

Appendix 1:

October 19, 2010 Joint Submission of Athabasca Chipewyan First Nation, Chipewyan Prairie Dene First Nation, Mikisew Cree First Nation Regarding Comments on the Lower Athabasca Regional Advisory Council's Advice to the Government of Alberta Regarding a Vision for the Lower Athabasca Region



Athabasca Chipewyan First Nation
Industry Relations Corporation
110B -9816 Hardin Street
Fort McMurray, AB T9H 4K3



Mikisew Cree First Nation
Government and Industry Relations
Suite 208, 9715 Main Street
Fort McMurray, AB T9H 1T5



Chipewyan Prairie Dene First Nation
Industry Relations Corporation
Suite 205, 10020 Franklin Avenue
Fort McMurray, AB T9H 2K6

October 19, 2010

Dave Bartesko
Land Use Secretariat
9th Floor, 10035-108 Street
Centre West Building
Edmonton, AB T5K 2G8
Dave.bartesko@gov.ab.ca

Dear Mr. Bartesko:

Re: Comments on the Lower Athabasca Regional Advisory Council's Advice to the Government of Alberta Regarding a Vision for the Lower Athabasca Region ("the RAC Document")

This letter sets out some of the Mikisew Cree First Nation, the Athabasca Chipewyan First Nation and the Chipewyan Prairie Dene First Nation's ("First Nations") comments on the RAC Document and Cabinet's powers in respect of the Lower Athabasca Regional Plan ("LARP"). We have also attached an appendix to this letter which provides a chart showing all of the references to "aboriginal peoples" in the RAC Document, the RAC vision for each item, and the problems with the vision. Please note that the First Nations will be providing additional information to the Government of Alberta, including their respective visions for the LARP, on or before November 11, 2010, as per Melody Lepine's discussion with Dave Bartesko on October 15, 2010.

Background Comments

As you are aware, the RAC Document does not incorporate the First Nations' information, or incorporates, at best, limited information that was publically available at the time that the RAC Document was being completed. The RAC Document should be

updated after careful consideration of the information submitted by the First Nations in consultation with the First Nations.

All three First Nations have made various requests with Alberta, including specific proposals with Alberta in their October 2008 submissions on the Land Use Framework for developing data regarding land and resource use requirements of First Nation; data which is critical for credible land use planning.¹ Alberta did not respond in any way to the requests of the First Nations to develop the data and information (including thresholds) required to properly assess and accommodate Section 35 rights in the LARP. Therefore, the RAC document does not include the types of specific information that would have come from a traditional land and resource use plan.

The RAC Document does not consider the questions previously tabled by the First Nations with the Land Use Secretariat concerning specific potential impacts on section 35 rights.² As a result, while there are occasional references to “rights” in the RAC Document, there is no analysis provided as to how (if at all) the recommended areas for protection took into account any of the information necessary to protect section 35 rights.

It is important to recognize that both MCFN and ACFN requested the development of a mutually acceptable consultation protocol to guide the development of LARP. Both First Nations also set out, in their funding request for participation in LARP³, approaches to consultation that they wished to pursue. Alberta unilaterally imposed its own approach to consultation and has not responded to the consultation approaches set forth by the First Nations. This lack of procedural consultation by Alberta is problematic both from a constitutional standpoint and also from a pragmatic standpoint given that the RAC itself was constituted primarily of industry and government representatives and not First Nations.

The RAC Document perpetuates what the First Nations consider to be Alberta’s flawed approach towards aboriginal issues by not using a rights-based focus. Indeed, none of the other processes referenced in the RAC Document, such as the IFN, use a rights-based focus. As such, the RAC Document and the proposals that it contains are insufficient to meet Alberta’s constitutional obligations towards aboriginal peoples.

¹ Chipewyan Prairie First Nation and Mikisew Cree First Nation’s October 2008 Joint Submission on the Land Use Framework included the need to develop a Traditional Resource Use Plan. Athabasca Chipewyan First Nation’s October 2008 Proposal for Co-management of Richardson Backcountry also included the need to develop a traditional resource use plan in addition to a planning and decision-making framework that respects the Treaty relationship and priority rights of First Nations.

² CPFN and MCFN tabled these questions in their October 2008 submission on the Land Use Framework, while ACFN tabled them in their April 2009 submission on the LARP.

³ ACFN’s submitted their funding proposal July 31, 2009; MCFN submitted their funding proposal on August 19, 2009.

Because of the above problems with the adequacy of information, consultation and methodology, it is impossible to tell how RAC came to the conclusion that the proposed conservation and mixed use areas will assist in protecting section 35 rights when all indications are that the RAC Document proposals will, instead, facilitate yet more development that has the potential to adversely impact and infringe the section 35 rights of the First Nations.

As a final background point, it is troubling that the RAC Document provides no guarantee that even if certain areas are protected, that they will remain protected. This is because, as is discussed in greater detail below, under the Alberta *Land Stewardship Act* Cabinet can override various protection-related decisions, even if they initially accept them.

Specific Comments on the RAC Document

The lack of a rights-based approach in the RAC Document means that there is little or no recognition in LARP that the existing level of development in some areas is already adversely affecting and infringing section 35 rights. The potential consequences of this lack of recognition are exacerbated by the unwillingness of the Crown to conduct proper studies or consider freezing development in certain areas until more information is known about potential direct and cumulative impacts, including on section 35 rights.

At page 7 of the RAC Document, it is stated that “the *Alberta Land Stewardship Act* (“ALSA”) makes regional plans binding on...all provincial government departments and decision-making boards and agencies”, but it remains unclear what the relationship is between LARP and any project-specific decisions that must be made by regulatory agencies or individual line ministries. Also, while there is a recommendation at page 12 to strengthen the capacity of government boards to support the social and economic assessments of major projects, this recommendation is meaningless if the boards will simply apply ALSA.

There is no analysis in the RAC Document of the direct and cumulative impacts of existing and planned development on section 35 rights, and no attempt is made to distinguish between impacts of different kinds of development (e.g., mineable oil sands, SAG-D, mineral extraction, exploration, transportation and infrastructure). There appears to be an assumption, without any analysis of adverse impacts on section 35 rights, that various kinds of land uses (including First Nations land use) and industrial development can occur side by side in the large mixed use zone. This is particularly troubling in light of the broad range of activities, which the RAC Document assumes will continue to increase, without providing any basis for that assumption. An analysis of the impacts of these various uses on Section 35 rights (including an assessment of thresholds for the meaningful practice of rights), is required.

Throughout the RAC Document, there is no explanation of what is being assessed or should be assessed in terms of impacts in the planning area. What is clear is that there is no attempt to assess potential direct and cumulative impacts on section 35 rights. The disregard for section 35 rights goes even further, for in addition to not assessing effects on those rights, the RAC Document also virtually ignores the importance of the constitutional protection of section 35 rights.

This is reflected at page 3 where impacts to “aboriginal communities” are mentioned only after consideration of community development, physical and social infrastructure needs, recreation and tourism development, population growth and labour needs and impacts to local communities.

This is also reflected in the five land-use classifications in the document. The RAC Document assumes, without any analysis, that aboriginal and treaty rights can be exercised in “conservation” areas and in other areas. Moreover, it makes this assumption even though the various changes that Alberta Sustainable Resource Development is proposing in mechanisms such as the Proposed *Public Lands Administration Regulation* raise questions as to whether First Nations can even exercise their rights in the conservation areas. It also makes this assumption even though its strategies, such as the strategy to “stimulate private sector development of recreation areas with long-term leases” and “partner with the private sector to develop a tourism industry with opportunities based on the Lower Athabasca Region’s industries, culture and heritage” may adversely affect the exercise of section 35 rights as well. The same sort of pro-development without analysis of impacts on section 35 rights is also contained in the Regulatory Enhancement Project (“REP”) work that Alberta is undertaking – the focus of REP is on increasing “regulatory efficiency”, without setting out how section 35 rights will be dealt with. The First Nations have filed separate submissions to Alberta on REP (Appendix 1) .

The RAC Document refers, at page 5, to management frameworks offering “a system for understanding priority values and how those values are affected by land-use decisions.” Yet, despite the constitutional framework and various Supreme Court of Canada decision, the RAC Document does not treat constitutionally-protected rights as a priority value at all.

The RAC Document fails in certain methodological respects as well. For one, while there are references to “cumulative impacts” throughout the document, there is no recognition that existing, planned and reasonably foreseeable industrial development has adversely affected and infringed, and has the potential to further adversely affect and infringe, the ability of the First Nations to meaningfully exercise⁴ their rights now

⁴ “Meaningful practice” of Section 35 rights requires access to tangible and intangible resources (including, but not limited to, air, water, minerals, timber, fish, small and large game animals, cultural landscapes, and resources of traditional knowledge and learning) of adequate quality and quantity for

and in the future. Moreover, there is no methodology set out for how such effects and impacts are to be assessed and there is no consideration of incorporating different methods of assessment for such impacts. Similarly, while there is a discussion of management frameworks at p. 6, there is no analysis of how things like thresholds and triggers will be developed and upon what sorts of considerations both generally and in relation to the meaningful exercise of section 35 rights.

It is clear that the overriding principle of the RAC Document is that of economic growth and that protection of other interests is secondary: page 8 states, “[m]any economic benefits are realized through our land and resources. The land and its renewable and non-renewable resources must provide quality of life for Albertans now and in the future.” This is a very one-sided notion of “quality of life.” The focus is on citizens of Alberta, including First Nations, “thriving” in terms of economic growth. While economic growth is critical to First Nation people, there appears to be no recognition in the RAC Document of the costs involved and who bears those costs. See, for example, the list of items at pages 8-9 under “the economic potential of the oil sands is optimized” and “the economic contribution of forestry is optimized.” There is also no recognition of the impacts of existing disturbances on section 35 rights or any other interests. Rather, the RAC Document contemplates activities that will likely significantly affect section 35 rights: take, for example, the statement at page 9 that within the LARP Alberta should “revise regulatory processes **to be competitive** in the development of oil sands and other key industries.” (emphasis added)

The First Nations note that the first real discussion of “aboriginal peoples” comes only at page 11 of the RAC Document, and even then the discussion is not in relation to constitutionally-protected rights, but in relation to “increased participation of aboriginal peoples in the regional economy.” Again, economic opportunities for First Nations people are important, but they cannot be considered without also understanding the impacts of development on the exercise of rights.

At page 11, there is also a reference to the need to “work with aboriginal peoples to develop aboriginal centres of excellence pertaining to traditional knowledge, stewardship practices, aboriginal cooperative management opportunities, roles and responsibilities in environmental monitoring, integration with western science, etc.” and “collaborate with aboriginal peoples to address compensation matters and concerns relating to the infringement of treaty rights and other constitutionally protected rights.” Contrary to constitutional requirements that the Crown respect aboriginal and treaty rights, the focus here is not on preserving the rights, but appears to be focused on monitoring impacts and compensating for infringement.

First Nations members to practice their mode of life with confidence, in the preferred manner and location, to sustain their health and the health of their families, and to provide a reasonable and moderate livelihood.

There is a recommendation at page 12 to “create a new process to assess the infrastructure, social and economic implications of major projects and the growth they create in a manner that parallels the application approval process”. This is a good idea, but that process needs to include impacts such as cultural impacts and impacts to constitutionally-protected rights. It also needs to involve meaningful consultation with First Nations people at all key decision making steps, starting with scoping of projects, terms of reference, etc. The RAC Document does not set the framework for either.

Another interesting recommendation on page 12 is to “work with and support aboriginal peoples who develop sustainable social and economic development plans, consistent with traditional stewardship plans.” Unfortunately this recommendation is largely meaningless because it is not clear how this can be done when LARP creates a framework that allows Traditional Territories to continue to be developed over the objections of First Nations regardless of impacts on their rights.

There are a number of recommendations at page 15 concerning the need to better understand environmental issues. While many of the recommendations concerning aboriginal issues (see page 16 – “work with aboriginal peoples to utilize aboriginal knowledge of historical changes in water quality and quantity, air quality, land and biodiversity to establish firm baselines for measurement in the region”) are good ideas, they are ultimately flawed. First, the recommendations are meaningless without regulatory change to actually incorporate those perspectives into decision making. Second, there is no discussion of section 35 rights or accommodation in these recommendations. Equally troubling, the recommendation to support development of “education programs to present the region’s unique cultural and aboriginal history” essentially leads to what Tom Berger said years ago, namely, that development without considering the needs of First Nations may lead to a situation where First Nations and their cultures are analyzed as things of historical interest, rather than as living, vibrant cultures.

