alberta and Canada commit to implementing the full Biodiversity Stewardship Area proposed by the Mikisew by the time Project construction starts.</p> <p>Recommend that before issuance of final licenses and permits for the Project the Government of Alberta co-develop and commit meaningful funding to a management plan and cooperative management arrangement for the Biodiversity Stewardship Area.</p>	<p><b>Biodiversity Stewardship Management Area</b></p> <p>The ACO notes that these concerns are general policy proposals, which are more appropriately considered in forums other than the project specific consultation process.</p>

<b>Concerns Expressed by MCFN</b>	<b>Response to Concern</b>
<p data-bbox="188 201 639 235"><b>Ronald Lake Bison Herd (RLBH)</b></p> <p data-bbox="188 268 769 432">MCFN expressed concerns that the Ronald Lake Bison Herd Technical Team does not manage the herd; it only gathers information, so management actions to protect the RLBH are still required.</p> <p data-bbox="188 470 797 567">MCFN submits that Governments must immediately take steps to protect the habitat of the RLBH beyond the project area.</p> <p data-bbox="188 604 805 831">MCFN submits that Alberta's co-management proposal for mitigating impacts to the RLBH is inadequate. In particular, MCFN submits that this proposal is inadequate because advice and recommendations of the participants are not binding on the Minister of Environment and Parks.</p> <p data-bbox="188 907 797 1066">MCFN submits that the potential relocation of the RLBH may significantly impact MCFN's relationship with the herd. MCFN is concerned that MCFN may not be able to access the herd or hunt the herd if it is relocated.</p> <p data-bbox="188 1142 769 1268">MCFN submits the draft Biodiversity Management Framework, or BMF, under the Lower Athabasca Regional Plan, or LARP, cannot address project effects on bison.</p>	<p data-bbox="834 201 1286 235"><b>Ronald Lake Bison Herd (RLBH)</b></p> <p data-bbox="834 268 1495 432">The ACO notes that Alberta's LARP and its implementation items are tools that can address MCFN concerns. MCFN is encouraged to continue to engage with Alberta on the LARP implementation items</p> <p data-bbox="834 504 1471 634">The ACO notes that GOA's initiatives addressing MCFN's concerns regarding the RLBH were considered in the ACO's Report dated August 24, 2018.</p> <p data-bbox="834 705 1500 835">The ACO notes that these concerns are general policy proposals, which are more appropriately considered in forums other than the project specific consultation process.</p>

Concerns Expressed by MCFN	Response to Concern
<p><b>Involvement in Monitoring and Adaptive Management</b></p> <p>MCFN submits that Governments must establish an independent committee to create a formal role for Indigenous groups to undertake monitoring of project effects, participate in compliance monitoring and verification, and have an effective role in improving monitoring programs and developing adaptive management processes.</p>	<p><b>Involvement in Monitoring and Adaptive Management</b></p> <p><b>ACO Response:</b></p> <p>ACO has considered MCFN’s hearing evidence with respect to cumulative effects concerns and the LARP and took these concerns into account in considering consultation adequacy.</p> <p>The ACO notes that these concerns are general policy proposals, which are more appropriately considered in forums other than the project specific consultation process.</p> <p>The ACO recommends that the AER consider this evidence to the extent that this may inform the AER’s regulatory decision.</p>
<p><b>Land Use Planning and MCFN’s Treaty Rights</b></p> <p>MCFN submits that plans, policies, Frameworks including the Lower Athabasca Regional Plan (LARP), frameworks under LARP, and other measures developed by the Governments of Alberta and Canada to address cumulative environmental effects do not mitigate direct, indirect or cumulative effects of oil sands development on Mikisew’s Treaty rights.</p> <p>MCFN submits that LARP is not an appropriate response to MCFN’s non-site specific concerns.</p>	<p><b>Land Use Planning and MCFN’s Treaty Rights</b></p> <p><b>ACO Response:</b></p> <p>The ACO notes that Alberta’s LARP and its implementation items are tools that can address MCFN concerns. MCFN is encouraged to continue to engage with Alberta on the LARP implementation items.</p> <p>ACO has considered MCFN’s hearing evidence with respect to cumulative effects concerns and the LARP and took these concerns into account in considering consultation adequacy.</p> <p>The ACO notes that these concerns are general policy proposals, which are more appropriately considered in forums other than the project specific consultation process.</p> <p>The ACO recommends that the AER consider this evidence to the extent that this may inform the AER’s regulatory decision.</p>

<b>Concerns Expressed by MCFN</b>	<b>Response to Concern</b>
<p><b>Lower Athabasca Region Surface Water Quantity Management Framework (SWQMF)</b></p> <p>MCFN submits that the SWQMF under LARP does not mitigate for effects of any oil sands project on water quantity and Mikisew navigation.</p> <p>MCFN submits that the SWQMF must be revised to (a) include an effective short-term trigger to protect open-water Indigenous Navigability (b) require limits on surface water withdraws from the Athabasca River when the flow rates at the Athabasca below the McMurray Station are below the Aboriginal Extreme Flow of 500 m3/s (AXF); and update the short-term trigger for the ice-covered season to provide for cut-off flow at 100 m3/s to protect winter fish survival.</p>	<p><b>Lower Athabasca Region Surface Water Quantity Management Framework (SWQMF)</b></p> <p><b>ACO Response:</b></p> <p>ACO has considered MCFN's hearing evidence with respect to cumulative effects concerns and the LARP and took these concerns into account in considering consultation adequacy.</p> <p>The ACO notes that these concerns are general policy proposals, which are more appropriately considered in forums other than the project specific consultation process.</p> <p>The ACO recommends that the AER consider this evidence to the extent that this may inform the AER's regulatory decision.</p>
<p><b>Failure to implement past recommendations</b></p> <p>MCFN submits that the Governments of Canada and Alberta have not implemented recommendations from the Joint Review Panel for the Shell Jackpine Mine Expansion Project (2012) and have not implemented the recommendations in the Strategic Environmental Assessment for Wood Buffalo National Park (2018). MCFN submits that the Government of Alberta has not resolved the issues identified in the final report of the Review Panel for the Lower Athabasca Regional Plan (2013)</p>	<p><b>ACO Response:</b></p> <p>The recommendations issued by the JRP in the Jackpine Mine Expansion Project are part of separate process and represent separate issues from the issues in this Project. In the context of the Teck Frontier JRP ACFN must raise site-specific concerns about the Teck Frontier Project.</p>

Based on the above the ACO concludes that consultation is adequate.

This ACO Hearing Report concludes the ACO's involvement with proposed Project Integrated application regarding the EPEA No. 001-00247548 and WA No. 00303079. As per the Alberta consultation policy, guidelines and procedures, Alberta relies on project proponents and regulatory tribunals to assist in meeting consultation obligations should they arise.

Sincerely,  
<Original signed by>

Vince Biamonte  
Aboriginal Consultation Office

cc: Yvonne Walsh, Teck Resources Ltd  
Alex Bolton, Joint Review Panel  
Sarabpreet Singh, ACO  
Robert Kopecky, ACO  
Charlene Richards, ACO