



Fort McKay First Nation

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January 28, 2014

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Dear Deborah and Dion,

RE: Consultation Adequacy Decision regarding the Athabasca Oil Corporation Leduc TAGD Project

I am writing to you on behalf of the Community of Fort McKay, including the Fort McKay First Nation and the Fort McKay Métis Community regarding consultation related to the Athabasca Oil Corporation (AOC) Leduc TAGD Project. Thank you for meeting with us last week in Edmonton to discuss the consultation completeness decision regarding the AOC Leduc Thermal Assisted Gravity Drainage (TAGD) Project.

In December we received a brief 1-page letter (dated December 3, 2013) from Kelly Kennedy of the Aboriginal Consultation Office (ACO) indicating that the ACO has determined that First Nations Consultation with Fort McKay was adequate for this project. Fort McKay does not agree with this determination. We have had several discussions with AOC and the company provided written responses to our concerns; however most of the company's responses did not address our project-specific concerns (see list below for more detail). To date AOC and Fort McKay have not mutually agreed on project-specific mitigation. Further, there is not enough information in the letter from ACO describing the factors that were considered in determining that consultation is complete or how the Government of Alberta (GoA) will address the project specific and cumulative effects concerns that are within its area of responsibility.



Consultation Process

We appreciate the discussion and efforts by your team to clarify the decision making process for consultation adequacy. However there are several outstanding issues and questions:

- Consultation with Fort McKay on this project is incomplete.
- Fort McKay wants more clarity on ACO's process, what is looked at, and more specifics on the rationale for the decision.
- We appreciate the clarification, by ACO that it is focused on project specific impacts that affect Aboriginal rights and traditional uses. We are concerned however that this excludes many important issues and that these are being determined as "out of scope" (e.g. cumulative effects, areas of government responsibility that are not project specific). Each project contributes to cumulative effects, which have already significantly impacted Fort McKay's rights and uses. We remind you that Fort McKay has a treaty right to have meaningful opportunities to hunt, fish and trap and pursue its way of life within its traditional territory. By definition, this right is not site specific. Therefore, from our perspective cumulative effects issues are "in scope" with regards to consultation. This is an acute issue given how much land has been taken up for development by oil sands and other resource developers and the rapidly declining wildlife populations. This matter is also germane to the Leduc TAGD project given its location within a Fort McKay trapline and an area of cultural importance and current use.
- Please advise, if the assessment of consultation adequacy is narrowed to only addressing a small part of the impacts on land use and rights, where is the other piece handled and how does GoA address its responsibility for these broader environmental and cumulative effects issues?
- A Traditional Use Study was not conducted for the project despite the project being located in a key area of traditional land use for Fort McKay. Fort McKay has documented impacts to treaty rights and traditional use due to the project, however the full scope of impacts remains to be determined.
- Fort McKay requested the Historical Resources Impact Assessment (HRIA) from Alberta Culture twice and Alberta Culture did not share it with Fort McKay. Therefore, Fort McKay was not given any information on the extent of historical resources impacts.
- We also note that the approval issued by ESRD for this project does not require any mitigation for impacts to wildlife (apart from caribou) or the impacts associated with the increased access this project will create, and does not require reclamation of existing disturbances (the OSE conducted to date by AOC on this lease).

Follow-up Meeting

As we requested in our letter of December 17, 2013 to Dion Lawrence and as discussed in our meeting last week, Fort McKay needs additional information to understand ACO's rationale for its determination and to understand if any of our concerns will be mitigated by the proponent or by government. We proposed a follow-up meeting with you (and appropriate technical staff) to attain specific feedback on:

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- how Fort McKay's project specific issues were addressed by Athabasca Oil Corporation to ACO's satisfaction;
- how Fort McKay's concerns are being addressed or mitigated when they are not reflected by the terms and conditions of the *Environmental Protection and Enhancement Act*(EPEA) Approval;
- for cumulative effect issues, which specific government programs, policies or initiatives would address each issue; and
- how does ACO make recommendations to the Joint Oil Sands Monitoring (JOSM) program? Can you provide copy of these recommendation? Who at JOSM is responsible for dealing with consultation concerns on project specific statements of concern (SoCs)?

We are aware that you have Fort McKay's technical review, SoC and summary table on file. For your reference, in preparation for the meeting, we have attached our technical review and issues summary table from the technical review (Appendix 1) that Fort McKay did of the project application and we are identifying the following for discussion:

- 50 project-specific issues directed at Athabasca Oil Corporation that remain unresolved from Fort McKay's perspective: 1, 6 – 17, 19, 20, 21, 23, 24, 25, 26, 34, 35, 37, 38, 40, 41, 46, 50-52, 55, 56, 60, 61, 64, 67, 70, 71, 76-78, 80, 84, 86, 91, 92, 95, 96-98, 100.
- 34 concerns directed to GoA: 3, 5, 27, 28-32, 36, 39, 42-45, 47, 54, 57-59, 62, 65, 66, 69, 72-75, 81-83, 85, 90, 94, 99).

We propose February 10, 2014 in Edmonton for the meeting. We look forward to meeting with you.

Sincerely,

Dan Stuckless
Manager, Environment and Regulatory, Fort McKay Sustainability Department

Cc: Alvaro Pinto, Executive Director, Fort McKay Sustainability Department
Karla Buffalo, Manager, Government Relations, Fort McKay Sustainability Department
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