The recommendation at page 17 that a cap be placed on the amount of the LARP Region’s land base in mixed-use areas that can be disturbed for oil sands extraction footprint at any one time is a good idea; however, this recommendation needs to be expanded to include all development zones and also needs to consider placing a limit on all kinds of development depending on cumulative impacts, not just in terms of oil sands extraction.

At page 17 there is a recommendation that calls for use of aboriginal traditional knowledge to enhance understanding of cumulative effects and develop appropriate mitigation/minimization strategies. This is generally a good idea, but it will only work if there are regulatory changes to require incorporation of such knowledge at an early point in project and application planning.

There are various recommendations, beginning at page 17, for incorporating planning and analysis into reclamation and inclusion of aboriginal peoples at that stage. This focus on reclamation without assessing impacts on rights beforehand is problematic by itself. It is made more problematic by the failure of the RAC Document to counter the apparent assumption that any kind of plants or grasses, for example, in an area is fine in reclamation, irrespective of what the pre-disturbance conditions were. This “reclamation as mitigation” approach essentially reflects an understanding that it is acceptable for First Nations to suspend their exercise of rights in an area for decades without analyzing what the cultural impacts may be if that occurs.

There is a recommendation at page 18 that aboriginal peoples be included in terms of conservation and enhancement of regional biodiversity and ecosystem function and in respect of developing a traditional knowledge base of the variety and intensity of impacts of individual and cumulative industrial activities on biodiversity and ecosystem functions through time. The problem, again, is that this recommendation has no context, for it does not address when this will occur, how it will influence LARP or future project-specific decision making, etc.

There are references at page 22 to valuing cultural diversity and protection of significant historical resources, including maintaining opportunities for community traditional use activities such as hunting, fishing, trapping, country foods and camping, preservation of historical sites, etc. Again, these are important concepts, but so long as the regulatory system ignores or downplays rights and traditional uses, these statements are largely meaningless.

Outcome 7 expressly deals with Aboriginal People’s Rights, Traditional Uses and Values and says they should be respected and reflected in planning. Some of the recommendations in Outcome 7 and the First Nation’s comments on them include:

- *Ensure meaningful consultation with aboriginal peoples:* it is unclear how this is to be done, particularly when Alberta’s Consultation Guidelines do not reflect the current state of the law⁵;
- *Work with aboriginal peoples to improve quality of information to inform and coordinate current planning processes, infrastructure and services planning:* This is an positive idea, but the RAC Document does nothing to assist First Nations when they raise information needs in project-specific TORs or in other processes and are ignored;
- *Work with aboriginal peoples to develop formal roles and responsibilities for aboriginal peoples in land-use planning and environmental assessment:* this is a

⁵ Please note that all of the Treaty First Nations of Alberta have submitted a detailed letter to the Government of Alberta setting out their concerns with Alberta’s Consultation Guidelines (Appendix 2).

good idea, especially if the role is in relation to rights and unique First Nation issues, and not merely as stakeholders. However, it can only work if there is a real chance to influence planning and project decision making at all levels, and the RAC Document offers nothing to make that happen;

- Other recommendations in this section are positive as well, but are hindered by current realities that are overlooked by the RAC Document: significant areas are already leased out, economic development is the overriding imperative in the RAC Document, and the current regulatory system and consultation approach does not meaningfully incorporate First Nation issues and concerns;

The First Nations note that the RAC Document fails to consider the potential adverse impacts of things like conservation areas and parks on the exercise of rights. Although “parks” sound like a good idea, the exercise of section 35 rights is usually restricted in those parks and Alberta must carefully consider the scope and nature of those restrictions in order to avoid infringing constitutional rights.

Problems such as those just identified run through the remainder of the RAC Document as well. For your consideration, attached as Appendix 3 hereto is a chart showing all of the references to First Nations or Aboriginal peoples in the RAC Document, together with the weaknesses, flaws or questions that the various references raise in respect of the First Nations and their rights.

Comments on the Power of Cabinet over the Implementation of RAC Proposals and Conservation Efforts

The RAC Document notes at page 7 that the Alberta *Land Stewardship Act* governs the implementation of regional plans, including LARP. Under the *Land Stewardship Act* the responsibility for designating regions for planning purposes, adopting regional plans and all other significant powers rests with the Lieutenant Governor in Council. In short, the Lieutenant Governor in Council has absolute and unfettered authority over regional plans. For example, pursuant to the *Land Stewardship Act*:

- the Lieutenant Governor in Council has exclusive and final jurisdiction over all regional plans [s.13(1)];
- the Lieutenant Governor in Council can amend regional plans regardless of the views or advice of a regional advisory council or the land use secretariat [s.5(1)];
- there are no limitations on the Lieutenant Governor in Council’s authority to repeal regional plans [s.5(2)];
- the Lieutenant Governor in Council has authority to determine and amend planning boundaries [s.3(1)];

- the Lieutenant Governor in Council has regulation-making authority in respect of all aspects of the process for amending regional plans, including who may be consulted [s.4(2)];
- the Lieutenant Governor in Council sets the terms for the 10 year review of each regional plan [s.6(2)];
- the Lieutenant Governor in Council has the sole authority to determine how and by whom stewardship units are created [s.46]; and
- the Lieutenant Governor in Council has the sole authority to create and regulate “off-set programs” [s.47] and transfer of development credit schemes [s.48].

The authority of the Lieutenant Governor in Council to unilaterally amend or disregard parts of regional plans renders even the positive proposals of the regional plan regarding conservation and aboriginal rights – such as the proposal to develop formal roles and responsibilities for aboriginal peoples in land-use planning – potentially meaningless, for any commitment to include aboriginal peoples in planning decisions and management frameworks can be set aside by the Lieutenant Governor in Council.

Comments on the RAC Conservation Approach

In addition to the foregoing, below we set out specific comments on the flaws with the LARP approach to “conservation.”

1) General Comments on the RAC Document and Conservation

At the heart of the RAC Document is a suggested planning philosophy that environmental effects are to be *balanced* with social and economic goals. At the outset we note that this planning philosophy fails to recognize that this balancing exercise must take place within the constitutional framework of Canada. The constitutional framework requires that aboriginal and treaty rights be recognized and protected and, where the province considers any action which may adversely impact or infringe those rights – **including conservation actions** – that there be meaningful consultation and, in the case of any infringement, that the infringement be justified according to the **Sparrow** test. A balancing exercise that does not have the Constitution at its heart renders the conservation promises in LARP largely meaningless.

At various points, the RAC Document makes reference to the need to *integrate* aboriginal traditional knowledge in the regional planning process. While including aboriginal peoples and the traditional knowledge that they possess in the regional planning process is important for Alberta to be able to fulfill its constitutional obligations to protect aboriginal and treaty rights and for Alberta to have adequate

information for implementing its conservation approach, references to integrating aboriginal traditional knowledge in the RAC's approach to conservation planning are largely meaningless given the following:

- the overall scheme of the RAC Document is to promote and optimize economic growth of the oil sands, forestry, tourism and agriculture. Neither conservation nor aboriginal rights are given serious consideration in the proposed Outcomes or in the land-use classification system;
- the RAC Document does not describe how aboriginal knowledge will be used in regional planning or conservation processes. Nor does it contain a methodology or demonstrable commitment to incorporate that knowledge. Nor does it contain any criteria, methods or thresholds for assessing the direct and cumulative impacts of existing, planned and reasonably foreseeable development on the meaningful exercise of section 35 rights or any criteria, methods, or thresholds for what is required to sustain those rights – both of which the First Nations have been asking for throughout the development of LARP;
- the RAC Document does not describe what baselines will be used in assessing the pace of development and cumulative impacts in the LARP region; and
- under the *Land Stewardship Act*, the Lieutenant Governor in Council can reject or amend any planning advice from the regional advisory councils or the land use secretariat. As such, any proposed integration of aboriginal traditional knowledge can be disregarded at the discretion of the Lieutenant Governor in Council.

The lack of meaningful consideration of conservation is also demonstrated by looking at the conservation tools available under the *Land Stewardship Act*. Specifically, nowhere does the RAC Document identify any of the range of statutory conservation tools (e.g. direct and indirect expropriation for conservation, conservation easements, conservation directives, stewardship units, etc.) created by the *Land Stewardship Act* for regional planning purposes in respect of the conservation areas proposed by RAC.

Rather, the RAC Document undermines conservation efforts in two ways. First, it prioritizes economic activities associated with resource development within the majority of the LARP area, even though a central purpose of its authorizing statute, the *Land Stewardship Act*, is to manage land-use activities to meet the foreseeable needs of future generations of Albertans and aboriginal peoples. Second, rather than utilize authority under the *Land Stewardship Act* to compensate title holders for conservation efforts and to otherwise facilitate conservation, the RAC Document identifies the strategy to compensate aboriginal peoples for infringing their constitutionally-protected rights. In other words, the RAC Document contemplates paying for the right to avoid

seriously conserving land, whereas the *Land Stewardship Act* contemplates conservation.

The only time that “conservation strategies” are mentioned in the RAC Document is in the description of “conservation areas” at page 27, where the RAC Document states that aboriginal uses will be permitted where those uses will be consistent with overall conservation strategies. This is inconsistent with the constitutional promise of section 35. It is also important to note that the document does not describe how conservation objectives are to be selected. Nor does it describe the implementation and monitoring of those objectives.

2) *Comments on Specific “Outcomes” & Conservation*

As the main purpose of Objective 1 is to promote natural resources development, the First Nations note that Alberta’s resource allocation and regulatory regimes, insofar as they relate to the LARP area, will be modified to promote development rather than conservation or the protection of section 35 rights. Because the recommendations relating to aboriginal peoples are not tied to a regulatory regime, LARP will not have the same direct consequences for aboriginal peoples and rights as it does for the oil sands, forestry, agriculture and tourism.

The infrastructure and community development plans identified in Outcome 2 are predicated on rapid economic and population growth, not conservation. As the RAC Document does not create any thresholds for the achievement of objectives or for the assessment of the pace of development and cumulative impacts generally or in respect of section 35 rights, it is difficult to see how a conservation approach can be meaningfully applied to RAC’s desired infrastructure development. Furthermore, even though infrastructure projects – such as major transportation systems and high capacity transmission systems – are likely to have environmental, social and cultural impacts on aboriginal and treaty rights, the infrastructure strategies and plans in Objective 2.2 only minimally address the impacts of population growth and infrastructure on the environment and on section 35 rights in the LARP region and the involvement of aboriginal peoples in addressing those impacts.

The First Nations note that in Outcome 3, the RAC Document proposes to engage aboriginal people only in monitoring and reporting on issues relating to management systems. At no point in this outcome does RAC consider involving aboriginal people in the creation and design of management systems: for the environment’s natural processes and natural resources to be understood and for conservation to be seriously advanced, aboriginal knowledge and use of the land must be utilized and respected, *not merely presented*.

In Outcome 3 the RAC Document also fails to consider involving aboriginal peoples in the setting of appropriate baselines on which to base management systems – and by

extension, conservation – decisions. Aboriginal people should be consulted regarding appropriate baselines and how their knowledge will be utilized in assessing changes, mitigating impacts and ensuring protection of aboriginal and treaty rights. The proposals under this outcome fall short of these.

In Outcome 4.2, the RAC Document proposes to develop an integrated reclamation land management plan in the mixed-use resource area. It is inappropriate for this outcome, which relates to responsible and sustainable land uses, to consider aboriginal peoples only at the stage of reclamation. Moreover, the RAC document operates on the assumption that reclamation is acceptable and will be successful (again without considering reclamation in relation to the exercise of section 35 rights).

Furthermore, developing a reclamation plan to blanket the entire mixed use resource area (60% of the LARP area) demonstrates a failure to seriously address which lands are in more urgent need of conservation within that area, which lands are socially and culturally more important for the exercise of aboriginal and treaty rights, and other requirements under s.35(1) of the *Constitution Act*. Additionally, given that the land-use classification system defines how competing uses are to be balanced within land areas, the proposal to meaningfully incorporate aboriginal knowledge provides no guarantees that conservation priorities will be effectively taken into account. Also, as noted above, the absolute and unfettered authority of the Lieutenant Governor in Council to reject planning advice renders the promise to establish conservation areas and management plans largely meaningless.

There is no mention of aboriginal peoples or rights in Outcome 5, which guides responsible stewardship for air and water. This undercuts the RAC Document's purported attempt to involve aboriginal peoples and aboriginal traditional knowledge in the planning decisions, let alone conservation decisions.

