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Mikisew Cree First Nation
Government and Industry Relations
206-9401 Franklin Ave
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January 20, 2014

Pickering, Brad
Chief Executive Officer, Environmental Monitoring
Environment and Sustainable Resource Development
10th floor, Petroleum Plaza
9915 108 Street
Edmonton, Alberta, T5K 2G8

Dear Mr. Pickering,

The Mikisew Cree First Nation (MCFN) and the Athabasca Chipewyan First Nation (ACFN) are formally withdrawing from the Joint Oil Sands Monitoring (JOSM) program, effective immediately.

Your December 5th, 2013 response was an overwhelming disappointment. Having reviewed your December 5th, 2013 response to our Terms of Reference (TOR) for inclusion of our Nations in the JOSM, it remains clear that JOSM does not meaningfully or effectively incorporate First Nations, our Traditional Knowledge, our Treaty Rights or our concerns. In this letter, we highlight a number of our concerns with JOSM and the effect of your negative response to our TOR.

At a high level, your response indicates that we remain at odds over the purpose of a monitoring program in the oil sands region. While the Alberta Government and Environment Canada (EC) appear to see monitoring as a way to assure Canadians and foreign investors that the oil sands is

being developed in a sustainable way, the MCFN and ACFN are monitoring to determine what is causing the extensive decline in environmental quality the Elders and land users have been noting for decades and other severe adverse impacts to the exercise of our Treaty Rights, including the cultural and spiritual aspects of those rights. Furthermore, our First Nations want to know if their health is at risk from oil sands related contamination to air, water and other traditional resources.

We are also troubled by the spirit of the discussions relating to our involvement in JOSM. For example, the MCFN and ACFN received the response letter to our TOR via email on December 10th, however only two days later, on Dec 12th you presented a slide at the Stakeholder meeting which stated, under the title "First Nations & Metis" that: "Fort MacKay First Nation, Athabasca Chipewyan First Nation, and Mikisew Cree First Nation have currently withdrawn from participating in JOSM". We had not withdrawn from the JOSM in any way at that point, and find this statement insulting and reflective of a lack of "good faith" in your discussions with our First Nations about ensuring JOSM meaningfully included our input, our Treaty Rights and our Traditional Knowledge. Whereas the TOR was intended to outline a process for our meaningful involvement in JOSM, the content and timing of your December 12 presentation suggests that even the process to discuss ways to make JOSM meaningful was flawed, in that we were not given time to respond and because it suggests you presented a response that you knew would not address our concerns.

Your response to the TOR is also indicative of the acutely disappointing way JOSM has approached the engagement of Aboriginal people and inclusion of Traditional Knowledge in research initiatives. The JOSM promised that "The Implementation Plan will be delivered based on the principle of inclusion of Traditional Ecological Knowledge, and the training and involvement of members of local communities in the actual monitoring activities", (from p.6 of the joint Canada-Alberta implementation plan for oil sands monitoring states). Despite the above statement, there has never been any plan in place to realize those promises. There has been no coordinated government effort to gather Traditional Knowledge (TK) at a local or regional scale, or to train Aboriginal people, nor to include Aboriginal people in sample collection.

Our TOR offered a way to address this gap. Our First Nations have been working for 5 years building a rigorous Community Based Monitoring process that uses Traditional Knowledge as a foundation. MCFN and ACFN sincerely wanted to be involved in JOSM and to include TK so that a truer picture of environmental decline in the Peace Athabasca Delta could be articulated and then mitigated. Yet it is now clear to us that there was never any real intention of including TK into JOSM in anything more than a token gesture.

In this regard, we note that your rejection of our TOR has also compromised the two years spent building relationships with JOSM scientists. Our First Nations frequently initiated work alongside many JOSM scientists in the past years at our own cost and at the expense of other community needs. Our involvement proved invaluable to many researchers. By rejecting our

TOR and by extension our meaningful involvement in JOSM research, you are undermining the research initiatives that have been begun and the scientists that have and would benefit from meaningful First Nation involvement in JOSM through our TOR. This includes:

- Air (Jane Kirk and Kevin Percy)
- Water (Fred Wrona, Roderick Hazelwinkel, Malcolm Conly, Kerry Pippi)
- Habitat (Jim Hebers, Monica Kohler, Brandi Mogge, Tara Narwani)
- Contaminants (Bruce Pauli, Phil Thomas, Craig Hebert)

The rejection of our TOR and the role that it would enable our First Nations to play in JOSM also means that planning teams for the following Component Advisory Committees, (CAC)s will lack critical First Nation input and knowledge that would benefit research:

- Biodiversity
- Water
- Wildlife Contaminants

Next, the rejection of the TOR is part of the JOSM executive's persistent failure to provide capacity for First Nation involvement in JOSM. All co-initiatives between First Nations and both levels of government have been rejected by JOSM executives. Not a single dollar from the lauded 50 million of JOSM funding has been made available for First Nation participation in JOSM-related work. The rejection of our TOR is the most flagrant example of this pattern, particularly given that we worked collaboratively with both the Alberta ESRD and Environment Canada staff for almost two years to arrive at a common objective (namely a TOR and budget) and were given assurance at a senior level that our TOR would be approved and funded and worth the effort to develop (based on successful models with other Alberta First Nations). Despite our extensive efforts to work with JOSM and to contribute our knowledge respecting the serious cumulative effects of oil sands development on our communities and the exercise of our Treaty Rights, it is shocking that there appears to be no positive answer to the question "what would it actually take for the JOSM executive to support a First Nation initiative?"

When the JOSM executive divided the whole JOSM program into seven Component Advisory Committees, without any prior discussions with First Nations, they also divided the JOSM budget. JOSM executive presented at the June 11 stakeholder meeting the concept of a First Nations/ Métis Engagement CAC. Now seven months later, it is evident that no thought had been put into the First Nations/ Métis Engagement CAC at all, and certainly no funding allocated. In fact it would appear that 4 of the CACs get to split 50 million and the other 3; including the First Nations/ Métis Engagement CAC receive no funding.

With a lack of JOSM funding to support the our Nations' involvement or the inclusion of Traditional Knowledge in JOSM, it is clear to us that this isn't and never has been an important

issue for the JOSM executive, even though our communities, our Treaty Rights and our way of life are so adversely affected by oil sands development and even though we have unique perspectives, knowledge and experiences to contribute. Even massively flawed Regional Aquatic Monitoring Program (RAMP), whose failure precipitated the formation of JOSM, received 5.6 million of funding from JOSM, of which \$40,000.00 is to pay for “JOSM Engagement” and \$20,000.00 of which is to be used for undefined and nebulous “miscellaneous investigations and support”. With such random allotments of money to other stakeholders, we are left – as Section 35 rights holders, fully insulted at the priorities of this JOSM executive, that we should be so completely marginalized from the process.

It is without controversy that research costs money. Your rejection of our TOR and its identification of the need for funding for First Nation initiatives is, in effect, a rejection of First Nation inclusion in JOSM research. This silencing of the First Nations and their Knowledge is deeply troubling and suggests to us that the JOSM executive does not value the combined knowledge of hundreds of generation’s worth of knowledge about the study area. Our Community Based Monitoring program fully integrates TK, includes Elders in research activities, and has demonstrated successful collaboration with JOSM scientists in the field.

Finally, we are seriously concerned that there has been no coordination between JOSM monitoring and regional development planning. One important goal of the monitoring program should be to have a clear outline of the actions that will take place if the data from the program reveal deteriorating component quality or indicate negative cumulative impacts. JOSM has not achieved this; and instead points to the Alberta Environmental Monitoring, Evaluation and Reporting Agency (AEMERA) process to accomplish such governance, however the development of the AEMERA has been shrouded in almost total secrecy, with no involvement of First Nations.

Initial JOSM findings (Kirk, Hebert, Kurek) are sounding alarm bells about oil sands development causing elevated levels of contaminants in the environment (Hg, PAHs). Yet, instead of awaiting conclusions from JOSM, and feeding these into a structured governance process, oil sands projects are being pushed through the approval process when your own JOSM evidence would dictate that a more precautionary approach to development should be adopted.

Next Steps

With the failure of the informal TOR discussions to address the serious problems with JOSM and MCFN and ACFN formally withdrawal from the JOSM process, we request that you immediately work with us to develop a credible and adequately funded process to determine how to:

- Plan and undertake Traditional Knowledge research related to Oil Sands development;
- Undertake arms-length, expert evaluation of current JOSM findings;

- Determine the process to evaluate and report on the adverse impacts of oil sands development on the environment and the exercise of our Treaty Right, using the best available TK and science
- Develop measures, criteria and thresholds related to the meaningful exercise our Treaty Rights and ensure that those thresholds are enforced.

With respect to the second bullet point, we note that it should also include a formal process for when arms-length, expert evaluation of JOSM findings (using the best available TK and science) shows negative environmental consequences from oil sands development (single operator or cumulative) or other adverse impacts to our Treaty Rights. In such instances:

- these findings must be evaluated against Canadian Environmental Assessment Agency recommendations to enforce management changes, or suspend operations;
- these findings must be evaluated against Alberta Regulatory laws to enforce management changes, or suspend operations;
- these findings must be evaluated against Health Canada and Alberta Health regulations to determine if the negative environmental consequences translate into human health risks;
- these findings must be evaluated against Treaty and Aboriginal rights to determine if infringement has occurred, and if so, then mitigate or accommodated.