Similarly, limiting the role of elders in Outcome 6 to be a tool for cultural diversity:

- (1) minimizes the role that elders and aboriginal knowledge holders should play in the land-use planning and land conservation process;
- (2) minimizes the link between their information and the protection of treaty rights;
and
- (3) undercuts the purported effort to involve aboriginal peoples and aboriginal traditional knowledge in conservation efforts.

The proposal in Outcome 6 – to support aboriginal communities' leadership to develop management procedures as appropriate to preserve and protect aboriginal peoples' historic and ceremonial sites that are significant to aboriginal peoples – is exceedingly vague, particularly in light of the RAC Document's priority on economic, infrastructure

and resource development and so is unlikely to promote conservation of these sites. The proposal is also largely meaningless given the unfettered discretion of the Lieutenant Governor in Council to reject any such management procedures.

We note that the proposals in Outcome 7 for including aboriginal peoples in land management planning are insufficient to meet Alberta's constitutional obligations towards aboriginal peoples, let alone seriously advance conservation in the LARP area. For example, the RAC Document does not acknowledge that Alberta must accommodate aboriginal peoples where appropriate and must justify all infringements of aboriginal rights in addition to consulting meaningfully with aboriginal peoples.

The proposal in Outcome 7 to balance aboriginal peoples constitutionally protected rights with the interests of all Albertans does not meaningfully advance conservation because it:

- (1) fails to recognize priority allocation of resources to aboriginal peoples when balancing access to limited resources requiring conservation;
- (2) fails to ensure no impairment or minimal impairment of section 35 rights or the justification of any infringement of aboriginal and treaty rights as required under the constitutional framework of Canada;
- (3) fails to set appropriate baselines from which to assess such infringement of rights and the level of environmental and cumulative impacts;
- (4) fails to acknowledge that the ability of aboriginal peoples to exercise traditional uses of the land may be linked to specific lands and territories, as well as tangible and intangible resources, which require conservation for the ability of aboriginal peoples to exercise traditional uses to be maintained;
- (5) fails to recognize that intended land uses in mixed use areas are too broad and mutually exclusive to be incorporated in one single land class;
- (6) provides no guidance regarding how traditional use information base is to be incorporated or used together with other scientific and socio-economic data and how that information is to be safeguarded;
- (7) proposes to involve aboriginal peoples at the stages of mitigation and reclamation rather than seriously considering conservation options such as limiting development or creating conservation easements or conservation directives as allowed under the *Land Stewardship Act*; and
- (8) fails to recognize the ability of the Lieutenant Governor in Council to substitute its own balancing views under the *Land Stewardship Act*.

We look forward to discussing these comments with you and to your response on the specific points that are included in this letter.

Sincerely,

Melody Lepine,
Director, Mikisew GIR

Lisa King,
Director, ACFN IRC

Shaun Janvier,
Director, CPDFN IRC

cc: Chief and Council, MCFN
Chief and Council, ACFN
Chief and Council, CPDFN
The Hon. Mel Knight, Minister, SRD
Morris Seiferling, Land Use Secretariat
The Hon. Diana McQueen, Chair, Regulatory Enhancement Task Force

APPENDIX 1 – Joint Submission on the Regulatory Enhancement Program



Athabasca Chipewyan First Nation
Industry Relations Corporation
110B -9816 Hardin Street
Fort McMurray, AB T9H 4K3



Mikisew Cree First Nation
Government and Industry Relations
Suite 208, 9715 Main Street
Fort McMurray, AB T9H 1T5



Chipewyan Prairie Dene First Nation
Industry Relations Corporation
Suite 205, 10020 Franklin Avenue
Fort McMurray, AB T9H 2K6

October 15, 2010

Mrs. Diana McQueen, Chair
Regulatory Enhancement Task Force
MLA for Drayton Valley-Calmar
Parliamentary Assistant for Energy
#620 Legislature Annex
9718 107 Street
Edmonton, AB
Canada T5K 1E4
Phone: (780) 415-9466
Fax: (780) 415-0951

Dear Ms. McQueen,

Please accept this submission on behalf of Athabasca Chipewyan First Nation, Mikisew Cree First Nation and Chipewyan Prairie Dene First Nations (herein after referred to as “the Nations”) who respectfully raise the following issues with the Government of Alberta’s Regulatory Enhancement Project (“REP”).

This initiative, as stated by Project organizers, was prompted by the Government of Alberta’s determination that the regulatory process was inhibiting the realization of the vision of the future of a “*prosperous province where all Albertans enjoy a high quality of life built on a healthy environment, a competitive economy and vibrant communities.*”¹

Further, in order to realize the substantial benefits that all Albertans enjoy, the Government of Alberta must “*continue to attract significant levels of oil and gas investment*” and that a comprehensive review of Alberta’s regulatory system for oil and gas would facilitate a streamlined and improved policy assurance system **that would attract increased levels of oil and gas investment** (emphasis added). Finally, the three stated outcomes of the regulatory process itself of “*environmental protection,*

¹ Updated REP Backgrounder, dated June 9, 2010.

general public safety and resource conservation” would be the focus of the REP to outline improvements.

There are several fundamental flaws with the above GOA statements and approach. Firstly, the stated GOA vision assumes that *all* Albertans benefit economically and socially from increased oil and gas investment or that they “benefit” in the same way. This is not the case for the majority of Aboriginal communities, including the Nations. In fact, the contrary is true; with each new oil and gas project comes an incremental loss of the ability to exercise Section 35 rights with no corresponding accommodation to the Nations for their loss of livelihood. Initiating the REP with this fundamentally incorrect assumption will ensure the Nation’s Section 35 rights will be further eroded if not addressed. All Albertans have the right, if qualified, to work in the oil and gas industry. However, to be clear, the fact that some members of the Nations may be employed in oil and gas-related jobs is not an accommodation of their section 35 rights.

This vision also assumes that the interests of **all** Albertans can be balanced and managed successfully, through tradeoffs occurring between the environment and economics within the regulatory process. This is also not the case. The constitutionally projected Section 35 rights of the Nations are fundamentally different than those of non-Aboriginal Albertans involved in the regulatory process. While non-Aboriginal Albertans’ rights can be balanced with broad economic and environmental tradeoffs achieved through outcome setting within the regulatory process, the Nations rights require a separate consideration. The Government of Alberta itself must reconcile these two different set of rights. This is the basis and purpose for Aboriginal consultation. Unfortunately, this is currently not occurring, and the REP Task Force (including the Design Team) gave no indication or assurances that this was being considered in the selection of regulatory models under consideration.

Stan Rutwind’s presentation on September 16th, where some members of the Nations were present, highlighted this lack of understanding by the Government of Alberta. Mr. Rutwind, if we understood him correctly, described the GOA position as preferring that disagreements over consultation matters (including constitutional issues) proceed directly to court and not be resolved by the appropriate regulatory body. This option was described by Mr. Rutwind as “just as cost effective” for First Nations as appearing at a hearing, and would be preferable because “boards and agencies do not have the expertise or capacity to competently consider Aboriginal matters.” This position, as articulated by Mr. Rutwind and if we understood him correctly, will have tremendous consequences and influence on any modifications or changes of the regulatory system proposed by this Task Force. The Nations would like to highlight that this discussion is not reflected in the “*What We Heard Report – First Nations Engagement*” dated October 12, 2010.

Any board, agency or regulatory authority created by Alberta to approve oil and gas activity **must** have the ability to consider matters related to Treaty and Aboriginal rights. Further, in order to ensure sufficient expertise and capacity, it is the Nations recommendation (and suggested directly by Chief Adams at an REP session) that any revised regulatory authority have Aboriginal representation reflected in its makeup, or direct First Nation involvement in regulatory decision making.

This fundamental lack of understanding by the Government of Alberta is central to the Nation’s concern over any proposed regulatory changes contemplated by the REP. This position by the Government of Alberta on the role of regulatory decisions and Aboriginal consultation does not

support the spirit of reconciliation that the Courts have expressed time and time again as the basis for the Crown relationship with First Nations.

It was also clear that the members of the REP Task Force did not have the necessary information about the role of Aboriginal consultation within the regulatory process until the last stages of ‘stakeholder engagement’ of this initiative. No presentation was provided by Aboriginal Relations to the Task Force prior to September, 2010. Nor was there any mention in the background information, interim report or oral presentation materials prepared by the REP Task Force which referenced the role of Aboriginal and treaty rights within the regulatory process. Mr. Rutwind stated that the Government of Alberta’s First Nation Consultation Guidelines would be amended or changed following the outcomes and recommendations of the REP Task Force.

What appears to be missing from the REP process is the issue of how meaningful consultation is to be carried out with First Nations. Despite years of objections from the Nations, Alberta continues to follow its First Nation **Consultation Policy** and Departmental Consultation Guidelines. Yet there is nothing in the REP process that discusses how consultation can be properly fit into the regulatory system. Instead, it appears to be an after-thought or is not being considered at all.

The Nations would like to raise the issue of how consultation or lack thereof occurred for the REP initiative. The chronology for initiation of this Project is as follows:

Phase 1	Project Start Up (Prior to December 2009)
Phase 2	Readiness Tasks (December 2009-March 2010) Stakeholder Engagement Approach
Phase 3	System Design (April 2010-March 2010)
90 Day Report	June 2010
Phase 4	Testing and Validation (October 2010-November 2010)
Phase 5	Recommendations (December 2010)

First Nations were not directly advised of the REP initiative until August 12, 2010. This first meeting was only allotted 1.5 hours for discussion. Less than two weeks notice was provided to Nation representatives to attend this meeting. No capacity funding was provided. Please see the attached letter for additional concerns regarding the manner in which consultation occurred prior to August, 2010.

It was only after repeated calls for additional discussion that a second meeting for First Nation scheduled for September 16-17th in Edmonton. However, the stated objectives of this second meeting as to “gather more feedback from First Nations participants...” and “build relationships between GOA and First Nations” only reinforced to the Nations that the REP Task Force does not appreciate what constitutes meaningful Aboriginal consultation or how to go about it. Finally on October 1, 2010, the Nations were encouraged to attend the ‘Final Stakeholder Engagement Session’ where all stakeholders were invited to attend. “Stakeholders” included ENGOs, landowners, municipalities, industry, and GOA staff. Again, this is not an acceptable venue for Nation-to-Nation discussions.

As the Government of Alberta unilaterally determined in advance that the REP initiative did not negatively impact Aboriginal and treaty rights of the Nations, and therefore did not consult, but “engaged” communities, the substance of discussions and subsequent consideration of the Nation’s comments was not adequate:

“While the REP anticipates no potential adverse impacts on rights or traditional uses through this process, Alberta recognizes that First Nations may have unique insights into the regulatory process and encourages you to participate in these meetings on the enhancement of Alberta’s regulatory process. If you are unable to attend the meeting, we would appreciate if you could send one senior representative in your place².”

The Nations recognize that the current regulatory process is disjointed, overly complex and confusing. There is little or no coordination between SRD, ERCB and AENV. There are different consultation standards depending on which department, field office or government representative is supposed to deal with consultation matters. There is no consistent approach on the ground as to when or if consultation is required within the Government of Alberta. There are extremely good reasons for reviewing and revising the regulatory process.

There are also benefits to both a “one window” and “one regulator” model approach that may address the current regulatory shortcomings, including lack of coordination; standardization of Aboriginal consultation requirements, etc. However the Nations would like to raise a number of concerns for a streamlined regulatory model based on a risk-management approach.

The REP Design Team member described a regulatory system based on a risk management approach (or “risk-to-outcome” based) as one of the pre-requisites for improving regulatory performance. This is extremely problematic. As none of the current outcomes of land management currently being considered by the Government of Alberta includes sufficient land for the exercise of Aboriginal and treaty rights (particularly in the Lower Athabasca), the basis for regulatory enhancement is flawed from the beginning. As an example, the recently released RAC Vision Document barely mentions constitutionally protected rights of the Nations at all, and places economic development as a priority far above the protection of section 35 rights. A “risk-to-outcome” approach is vague at best. Based on the experience of the Nations, such an approach, in practice, focuses on the risks to economic development rather than on the risks to the meaningful exercise of section 35 rights by the Nations.

The Nations also do not want the Alberta ‘one-window/one regulator to resemble and embody the flaws found in the British Columbia Oil and Gas Commission (“OGC”) in its approach to managing effects on the environment. Those flaws include, but are not limited to: inadequately considering Aboriginal consultation matters; short regulatory timelines; and total lack of pre-Application consultation with First Nations. We do recommend, however, that Alberta take note of revenue sharing in British Columbia, and the distinction between procedural and Crown consultation that is made by the OGC.

To be clear, the Nations are of the view that a one-window approach is a very good idea. But it will only work if the Government of Alberta requires companies to involve First Nations early in any application process, before applications are filed, to ensure that those Nations are consulted on the design of biophysical and other studies; that the Nations have some input into project design, scoping of projects that require environmental assessments, and in respect of designing the terms of reference for any EAs. Such aboriginal input cannot be anything other than legally mandated, particularly if Alberta continues to delegate most, if not all, of its consultation obligations to industry. The approach

² August 27, 2010 invitation letter to Nations

will only work if there is clarity around consultation: when are proponents and the Crown required to consult (how early in any decision-making process?); what are the triggers for consultation? What are the procedural and substantive aspects of consultation involved? If there is a one-window approach, who consults? If the one-window approach involves both consultation and decision making, which is the OGC model in British Columbia, how are those roles distinguished, particularly so that there is no conflict of interest in terms of the roles?

Any consideration of a one-window approach must take into account the financial needs of First Nations for meaningful consultation. Alberta has actually reduced core consultation funding, even though Alberta keeps increasing the processes and issues on which it purports to consult with First Nations. The REP process does not deal with this issue at all.

Aboriginal consultation is the process of first identifying and then seeking to address potential adverse impacts (including direct, indirect, and cumulative) to the exercise of Aboriginal and treaty rights. Aboriginal consultation is a legal responsibility of the Crown to identify, assess and if necessary accommodate those potential impacts brought about through Crown decision or action. It is also recognized that certain procedural aspects of consultation can be delegated to industry. Although there are profound differences of opinion between the Crown and the Nations on how far such delegation can go, it is recognized that the primary role of the duty to consult remains with the Crown.

Meaningful Aboriginal consultation involves two distinct steps: ***assessment and accommodation***. *Assessment* will determine the extent, scope and size of the potential direct, indirect and cumulative impacts on biophysical, cultural, social and economic systems of a proposed activity. *Accommodation* discussions will determine appropriate mitigation steps to offset those impacts.

Accommodation may include options, such as:

- Avoidance of impacts,
- Minimization or mitigation of impacts, and,
- Economic measures to offset identified residual impacts to the exercise of those rights.

Accommodation discussions occur only after the proposed activity has been properly assessed. It is critical for the Crown to have accurate and credible information about the potential negative/positive direct, indirect and cumulative impacts on biophysical, cultural, social and economic systems in order to properly assess the impacts on the rights and interests of potentially affected Nations.

Aboriginal consultation requires the Crown to inquire and determine what potential effects a proposed decision has on the exercise of Aboriginal and treaty rights. Regulatory processes in all Canadian jurisdictions are meant to gather and identify information about both potential positive and negative environmental and socio-economic effects of a proposed activity.

Under existing regulatory processes, Proponents themselves are required to predict the potential effects of their proposed project before approval can be granted by the appropriate Regulating Authority. To predict those effects, Proponents are required to undertake assessments of various biophysical (including air, hydrology, wildlife, vegetation, fish and fish habitat, and soils), socio-economic and

cultural systems. Proponents use specialists to compile this information needed for inclusion in their applications to the appropriate Regulating Authority.

If the regulatory process (as recommended by the REP Task Force and Design Team) minimizes any opportunity for the Nations to be consulted on the potential impacts of a project occurring within the areas to which they have a right to exercise their Section 35 rights, this will have a negative effect on that ability to exercise.


In the majority of cases, involvement of or consultation with Nations on potential impacts to their rights occurs only *AFTER* applications are ready for submission or have been submitted to Regulating Authorities (including SRD, AENV and ERCB). Applications contain completed, or nearly completed, assessment information compiled by the Proponent. **This is too late in the process.** When this occurs, Nations do not have the necessary information or time to properly identify issues and concerns in relation to the proposed activity.

The Government of Alberta has initiated several ‘projects’ over the last several years, including:

- Land Use Framework
- Alberta Land Stewardship Act
- Lower Athabasca Regional Plan
- Comprehensive Regional Infrastructure Plan
- SRD Public Land Access Regulations

Alberta has refused in each instance to work with the Nations to implement a mutually agreeable consultation process in relation to these initiatives and have downplayed any analysis that focuses on what is needed to sustain the meaningful exercise of section 35 rights in those processes. To the extent that the REP process includes or incorporates LARP, ALSA and related processes, this will simply exacerbate the existing infringement of section 35 rights. There must be clarity, which the Nations have sought, as to the relationship between things like LARP, ALSA, and actual regulatory decision making – whether by individuals or by bodies such as the ERCB.

Finally, the Nations also require more information on two initiatives described in the “Enhancing Assurance: The First 90 Days” report, issued by the REP Task Force in June, 2010. Neither of these two initiatives was disclosed by the Task Force in the two meetings with the Nations (August 12; September 16, 17; October 1). They are described as follows:

1. **Memorandum Of Understanding on First Nations consultation information** – A Memorandum of Understanding will facilitate the ERCB receiving information on SRD’s consultation decision-making under [Alberta’s First Nations Consultation Policy on Land Management and Resource Development](#). This will support the ERCB in making timely decisions on whether First Nations may be directly and adversely affected by applications made to the ERCB through the provisioning of information.
2. **Coordinated First Nation consultation approach** – In an effort to give industry and First Nations more clarity and improved process around consultation, Energy, Environment and SRD are implementing a coordinated First Nation consultation approach, starting with environmental impact assessments. This coordinated approach means that the three ministries are working together to provide more consistent direction to industry regarding First Nations consultation that interfaces across the business of the three ministries. The goal is to provide clear First Nations consultation direction on

behalf of all three ministries to industry earlier on in the regulatory process which in turn will provide First Nations the opportunity to raise consultation concerns in a timely manner. Ultimately, this coordination should eliminate duplication of consultation activities that consume First Nation's and industry's time and efforts.

These two initiatives may have far-reaching consequences for First Nations. What, exactly, do they entail and what steps is Alberta going to take to consult the Nations prior to implementing them?

We have also attached our recent proposal submitted to AEVN on September 20, 2010. Although this concept was raised with the Government of Alberta as early as October 2008, the Nations would like to highlight that developing this type of information is necessary to facilitate informed regulatory decision making in the Athabasca region.

The Nations reiterate their request for a one-on-one meeting with the Task Force (including Design Team members) before finalizing their recommendations in December.

Sincerely,



Shaun Janvier
CPDFN IRC Director



Melody Lepine
MCFN GIR Director



Lisa King
ACFN IRC Director

cc: Honourable Ron Liepert, Minister of Energy
Chief and Council, Chipewyan Prairie Dene First Nation
Chief and Council, Athabasca Chipewyan First Nation
Chief and Council Mikisew Cree First Nation
Robert Freedman, JFK Law Corp

Encl/2



Athabasca Chipewyan First Nation
Industry Relations Corporation
110B -9816 Hardin Street
Ft. McMurray, AB T9H 4K3



Mikisew Cree First Nation
Government and Industry Relations
Suite 208, 9715 Main Street
Fort McMurray, AB T9H 1T5

September 20, 2010

Alberta Environment
Environmental Stewardship
Environmental Relations
111 Twin Atria Building
4999 – 98 Avenue
Edmonton, AB T6B 2X3

Attention: Alvaro Loyola, Senior Advisor, Aboriginal Relations

Canadian Environmental Assessment Agency
61 Airport Road NW
Edmonton, AB T5G 0W6

Attention: Sheila Risbud, Aboriginal Affairs

Dear Mr. Loyola and Ms. Risbud:

Re: Proposal to Develop Athabasca Chipewyan First Nation (ACFN) and Mikisew Cree First Nation (MCFN) Traditional Land and Resource Use Management Plans (TLRUMP)

We are pleased to submit our proposal to develop TLRUMP for our First Nations. The TLRUMP concept builds on the Traditional Resource Use Plan concept that was tabled with Alberta in submission on the Land Use Framework, Lower Athabaca Regional Plan, and in respect to various regulatory applications (namely Shell's Jackpine Mine and Pierre River Mine projects, and Total's Joslyn North project). Our joint proposal provides further detail on the rationale for TLRUMPs and our estimate of the time and resources required to develop a TLRUMP. We look forward to a positive response from your departments. We would be happy to discuss this proposal with you and answer any questions that you might have.

Sincerely,

(original signed)

Lisa King
ACFN IRC, Director

(original signed)

Melody Lepine
MCFN GIR Director

cc: ACFN Chief and Council
MCFN Chief and Council
Dave Bartesko, Land Use Secretariat



Athabasca Chipewyan First Nation
Industry Relations Corporation
110B -9816 Hardin Street
Ft. McMurray, AB T9H 4K3



Mikisew Cree First Nation
Government and Industry Relations
Suite 208, 9715 Main Street
Fort McMurray, AB T9H 1T5

Proposal to Develop Athabasca Chipewyan First Nation and Mikisew Cree First Nation Traditional Land and Resources Use Management Plans (TLRUMP)

Submitted to:

Alvaro Loyola, Alberta Environment

Sheila Risbud, Canadian Environmental Assessment Agency

Submitted by:

Lisa King, Athabasca Chipewyan First Nation Industry Relations Corporation

Melody Lepine, Mikisew Cree First Nation Government and Industry Relations

September 20, 2010

1. Introduction

The Athabasca Chipewyan First Nation (ACFN) and Mikisew Cree First Nation (MCFN) are proposing to each individually develop Traditional Land and Resource Use Management Plans (TLRUMP). A TLRUMP would provide information necessary to understand the land and resource uses, interests and rights of the First Nations in Provincial and Federal land and resource management planning, decision-making and consultation processes.

This concept was first first provided to the Government of Alberta (Alberta Sustainable Resources Development) as a “Traditional Resource Use Plan” in the October 31, 2008 joint submission of MCFN and Chipewyan Prairie Dene First Nation (CPFN) on the Land Use Framework. In a letter to Alberta Environment and Shell Canada on December 18, 2009, ACFN asked whether the parties were prepared to work with and fund ACFN, prior to any project approvals on the Jackpine Mine Expansion and Pierre Rive Mine projects, on developing a TLRUMP in order to determine the resources on which ACFN relies to exercise their rights. Subsequent to that letter, Alberta Environment requested more information on the TLRUMP concept, and ACFN provided a brief proposal as an appendix to a letter dated February 1, 2010 to Alberta Environment and Shell Canada.

AENV and CEAA have requested a more detailed proposal from ACFN and MCFN. This proposal for a TLRUMP includes the following:

- Study Purpose and Objectives
- Study Rationale
- Study Methodology
- Study Work plan
- Summary of TLRUMP Deliverables
- Timelines and budget

ACFN and MCFN are presenting this proposal to AENV, CEAA, and potential Industry funders.

2. Study Purpose and Objectives

The purpose of the Traditional Resource Use Plan is to provide scientifically credible and culturally appropriate information on the land and resource requirements of ACFN and MCFN for the meaningful exercise of Treaty 8 rights now and into the future. Specific objectives of the TLRUMP study are to:

- Create an appropriate, culture-group specific vision for what constitutes the conditions for the meaningful practice of Treaty 8 rights currently and into the future;
- Identify the Valued Components (“resources or conditions”), tangible and intangible, that are central to the Aboriginal and Treaty Rights (“rights”) of the First Nations;
- Identify criteria and culturally appropriate indicators that can be used to measure the First Nations’ ability to practice these rights;

- Examine the current nature and extent of the Valued Components in the First Nations' Traditional Lands, and a historical baseline of these components;
- Identify the current and likely pressures, including but not limited to industrial development on the Valued Components;
- Predict the likely future nature and extent of the Valued Components in the First Nations' Traditional Lands;
- Identify broad land and resource management strategies, as well as possible mitigation tools, that can support and improve the continued meaningful exercise of Treaty 8 rights (e.g., key protected or conservation areas; hunting restrictions; setbacks; timing windows; among others);
- Integrate the information into appropriate information and management tool formats (e.g., GIS; planning documents; management objectives for particular use areas or districts; community based monitoring and adaptive management strategies) for use in resource and land use planning, decision-making and consultation processes;

Developing the TLRUMP will require in-depth community consultation, rigorous socio-economic research, and tools for managing, analyzing, and communicating this information as explained in the methods section of this proposal.