Senior representatives of JOSM and relevant federal and provincial departments and agencies should be part of the development of this process.

We look forward to your response

Regards,



Melody Lepine, MCFN GIR, Director



Lisa King, ACFN IRC, Director

CC: Karen Dodds, Science and Technology, ADM - (Karen.Dodds@ec.gc.ca)
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October 20, 2014

Karen Dodds
Assistant Deputy Minister
Science & Technology Branch
Environment Canada

Jay Nagendran

Chief Executive Officer

Office of the CEO
Alberta Environmental Monitoring, Evaluation & Reporting Agency
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Dear Karen Dodds,

We write in connection with your recent invitation(s) to attend sessions on Aboriginal input into Oil Sands Monitoring. There were a number of aspects of your invitation which we find deeply troubling.

We were surprised that your invitation makes no reference to, let alone any effort to address, our repeated requests for commitments from your departments to address the ongoing issues relating to Oil Sands Monitoring, such as:

- the exclusion of Traditional Knowledge;
- the failure of your departments to consult meaningfully with us regarding our concerns with the exclusion of Aboriginal input into Oil Sands Monitoring;

- the persistent problems caused by your departments' approach to our resource and capacity concerns; and
- the failure to fulfil commitments to train and include Aboriginal people in monitoring

As you know, we have provided input and suggestions on all of these issues. Unfortunately, these concerns have not been addressed. To be frank, the issue is not a lack of input from Aboriginal groups such as MCFN regarding "priorities and issues regarding oil sands monitoring and associated activities". The issue is the failure of your departments to take steps to address our concerns. Given our repeated efforts to engage in JOSM and to outline our concerns when our efforts have been thwarted, it is our view that holding another forum for MCFN to raise the same issues we have raised previously is not an effective use of time and resources or, indeed, a credible response to our concerns.

The Mikisew Cree's position has not changed related to JOSM, and we remain formally withdrawn from the process. We have made our requests for re-involvement known not only to the JOSM executive, including yourselves, but also to Alberta Minister Robin Campbell. Our requests included the following:

- Approval of our joint Terms of Reference (TOR) and,
- Approval of the budget linked to these activities stated in the TOR.

We continue to wait for engagement on those issues.

Similarly, the process set out in your invitation falls far short of what is required to address the problems identified by the Commissioner of the Environment and of Sustainable Development. The Commissioner of the Environment and of Sustainable Development was clear in her 2014 Fall Report that there has been a failure by Canada and Alberta to engage appropriately with Aboriginal groups, such as MCFN, in Oil Sands Monitoring. She was also clear that the Joint Oil Sands Monitoring program has failed to meet its obligation to incorporate Traditional Knowledge. The process set out in your invitation strongly suggests to us that either you have not acknowledged that or are not prepared to address these concerns.

We also find it disturbing to see the JOSM executive plough forward with these limited engagement strategies, apparently assuming that the First Nations are on board, when I have explained to you in person that there are significant issues that need to be addressed. Sub-regional sessions with Elders is only appropriate when it coincides with well-planned, funded TEK collection research program, including appropriate support for Elders and a credible and mutually-agreed upon process for integrating that TEK. At best calling two Elders and two community members to speak to issues demonstrates a

lack of understanding of how to appropriately elicit and incorporate TEK. At worst, particularly when considered in the ongoing absence of real efforts to address our concerns and credibly incorporate TEK into oil sands monitoring, it is suggestive of a dismissive and outdated view of Aboriginal involvement in oil sands monitoring.

Our own Community Based Monitoring program, guided by TEK, has demonstrated a significant decline in the health of our traditional territories. Our review of journal articles published by JOSM related scientists indicate a cumulative impact on the natural environment downstream of Oil Sands operations with direct impact on Treaty and Aboriginal rights and on our health. It is therefore troubling to see our input and expertise treated with such limited regard once again.

In our view, these failures demonstrate that the duty to consult has not been fulfilled with regards to the development of JOSM. If AEMERA is being built on the foundation of JOSM then this extends to that process as well.

For all of these reasons, it is our view that holding a limited forum in which 2 MCFN Elders and 2 community members can attempt to raise the same issues we have raised previously, is not an appropriate response to the present situation. What is urgently needed is action on the concerns and requests we have made previously. We once again ask for those issues to be addressed.

Sincerely,


FOR Melody Lepine

Director

Mikisew Cree First Nation – Government and Industry Relations

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