3. Study Rationale

Current land and resource use planning and decision-making (including regulatory EA processes) in Alberta do not analyze adequately the direct, indirect and cumulative impacts of development and land use on First Nations land and resource use, Aboriginal and treaty rights and interests. Project-specific approaches to environmental assessment, especially in absence of an appropriate cumulative effects management framework, do not yield a comprehensive understanding of impact to the First Nations. These gaps are compounded by a lack of capacity in First Nations communities to bring forward credible and relevant information to these processes in a timely fashion. The result is often errors in decision-making, misunderstandings, and conflicts due to inadequate information. This is particularly troublesome in the Lower Athabasca Region given the sheer number of operating, proposed and potential oil sands development in the Traditional Lands of the two First Nations.

A TLRUMP is meant to be a tool facilitating more timely and effective integration of ACFN and MCFN information and interests into decision making and planning processes. This will result in greater capacity for each First Nation to provide critical inputs of information at all stages of the EIA/regulatory process, allowing EIA and consultation to proceed substantively at the same time, and establishing earlier in the process how Aboriginal and treaty rights may be impacted. Meaningful and adequate accommodation measures can then be built into the EIA mitigation process. The coherent TLRUMP and supporting studies are expected to increase the First Nations-specific data consistency, timeliness and availability for proponents.

Developing a TLRUMP would have benefits for Crown consultation, land and resource use planning, environmental impact assessment, regulatory stages of approvals, cumulative effects monitoring and management, and other elements of decision-making. Benefits include:

- Timely data that is accessible by project for government and proponents;
- Data consistency;
- A streamlined consultation process; and
- Increased capacity for ACFN and MCFN.

4. Study Methodology

Geographic scope of study

The studies will be limited to impacts on traditional use and practices within ACFN and MCFN traditional lands, as well as mobile resources (e.g., water, air, wildlife) that seasonally reside within or travel through traditional lands that may be impacted by activities outside those lands.

Temporal scope of study

A principle of good EIA practice is that the baseline conditions wherever possible should be those conditions that were present prior to industrial development occurring (in this case, around 1965), or where that data is not available or sparse, an examination of trends in conditions over time somewhere in between “pre-development” and the “present case” should be used. This study will ground the framework as far back in time as possible. Where data gaps are evident and assertions of change are uncertain, these will be identified and noted as limitations of the analysis.

Issues scope

The focus of the TLRUMP differs from that of many other impact assessment studies by focusing on the intersection of impacts on rights and impacts on resources.

The First Nations maintain that each have Treaty and Aboriginal rights protected by section 35 of the *Constitution Act, 1982*. For the purposes of the study, Treaty rights include hunting, fishing, trapping and gathering. This includes incidental rights that support the meaningful practice of the treaty right, including sufficient quality and quantity of required traditional resources within traditional lands. For example, the right to hunt can only be meaningfully practiced when there is adequate amounts of *healthy game* (e.g., within the range of natural variation for the species; healthy as evaluated from the perspective of the harvester) within areas that are accessible to harvesters.

Identification of First Nations-specific limits of acceptable change for key “rights-based resources” is thus central to both EIA and Crown s.35 consultation.

In addition, the practice of these rights may be influenced by a variety of other factors related to environmental impact concerns, such as a lack of faith in the health associated with consuming country foods. Thus, while these underlying Treaty and Aboriginal rights and the resources required to

meaningfully practice these rights are at the foundation of the proposed TLRUMP, the First Nations will take a broader perspective on what the exercise of those rights mean in terms of social, economic, and cultural health and well-being of each First Nation. A community vision concerning the relationship between the land and the people (including health, well-being and culture) is required in order to define this broader perspective. The community vision will provide the basis for an assessment framework for linking impacts to traditional resources to impacts to culture, community health and well-being.

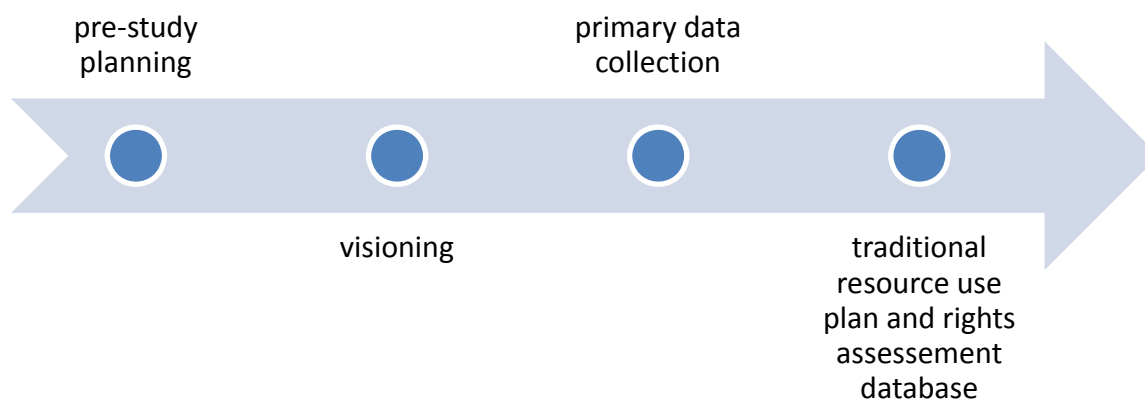
Project capacity and staff

A committee from each Nation will be formed to provide input into key research stages, to work closely with the interdisciplinary research team to understand the key issues of concern, to advise on liaising with the remainder of the community and on the selection of participants for workshops, interviews (and fieldwork).

We anticipate that an interdisciplinary research team consisting of people with social science, landscape ecology, GIS mapping expertise, traditional use practitioners, ecology, land and resource planning and project management expertise would be key to successful completion of the TLRUMP

5. Study Work Plan

The First Nations propose a four phase Work Plan for this study proceeding from high-level planning and visioning, through detailed data collection, to the production of tools and deliverables.



Phase 1: Pre-Study Planning

In this phase, we will build the project team, hold government to government meetings, agree on project methodology, set up data management and communications protocols, define research protocols (e.g., Traditional Knowledge or Ethics Protocols) and finalize the study scope.

Phase 2: Visioning

Phase 2 focuses on developing a community vision for the Traditional Land Use Plan. Sessions in Fort Chipewyan, Fort McMurray, Fort Smith and Edmonton will focus on culture and well-being in relation to traditional resources. For example, what vision do people have for continuing their way of life? What are the key practices, resources and relationships needed for health and well-being to be maintained? The vision that is identified through these sessions will be used to identify the first draft of the core valued components for the TLRUMP.

A research and gaps analysis exercise will be done to surface any existing knowledge and data related to these valued components, the result of which will be a State of Knowledge report. Sources will include:

- Collection and analysis of existing secondary data from environmental assessments. This will involve drawing together all existing completed environmental assessment reports on operating and proposed developments in the region. Analysis of the reports will focus on the core areas of focus, such as traditional use, food security issues, culture and social and economic impacts, with reports and data mainly from consulting companies hired by the oil sands producers.
- Collection and analysis of existing secondary data from internal community sources. This will involve drawing together all the data that has been collected in the past by consultants.

Full-day workshops, open to all First Nation community members, are then envisioned again in Fort Chipewyan, Fort McMurray, Fort Smith and Edmonton. The Project Team will provide short presentations about the valued components, criteria and indicators that have emerged through the vision sessions, and the “State of Knowledge” report.

Community members can provide input on whether these are the culturally relevant and accepted valued components to understand the present and trends in the health of the environment and the associated ability to exercise land-based Aboriginal and Treaty rights. They will then be asked to suggest management objectives and planning tools (e.g., zoning, restricted areas, among others) for each valued component.

These visioning sessions will allow community members to provide input on the accuracy of the State of Knowledge report, to review proposed study scopes, parameters, and methods, and to identify any additional work being conducted (or already completed) by any other stakeholders in the region (e.g., developers, AENV, and CEMA).

The key goal of this phase will be to build a preliminary model for the TLRUMP, to be tested and validated in the next phase.

Phase Three: Primary data collection and analysis

Data will be gathered on selected valued components, criteria and indicators related to the TLRUMP. This will include surveys, interviews, focus groups, TUS and TEK inputs, mapping and modelling exercises. The focus of this work will be to establish the conditions needed for the practice of rights, and gather the data on all the key valued components that were identified in earlier phases.

The focus of the interviews, focus groups and research in this stage will be to establish the geographic scale for resources for practicing rights, the required condition of the resources, and the future strategies that might need to be implemented to protect rights. Research in this phase will:

- Identify why the protection of resources is culturally important to both First Nations, including ACFN and MCFN defined concepts of environmental stewardship;
- Identify what pressures (e.g., road access and habitat fragmentation) have been threats to the meaningful practice of Treaty 8 rights;
- Identify what resources are integral to the meaningful practice of Treaty 8 rights;;
- Integrate the information into an appropriate management tool format (e.g., GIS; planning documents) for use by decision-makers;
- Determine the socio-cultural, ecological and economic conditions (including desired conditions of manageable or acceptable change) that support the meaningful practice of Treaty 8 rights for each identified resource currently;
- Recommend land and resource management strategies, including monitoring, that would ensure the continued meaningful exercise of Treaty 8 rights (e.g., protected or conservation areas; hunting restrictions; setbacks; timing windows; etc.); and,
- Develop Aboriginal and treaty rights enhancement strategies and a suite of mitigation measures for the exercise of rights that are grounded in cultural realities.

Phase Four: Traditional Land and Resource Use Management Plan (TLRUMP)

The purpose of the TLRUMP is to provide credible, sufficient, defensible, and reliable information on the land and resource needs of the First Nations for the meaningful exercise of their Treaty 8 rights within their Traditional Lands now and into the future. At this point, the TLRUMP will be presented to the communities, with a focus on reporting on the current state of the traditional resources. This effort will be twinned with proactive development of strategies and tools for maintaining the health of the traditional resources of the region that people depend on for practice of Aboriginal and treaty rights. A variety of management options will already have been developed, which will then be field tested with the communities, and negotiated in government to government tables, where appropriate. For example, where there is an existing threat to traditional resources, there may need to be both government and community strategies in place for management and mitigation.

6. Summary of TLRUMP Deliverables

The specific outcomes of developing the TLRUMP will include:

- Baseline and trend dataset for valued components related to traditional resources, with qualitative and quantitative components;
- A State of Knowledge report on the valued components that have been community selected, bringing together data and knowledge from disparate sources;
- A pressure-state-response framework from the cultural framework that illustrates pathways of change. This will enable future impact assessments to accurately model their own impact pathways and predict changes;

- Mapping of areas of special sensitivity (confidentiality provisions may apply to external use); and,
- Replicable, community-accepted methods of assessment (thus applicable for both future project-specific and cumulative effects assessments).

The primary deliverable to Government will be a **Traditional Land Resource Use Plan Management and Assessment Framework** that includes the following:

- MCFN and ACFN Guidelines for assessing Traditional Land and Resources. This guidance document will provide clear expectations for proponents regarding the process for accessing traditional land and resource data from MCFN and ACFN, as well as guidelines for quality traditional use, socioeconomic and ecological research;
- Management objectives, criteria and thresholds for traditional lands and resources; and
- Management and mitigation options for traditional lands and resources.

In order to enable implementation of the TLRUMP, it is necessary to develop internal capacity within ACFN and MCFN. This will consist of an internal database, data management procedures and formalizing functional roles within each organization. While this “deliverable” is internal, we can provide a report to our external funders on the structure of this system (the guidance document mentioned above).

7. Timelines and Budget

Provided the required funding is made available, this project will be completed within two years, with the following schedule, deliverables and updates to funders. The cost for each individual First Nation (ACFN and MCFN) to complete a TLRUMP specific to their First Nation is anticipated to be \$1,435,500 (total budget of \$2,871,000).

Project Phase/Step	Estimated Timeline	Deliverables	Consultants	Community engagement	Project Manager	
Phase 1	Month 1	Project team formation	\$10,000	0	\$5,000	
Phase 2	Months 2-4	Vision sessions	\$25,000	\$100,000	\$15,000	
	Months 5-8	State of knowledge report	\$60,000	0	\$15,000	
	Months 8-10	Testing of VCs, criteria and indicators with communities	\$25,000	\$100,000	\$10,000	
	Months 7-16	Design of dataset for VCs, criteria and indicators	\$200,000	\$50,000	\$50,000	
Phase 3	Months 15-19	Community data reports and management systems	\$300,000	\$50,000	\$15,000	
Phase 4	Months 18-24	TLRUMP planning and validation	\$150,000	\$100,000	\$25,000	
		Subtotal of costs	\$770,000	\$400,000	\$135,000	\$1,305,000
		Administration (10%)				\$130,500
		Total project value per First Nation				\$1,435,500
		x 2				\$2,871,000



*Chipewyan Prairie
Industry Relations Corporation
Suite 205, 10020 Franklin Avenue, Ft. McMurray, AB, T9H 2K6
Phone: (780) 715-3401 Fax: (780) 715-3463*

August 18, 2010

Diana McQueen
Parliamentary Assistant, Alberta Energy
Government of Alberta
#620 Legislature Annex
9718 107 Street
Edmonton, AB T5K 1E4

RE: Regulatory Enhancement Project
"Stakeholder Engagement" Process

Dear Mrs. McQueen,

I would like to take this opportunity to offer a preliminary response to the Government of Alberta on their current Regulatory Enhancement Project (REP).

The expressed purpose of the REP is to ultimately "increase competitiveness" of the Alberta regulatory process to "ensure that Alberta captures the appropriate levels of investment and protects valuable industry activity." In the effort to increase competitiveness, the REP will "consult a broad range of interest groups," including First Nations, to gather input for consideration by the Design Team, who will present recommendations to the MLA Task Force to improve Alberta's policy assurance system.

The purpose of this government initiative and how the initiative is being implemented is troubling to the people of Chipewyan Prairie Dene First Nation for several reasons.

Firstly, the economic prosperity enjoyed by the rest of the province resulting from oil and gas activity, is not felt by the majority of our Nation. The assertion that:

The benefits [of oil and gas activity] will affect literally hundreds of communities and thousands of businesses and jobs - with sustained economic growth supported by increased spending, labour income, GDP, etc....In fact, almost one in seven Albertans are directly or indirectly employed in the energy industry. These [regulatory]

changes are expected to create 8,000 more jobs in 2010-11 and 13,000 more jobs annually thereafter in all sectors of the economy.

Our Nation faces high levels of unemployment, and conversely, our community's physical infrastructure (including housing, roads, schools, and health centres) is not supported by funds derived from oil and gas revenues (including royalties) collected by the Province of Alberta. Oil and gas activity occurring within our Traditional Territory has not resulted in significant improvements to Chipewyan Prairie Dene First Nation members lives. Until that occurs, our Nation does not have the same interest in ensuring oil and gas activity levels remain. An honest and open discussion about sharing the benefits of oil and gas activity occurring on CPDFN traditional territory between CPDFN and the Government of Alberta would be a good starting point.

Secondly, the oil and gas activity that is occurring within our Traditional Territory has resulted in the permanent and long term 'taking up' of land' by the Government of Alberta, so that the exercise of CPDFN Section 35 rights (including hunting, trapping, fishing and gathering) is negatively affected, influencing our ability to provide food for our families, and our ability to pass on our culture and language to our youth. The displacement of traditional activities by oil and gas activities is the primary concern of the CPDFN. To determine how oil and gas activity is negatively affecting the exercise of CPDFN Section 35 rights, the Government of Alberta (including all departments and quasi-judicial boards and agencies) is supposed to consult with CPDFN to identify both potential impacts to those rights, and proposed accommodation measures to deal with those impacts.

Thirdly, the prospect of regulatory relaxation in any form greatly disturbs both CPDFN members and its leadership. Whether termed, 'streamlining,' 'simplification,' or 'risk-based,' the regulatory system is the **primary** mechanism to carry out meaningful Aboriginal consultation with CPDFN. The proponent who is proposing the project is required to gather the necessary information about the potential effects of the project and provide that information to the Regulatory Authority. A lessening of current Aboriginal consultation requirements would effectively extinguish CPDFN's ability to voice concerns, and prevent the identification of potential negative effects of proposed projects. CPDFN has a concern that if a risk-based approach is used, only the largest scoped project will have Aboriginal consultation requirements attached. This is unacceptable.

What became very clear at the session held in Red Deer on August 12th was the MLA Task Force did not have adequate information about the Government of Alberta First Nation Consultation Guidelines, and the implications of 'improving' the oil and gas regulatory process would have on the Aboriginal consultation requirements. This is absolutely required before the Task Force moves forward in creating recommendations.

After quickly reviewing the document, "*What We Heard Report: Issues and Opportunities*," dated August 4, 2010, a reference in the Oil and Gas Industry Meeting summary (Section 3.5.2) the comment of "**Aboriginal consultation during the approvals stage is perceived to be lengthy and there is a need to improve the process**" is particularly troubling. CPDFN interprets this comment as support for a relaxation of current Aboriginal consultation requirements that is viewed by CPDFN as already insufficient process to identify potential impacts to the exercise of our Section 35 rights.

Finally, the manner by which the 'engagement' process was structured for the REP causes CPDFN extreme concern. CPDFN believes that the Task Force did not structure a meaningful or sufficient Aboriginal consultation process for this initiative itself. The fundamental problems with how the Task Force attempted to 'involve' Aboriginal people include:

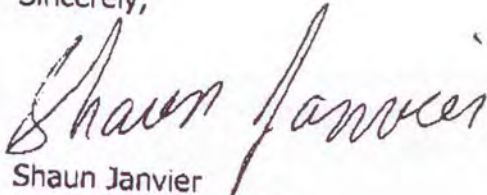
- The Government of Alberta have determined that the REP initiative will have no negative effect on the exercise of Aboriginal and treaty rights; therefore a formal consultation process is not required. CPDFN fundamentally disagrees with this assessment, and believes this initiative will result in negative effects to the exercise of Section 35 rights. Any lessening of Aboriginal consultation requirements, based on this review will result in negative consequences
- The first time CPDFN was made aware of the material associated with the REP was August 12, 2010; the Task Force had met on 6 other occasions with various other non-Aboriginal groups to discuss the initiative and gather feedback
- Only 2 weeks notice was provided to CPDFN to attend the Red Deer session
- The session was scheduled during the summer holiday season, when key personnel are out of the office
- No capacity was provided to CPDFN to attend, even though the invitation specified that a "senior representative" should attend the session
- The timeline for this initiative (delivery of final report by December 2010) is completely unrealistic, due to lack of capacity for sufficient review and lack of time allotted to meet with CPDFN directly
- CPDFN objects to an Aboriginal consultation process based on inclusion with other 'stakeholders.' Time and time again, direction has been provided by the Supreme Court of Canada that Aboriginal consultation must be a direct and unique process with potentially affected Aboriginal Nations. Due to the nature of Section 35 rights, an separate Aboriginal consultation process is necessary
- No working lunch was provided at the session, which is simply bad manners and minimized discussions.

At minimum, CPDFN requires a more thorough review of this document, and other supporting material related to this initiative. This will require more time and sufficient capacity for a directed review.

Finally, CPDFN would like to invite the Task Force to a meeting with CPDFN leadership as soon as is practical to discuss these issues before the Task Force has concluded it's solicitation of input for their final report and recommendations.

We look forward to your response.

Sincerely,



Shaun Janvier
Director, CPDFN IRC

cc: Robert Freedman, JFK Law

Appendix 2 Treaty 8 Alberta Chief's Position Paper on Consultation (September 30, 2010)



TREATY 8 FIRST NATIONS OF ALBERTA

To protect, promote, bring to life, implement and sustain the true spirit and intent of Treaty No. 8 as long as the sun shines, the grass grows, and the rivers flow.

HEAD OFFICE

Woodland Cree Nation
General Delivery
Cadotte Lake, AB T0H 0N0
Telephone: 780.629.3803
Fax: 780.629.3842

SUB OFFICE

c/o Santa Fe Plaza
18178 – 102 Avenue
Edmonton, AB T5S 1S7
Telephone: (780) 444-9366
Fax: (780) 484-1465

September 30, 2010

Prime Minister Stephen Harper
Office of the Prime Minister
80 Wellington Street
Ottawa K1A 0A2

Grand Chief Charles Weaselhead
Treaty 7 Management Corporation
Suite 101, 12111 – 40th Street SE
Calgary, AB T2Z 4E6

Premier Ed Stelmach
Office of the Premier
307 Legislature Building
10800 – 97 Avenue
Edmonton, AB T5K 2B6

Grand Chief Ernest Gadwa
Confederacy of Treaty Six First Nations
Suite 204, 10310 – 176 Street
Edmonton, AB T5S 1L3

Honourable Len Webber
Minister of Aboriginal Relations
203 Legislature Building
10800 – 97 Avenue
Edmonton, AB T5K 2B6

Re: Treaty 8 Alberta Chiefs' Position Paper on Consultation

Elders and Chiefs from the Treaty 6, 7 & 8 First Nations in Alberta gathered from April 12 to 14, 2010, from June 2 to 4, 2010, on August 24 and 25, 2010, and Treaty No. 8 Alberta Chiefs met on September 20th, 2010 to discuss consultation. Based on these deliberations, our objectives in this Position Paper (*Position Paper*) are threefold:

1. To set out our common consultation objectives, interests and principles including livelihood participation and greater participation in decision making;
2. To discuss our concerns with Alberta's current approach to consultation and the resulting general failure to respect our Treaty rights (in Appendix A); and
3. To provide our views (in Appendix B) of what we consider to be the core elements of a new, mutually developed, approach to consultation.

As stated in the letter of September 3, 2009 to the Premier, in the event that our concerns and interests are not satisfactorily addressed, we will take steps to develop our own province-wide First Nations' approach to consultation as an alternative to Alberta's *First Nations Consultation Policy on Land Management and Resource Development* ("Consultation Policy") and related guidelines. Some First Nations have, in fact, already developed their own consultation protocols. However, before more First Nations take this step, we the undersigned Chiefs of Treaty 8, invite your Government to enter into a negotiating process involving Alberta, Canada where appropriate, industry representatives and Alberta First Nations with a goal of jointly developing an agreement, not a policy, on consultation. This Position Paper would serve as our opening position in such negotiations. We note that a similar negotiating process has recently met

with success in Nova Scotia were the provincial government, Canada, and First Nations have ratified an agreement on consultation.

INTRODUCTION:

1. Treaty Centred Consultation

A core concern emerged from our discussions: Treaty No. 8 is the foundation of our relationship with the Crown. As Treaty 8 First Nations, we have the honour of being entrusted with these lands by our ancestors, and the obligation to future generations to be responsible stewards of these lands and our Treaty. It is through our Treaty that First Nations have maintained our historic and ongoing connection to our lands.

Failure to honourably and meaningfully consult with First Nations is disrespectful of our connection to the land as well as to our Treaty that reflects this connection. We need to change Alberta's record in this regard. For both Alberta and First Nations to continue to benefit from the Treaty, we must mutually respect and honour the Spirit and Intent of the Treaty No. 8.

We look to the Treaty as having its own life. The quintessential phrase from our oral history framing the Treaty is: "as long as the grass grows, the sun shines, and the rivers flow". This is a reflection of the living nature of the Treaty. Our Treaty can and will adapt over time, but we must always ensure that the core elements of the Treaty is upheld. Consultation is the forum through which we can ensure this balance takes place.

Our Nations also have protocols and ceremonies that we use to understand, maintain and balance the intent of the Treaty. Our protocols and ceremonial traditions give us the tools and legitimacy within our territories to make decisions on how we treat the land and its resources. Our processes pass on critical teachings and a management system based on generations of knowledge and information about our lands. These traditional processes vary from Nation to Nation and are key to interpreting the Treaty; further, these processes cannot be replicated by the Crown. However, Alberta's approach to consultation has not involved any significant attempt to incorporate our protocols and ceremonies into a mutually-agreeable approach.

Our Nations do not look at consultation as just a series of land use decisions, but also at the "big picture" of our relationship with Alberta and Canada. Consultation is about ensuring balance. Our perspectives and positions are guided by a number of different interplaying factors regarding our members, communities, economic interests and connections with the land. We do not see our traditional lands as set aside for the exclusive use of „Albertans,“ but rather to be shared with all people within Treaty 8 borders. We want to ensure our people and communities can sustain themselves with the same access to opportunities that others are entitled to and, at the same time, ensure that our Treaty and way of life is protected.

Our Treaty needs to be fulfilled for our people. We cannot have our rights defined so narrowly so as to make our rights useless or meaningless. Alberta needs to identify strategies with First Nations to ensure Treaty rights and developments are balanced in a mutually acceptable manner. There are areas of particular concern to many Nations that will require a detailed level of planning, discussions, and accommodations to ensure that Treaty rights continue to be viable and meaningful.

First Nations have expressed many concerns, on many occasions, about Alberta's approach to consultation since the introduction of the Consultation Policy by Alberta in 2005. We have experienced a

negative form of consultation by which Alberta has attempted to avoid responsibility while maintaining the appearance of „consulting“ with First Nations. This needs to change. We have signed on to the Protocol Agreement and engaged in the Consultation Policy review process because we want positive and mutually beneficial change. It is incumbent on Alberta to demonstrate, by changing its own approaches and attitudes, that we are not misplacing our optimism in a renewed relationship.

Although our primary relationship is with the Federal Crown, Alberta and First Nations must address the reality that we share the same lands and home. We can only mutually succeed if we are willing to work together. Consultation is the tool to ensure mutual success. It will only be successful if we attempt to address each other’s issues in a manner that will get us closer to our goals.

The honour of the Crown and the Treaty relationship are sources of the duty to consult and accommodate which also require respect for, adherence to, and recognition of the Treaty. Any approach to consultation that is not grounded in the Treaty relationship cannot achieve the fundamental objective of reconciliation that has been called for by the Supreme Court of Canada. As the Supreme Court of Canada made clear in the *Taku River* and *Haida* cases, at paragraphs 24 and 45 respectively:

The Crown’s honour cannot be interpreted narrowly or technically, but must be given full effect in order to promote the process of reconciliation mandated by s. 35(1).

* * *

The controlling question in all situations is what is required to maintain the honour of the Crown and to effect reconciliation between the Crown and the Aboriginal peoples with respect to the interests at stake.

Any approach to consultation going forward must recognize that our Treaty rights are protected by the *Constitution*. With respect, Alberta and Canada cannot simply pay lip service to those rights: consultation and accommodation processes must respect and accommodate our rights. While we are open to discussing how we can protect our Treaty rights, we are not open to an approach unilaterally developed by Alberta which ignores those rights in practice.

Our strong emphasis on the Treaty in the context of consultation is not simply a matter of principle or law – it is also a point of great practical importance for First Nations. Across Treaty 8 Alberta, First Nations are gravely concerned about the continued viability of our Treaty rights and our traditional ways of life. Resource development, urban growth, and other forms of development around Alberta are threatening First Nations’ ability to hunt, fish, gather and trap. This has placed enormous stress on First Nation communities. Growth and development has increased pressures on the remaining areas of Crown land in these Treaty areas diminishing First Nations’ ability to exercise our Treaty rights. The massive existing and planned development of the oil sands in the Treaty No.8 area has already affected and will continue to affect, the ability of those First Nations to exercise their rights. First Nations across the province face increasing pressures on their reserve lands, including the water resources within these lands, from increased resource development and/or the growth of neighbouring municipalities.

Respect for the Treaty goes well beyond being a matter of principle; respect for the Treaty is critical to the long term survival of First Nations’ culture, way of life, and the well-being of our communities. We are troubled that in correspondence, many of our First Nations are told by Alberta that, essentially, our Treaty did not guarantee that our traditional ways of life would be maintained forever. We recognize that development will continue to take place. However, Alberta’s approach is often selective and ignores the promises that were made in our Treaty. A fair “balancing” of rights and interests has to provide for the

meaningful exercise of our Treaty rights in the face of development, as well as, ways in which our First Nations can benefit from the development that does come.

The *United Nations Declaration on the Rights of Indigenous Peoples* also lends moral force to our call to Alberta and Canada to respect and adhere to the Treaties. The *Declaration* was broadly supported by 143 countries and acknowledged that “treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States.” Accordingly, the *Declaration* affirmed in Article 37(1) that:

Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

The *Declaration* articulates certain principles that are paralleled in the Canadian legal tradition. It is well established that the Treaties are sacred agreements and that pursuant to the honour of the Crown, there is a requirement to respect and adhere to the terms of the Treaties.¹

In addition to the discussion of the principles of consultation and other related matters in this Paper, First Nations also call on Alberta and Canada to do more, in cooperation with First Nations, to promote an improved level of awareness and understanding of our Treaty, including potentially:

- Treaty Day - The creation of a Treaty Day in Alberta to acknowledge the importance of our Treaties (T6, T7 & T8) to all Albertans and to increase the level of public understanding that the Treaties relationship between First Nations, the Crown and society in general, is fundamental to living in Alberta because our Treaties are sacred living documents that remind us where we’ve been and where we should be going.
- Treaty Commissioner - A commitment by Alberta to work with our First Nations and the Government of Canada to create a trilateral process, developed with and overseen by an independent Treaty Commissioner, to promote and work towards an improved and common understanding of Treaty No. 8 in Alberta.

2. Challenges Created by Alberta’s Approach to Consultation to Date

A second theme also emerged from the meetings that pose a significant challenge for the review of the *Consultation Policy*. There is a pervasive sense of scepticism among our First Nations - many feel that Alberta’s leadership and officials do not understand Treaty No. 8 and, therefore, do not have the political will to honour the Treaty and the Crown’s duty to consult and accommodate. Alberta has acknowledged the Treaty in the text of the *Consultation Policy* and the *Protocol Agreement*; however, far more often than not Alberta’s actions have failed to demonstrate respect for the Treaty and a genuine intention to fulfill the Crown’s duty to consult and accommodate.

Our sense of scepticism stems from First Nations’ experiences during the development of the *Consultation Policy* in 2005 and Alberta’s approach to consultation since 2005. First Nations at the April, June, August, and September meetings this year expressed widespread disbelief that in 2010 it is still necessary to talk to Alberta about implementing the principles of *Mikisew Cree First Nation v.*

¹ *R. v. Badger*, (1996) 133 D.L.R. (4th) 324 (SCC), para. 41.

Canada (“*Mikisew*”)², a decision released by the Supreme Court of Canada in 2005. Alberta ought to have immediately revisited and revised the *Consultation Policy* in 2005 to ensure that it complied with *Mikisew*. “Better late than never” is not good enough to uphold the honour of the Crown. While there is room for debate about the meaning and implications of *Mikisew* and other decisions, what is of the greatest concern to the First Nations is that Alberta, in developing its consultation approach, has unilaterally decided what those cases mean in terms of consultation.

Our scepticism and mistrust are also the result of our collective practical experiences of trying to consult with Alberta. No matter what the *Consultation Policy* says, and no matter what the courts say about the Treaty and the duty to consult and accommodate, in practice Alberta has adopted the narrowest possible interpretation of the Treaty and the most minimal application of the duty to consult. Since 2005, it has been the nearly universal experience of First Nations that Alberta’s approach to consultation rarely, if ever, involves anything more than notice (often at a late date), some information, and perhaps a meeting or two to fill in the Crown’s consultation log. Meaningful consultation is exceptionally rare and accommodation has been entirely absent. Alberta’s justification for this approach has been that it must “balance” First Nations’ rights and concerns with the interests of the broader public. On the ground, this has meant that our Treaty rights are consistently trumped by the economic interests of government and industry. There has been no true balancing of interests. You cannot achieve reconciliation when terms are imposed by one side based on solely on the interests of the broader public.

On numerous occasions, First Nations have sought to enter into good faith consultation with Alberta on consultation matters including but not limited to: First Nation water rights in the context of water management and allocation; fish and wildlife management; development of the Land Use Framework, and subsequently the LARP and SSRP; the process for conducting Environmental Assessments; various oil sands policy reviews; and forestry issues. In those consultations, the input and suggestions of the First Nations on both the procedural and substantive aspects of our rights have been ignored or downplayed by Alberta.

There is no legal impediment to making some of the changes to the consultation processes sought by our First Nations. Rather, Alberta has simply decided that its approach is correct, or at least that it has more resources than First Nations to litigate these issues if challenged in court. A good example of Alberta’s troubling approach is in respect of the Land Use Framework (“LUF”). Many First Nations dedicated significant time and resources to provide Alberta with input on the LUF. Nonetheless, Alberta largely ignored that input, approved the LUF, then proceeded to produce a “response” to First Nations’ concerns and input well after the fact and in direct contradiction to the principle in law and in the *Consultation Policy* that consultation will occur in good faith and *before* decisions are made. Further, in respect of LARP and SSRP, and over the objections of the affected First Nations, Alberta simply imposed a consultation approach. This was done despite the fact that certain First Nations actually provided their suggestions on how consultation ought to occur and on what issues needed to be addressed during the development of the LUF. This sort of approach to consultation does not further reconciliation. Rather, it furthers the distrust and cynicism of the First Nations.

Those problems have only been exacerbated by Alberta’s decision to end funding for Traditional Use Studies and significantly **reduce** core consultation funding to First Nations for 2010-2011, even as the number of project specific and general consultation matters for which Alberta purports to consult continues to increase. It is simply unrealistic for Alberta to expect First Nations to hire, train and retain

² 2005 SCC 69.

competent staff without realistic, long-term funding, particularly given the volume of consultation in which First Nations are expected to participate.

It is amidst this difficult climate of scepticism, doubt and growing mistrust that the Treaty 8 Alberta Chiefs has developed this Position Paper. First Nations and Alberta must build a new and better relationship on the foundation of our Treaty. To move in that direction, Alberta must take two concrete steps: 1) enter into negotiations with First Nations to reach a new agreement on consultation that incorporates the central points of this Position Paper, and 2) honour the Treaty and the Crown's duty to consult and accommodate. Where Alberta disagrees with any of the points raised in this Paper, we expect Alberta to identify the points of disagreement and to discuss them in good faith. A key concept of consultation is for the parties to hear each other's views and to try to understand and address them. This cannot be done, as has been the approach in the past, by Alberta simply declaring that it has met some of the First Nation's concerns without actually responding to First Nations' input or meeting and discussing why, in the First Nations' view, concerns have been not been addressed.

The September 3rd, 2009 letter indicated that any new approach to consultation must fairly and adequately reflect the core principles of *Mikisew* **and other relevant cases**. The letter set out some specific principles from *Mikisew* which represent the minimum standard for consultation. It is not necessary to repeat those principles here except to say that they remain part of our position. Elders and Chiefs from around Alberta met at the April 12-14, 2010 Consultation Meeting where Alberta's *Draft Policy Discussion Paper* was reviewed and the consensus was that Alberta's attempt to incorporate the principles of *Mikisew* is seriously deficient. To begin with, the *Draft Policy Discussion Paper* is premature because it was developed prior to Alberta receiving the input of First Nations through the Consultation Policy review process and this Position Paper. The exclusive focus on *Mikisew* principles is also inadequate. Further, Alberta's restatement of the *Mikisew* principles are selective, often qualified or cast in a context that is favourable only to Alberta and which departs from the intent of the principles as set out by the Supreme Court. First Nations cannot accept policy efforts to water down, soften, or otherwise diminish the principles of consultation and accommodation as set out in the case law.

In addition to the *Mikisew* principles, any new approach to consultation must address the principles and issues discussed below. We have also provided a model process for consultation that reflects the principles of consultation and should serve as the basis for any new consultation guidelines. This model process is set out in Appendix B to this Position Paper.

KEY CONSULTATION OBJECTIVES OF THE FIRST NATIONS

The objectives of our First Nations in respect of consultation and accommodation are, at a minimum, the following:

1. To maintain and protect our way of life, including our history, culture, language, tradition and economy, all of which are inextricably connected to our lands (reserve lands and traditional lands);
2. To ensure that we have the capacity and opportunity to build, enhance and maintain, a strong and secure culture, language, traditions and economy connected to our lands (reserves and lands within our Traditional Territories), our inherent and Treaty rights, and the history of our Peoples;
3. To ensure the security and protection of our constitutionally-protected rights – that we have a meaningful opportunity to exercise those rights now and in the future;

4. To ensure the meaningful participation of our First Nations in decision-making processes related to the planning and management, use and disposition of the lands and resources throughout our Traditional Territories and with respect to potential impacts on our reserve lands;
5. To ensure that we have an equal opportunity to share in the wealth of the Province – through capacity and training measures relevant to our People, through the acquisition of project-related benefits (award of jobs and contracts and various forms of participation in project benefits), and through more general measures, such as revenue sharing, to ensure that we receive an equitable share of the wealth of the Province (related to the fees, incomes, and economic benefits that are derived from resource extraction within our Traditional Territories); and
6. To enable our First Nations to attain and maintain a level of economic, social and political self-sufficiency, as individuals and as distinct Peoples, to standards that are at least equal to those prevailing in the rest of Canada;

With respect to point 6 in particular, we seek to ensure that there is a proper balance between protection of our rights and the environment and ecosystems on which our Treaty rights rely, and responsible industrial development, urban growth, and other forms of development.

While it is true that the courts have called for a balancing of various interests, that balancing cannot mean that the “public interest” or “economic goals of the Province” trump the protection and exercise of our Treaty rights. In other words, Alberta must always be mindful of the fact that the duty to consult and accommodate is a constitutional obligation that must take precedence over other interests.

This is not to say that there cannot be dialogue and a genuine attempt to work out a mutually acceptable approach to dealing with First Nation rights and interests. Indeed, this is why we are calling on Alberta to negotiate a new agreement on consultation. However, whether or not Alberta is serious about working together with First Nations to achieve a meaningful level of protection of Treaty rights depends entirely on whether or not we share a common objective. Alberta’s approach to consultation is focused on attempting to minimize the importance and significance of First Nation rights and interests and “court proof” Alberta against any challenges to decisions it has made.

What is particularly troubling and disappointing is that while Alberta purports to work with our First Nations on consultation issues, Alberta continues to make decisions (grants of tenure and other dispositions, project approvals, adoption of legislation and policy) which adversely affect and infringe the rights and interests of our First Nations. Even more troubling is the fact that Alberta has simply refused to meaningfully engage with First Nations on critical issues such as revenue sharing, water allocation, fish and wildlife management, changes to environmental and regulatory approval processes, and other fundamental issues.

The principles of consultation set out in this Paper also apply equally to the Government of Canada regarding any federal initiatives, projects, regulatory processes or other decisions that have the potential to impact First Nation’s rights and interests. On a similar note, many First Nations in **Treaty No. 8** Alberta have traditional territories that include portions of the Northwest Territories, Saskatchewan and British Columbia and/or are signatories to **Treaty No. 8** that extend into these other jurisdictions. Accordingly, the principles set out in this Paper also apply to any decisions or actions taken by those other governments that may adversely impact our First Nations’ rights and interests.

INTERESTS OF OUR FIRST NATIONS

Our First Nations share the following key interests, namely, ensuring that adequate consultation and accommodation includes:

- That all processes are structured so that the Province is not the party that can make decisions without being required to take into account our rights and interests in those decisions and without taking into consideration our procedural concerns about consultation.
- The full protection of our Treaty and inherent rights now and for future generations.
- Protecting the use and enjoyment of our reserve lands and lands within our, Traditional Territories, and lands acquired pursuant to TLE entitlements and other land claims, for present and future generations.
- Achieving greater participation in the social and economic benefits flowing from development.
- Protecting, preserving, encouraging and enhancing the cultural, social, economic and environmental connection of our First Nations to lands and resources.
- That the regulatory review of projects properly incorporates the procedural and substantive concerns of our First Nations through all phases – from the early conceptualization and design of the process through to decision-making, monitoring, enforcement and reclamation.
- That any consultation process properly takes into account the legal principles recognized by the courts and that accommodation options allow for the full range of First Nations’ concerns to be taken into account in decision making.
- Development of a forum for broader economic, social, and environmental issues to work with Alberta and Canada in addressing and developing solutions to these issues, while respecting the Federal, Provincial, and First Nations jurisdictions.
- That our First Nations have full information to assess potential impacts of Crown decision making on our rights and that our First Nations play a meaningful role in determining what information is required by the Crown, Industry and First Nations to determine such impacts.
- That traditional knowledge is respected and incorporated into decision making.
- That any decisions do not impair, or infringe, the rights and interests of our First Nations.
- When such an infringement occurs, accommodation of the infringement will be in the interest of the effected First Nation.
- That industrial development, urban growth, and other kinds of economic development take place in a way which minimizes the direct, indirect and cumulative social, health, cultural, economic and environmental impacts on our First Nations’ rights and on our communities.
- That our First Nations benefit socio-economically from any development that does take place – both in terms of direct project benefits as well as in sharing the wealth of the Province.

In addition, First Nations recognize that consultation requirements may be different among our First Nations depending, among other things;

- on the potential impacts of a proposed development on the exercise of our rights,
- the severity and duration of the impacts,
- the proximity of a First Nation to a large urban centre,
- a First Nation’s perspective on the significance or importance of the rights affected,
- the proximity of a First Nation to large scale proposals,
- the extent of existing and planned development in the vicinity of the area,
- cumulative impacts on our rights,
- the history and culture of our First Nations, and
- the nature of existing development and other related factors.

It is also obvious that consultation will be more complex in relation to some kinds of development (such as mines, agriculture, forestry, oil sands and conventional oil and gas projects, urban regional planning, water and land management planning, hydro electric generation, transmission lines, nuclear power, and infrastructure projects) than it is for other kinds of development.

As noted earlier, any adequate approach to consultation must recognize and reflect these differences in relation to required funding, the triggers for consultation, capacity and the way in which consultation is carried out. For example, projects requiring an assessment under Environmental Protection and Enhancement Act (“EPEA”) or Canadian Environmental Assessment Act (“CEAA”) will normally require more time and resourcing than other kinds of projects. Moreover, guidance needs to be given to decision makers to determine the level of consultation required in relation to potential impacts. Further, Alberta has to take significant steps to improve key policy and legislative initiatives, such as the current review of the water allocation system and development of regional land use plans, to build First Nation participation into the process so that major studies and reports are not undertaken based on scoping and terms of reference that are not broad enough to consider First Nation rights and concerns. Consultation with First Nations must occur at the earliest possible stage in the process of project development and not be left as a footnote to be addressed in the final stages of such processes.

KEY PRINCIPLES

As explained in more detail below, our approach is based on the key principles set out in the decided cases on consultation and accommodation and Treaty rights:

1. The Treaty is not a finished land use blueprint (*Mikisew*);
2. Consultation is an ongoing process and is always required (*Haida*);
3. Consultation is a “two-way” street with obligations on each side;
4. Consultation and accommodation are constitutional obligations (*Kapp*);
5. When the duty is triggered, First Nations have a clear constitutional right to Crown performance of that duty (*Haida, Mikisew*);

6. The duty to consult applies to a broad range of Crown actions, initiatives and decisions, including Crown officials charged with developing regulations and legislation that has the potential to impact First Nations rights and interests (*Haida, Delgamuukw, Tsuu T'ina Nation*)³;
7. Claimed Treaty rights can give rise to the Crown's duty to consult and accommodate. The Crown has a duty to assess the strength of claimed rights and consult and accommodate accordingly (*Marshall, Sioui, Sundown, Simon*). This point is addressed in more detail below;
8. First Nations' input must be seriously considered, substantially addressed and, as the context requires, accommodation may be necessary (*Mikisew, Halfway River*);
9. Stakeholder processes are not sufficient to discharge the Crown's duty to consult (*Mikisew*) nor are public processes open to First Nations, such as participation in Public Hearings (*Dene Tha'*);
10. The Crown has a positive duty to provide full information on an ongoing and timely basis, so that First Nations can understand potential impacts of decisions on their rights (*Jack, Sampson, Halfway*) and such information must be responsive to what the Crown understands to be the concerns of the First Nations (*Mikisew*);
11. The Crown must properly discharge both its procedural and substantive duties in any consultation process (*Mikisew*) and a failure to properly satisfy process-related concerns of First Nations, irrespective of the ultimate impact on substantive rights, may be a basis upon which a decision can be struck down (*Mikisew*);
12. The Crown must have sufficient, credible information in decision making and must take into account the long-term sustainability of section 35 rights (*Roger William*). This is particularly so in light of Alberta's constitutional duty to ensure the sustainability of Treaty hunting, fishing and trapping rights pursuant to the *Constitution Act, 1930 (R. v. Badger [ABCA])*;
13. The purpose of consultation is reconciliation and not simply the minimization of adverse impacts (*Dene Tha'*);
14. Consultation must take place early, before important decisions are made – at the “strategic planning” stage (*Haida, Dene Tha', Squamish Nation*);
15. Consultation cannot be postponed to the last and final point in a series of decisions (*Squamish Nation*)⁴;
16. Consultation is required in respect of the design of the consultation process itself (*Huu-ay-aht*). Scoping, terms of reference and other preliminary processes cannot be used to narrow consultation

³ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para. 62; *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 at para. 168; *Tsuu T'ina Nation v. Alberta (Environment)*, 2010 ABCA 137 at para. 55.

⁴ A concern of our First Nations in the EA context or in virtually all regulatory applications (even if a formal environmental assessment is not required) is that consultation often does not take place until project design is well under way and until studies have been completed as part of an application submission. This puts First Nations in the position of having to ask for more studies, amendments to studies, or for changes to terms of reference for studies. This situation could be avoided by consulting early with First Nations in respect of terms of reference for environmental assessments – scoping of projects, information requirements placed on proponents, etc.

to excuse the Crown from consulting about First Nations’ legitimate and relevant rights and concerns⁵;

17. First Nations must be consulted about aspects of the design of environmental and regulatory review processes (*Dene Tha’*);
18. Consultation cannot just be in respect of “site specific impacts” of development – but must also take into account the cumulative impacts, derivative impacts, and possible injurious affection resulting from development (*Dene Tha’*, *Taku River*, *Mikisew*, *Roger William*);
19. The Crown must approach consultation with an open mind and must be prepared to alter decisions depending on the input received (*Haida*); and
20. Consultation cannot be determined simply by whether or not a particular process was followed, but on whether the results are “reasonable” in light of the information presented, degree of impacts, and related matters (*Wil’itsxw*).

These principles go to ensuring the full and meaningful protection and recognition of our rights. Without precision with respect to how consultation and accommodation will take place – procedurally and substantively – our rights will remain at risk. Further, Alberta has consistently taken an approach to consultation and discussions regarding the legal principles of consultation and accommodation that fails to pay due regard to what is being consulted about – our Treaty rights. Consultation and accommodation in Alberta is primarily about Treaty rights and therefore must also always involve full consideration and application of the following principles relating to the Treaty:

1. **A Treaty represents an exchange of solemn promises between the Crown and the various Indian nations. It is an agreement whose nature is sacred. The Crown’s honour requires an assumption that the Crown intended to fulfill its promises;**
2. Aboriginal Treaties constitute a unique type of agreement and attract special principles of interpretation;
3. Treaties should be liberally construed and ambiguities or doubtful expressions should be resolved in favour of the aboriginal signatories;
4. The goal of treaty interpretation is to choose from among the various possible interpretations of common intention the one which best reconciles the interests of both parties at the time the treaty was signed;
5. In searching for the common intention of the parties, the integrity and honour of the Crown is presumed;
6. In determining the signatories’ respective understanding and intentions, the court must be sensitive to the unique cultural and linguistic differences between the parties;
7. The words of the treaty must be given the sense which they would naturally have held for the parties at the time;

⁵ *West Moberly First Nation v. British Columbia*, 2010 BCSC 359, para.54 & 55; *Dene Tha’ First Nation v. Canada*, 2006 FC 1354

8. Treaty rights of aboriginal peoples must not be interpreted in a static or rigid way. They are not frozen in time at the date of signature. Treaty rights must be interpreted to provide for their modern exercise. This involves determining what modern practices are reasonably incidental to the core Treaty rights in a modern context;
9. A technical or contractual interpretation of treaty wording should be avoided; and
10. While construing the language generously, courts cannot alter the terms of the treaty by exceeding what "is possible on the language" or realistic.⁶

A specific approach to consultation

In light of the foregoing, the obvious question is: What do First Nations want in terms of consultation and accommodation? Individual First Nations have provided Alberta with input on this important question. Alberta has also engaged in various processes such as the Protocol Working Group process. In short, Alberta is well aware, in general terms, of what our First Nations are looking for. In our view, the only way to achieve greater clarity and certainty, for First Nation, Industry and the Crown, is to negotiate a new agreement on consultation.

As noted earlier, the contents of consultation will necessarily differ with the nature of the project or issue in question, the degree of potential impact on First Nations' rights, and the interests and concerns of the particular First Nations. Keeping the need for flexibility in mind, we have set out an approach to consultation in Appendix B that should serve as the starting point for negotiations with Alberta to develop a mutually acceptable consultation process. Appendix A sets out the mistakes and issues that have arisen since the introduction of the *Consultation Policy*; it will help ensure that negotiations will avoid the mistakes of the past five years.

Yours truly,

Treaty 8 Chiefs of Alberta

⁶ *R. v. Marshall*, [1999] 3 S.C.R. 456, para. 78 (citations removed); *R. v. Badger*, [1996] 133 D.L.R. (4th) 324, paras. 41 and 47; *R. v. Frank*, [1978] 1 S.C.R. 95; *R. v. Sundown*, [1999] 1 S.C.R. 393 at para. 32

SIGNATURE PAGE ATTACHED

cc: Treaty No. 8 Alberta Chiefs
Ted Morton, Minister of Finance and Enterprise
David Hancock, Minister of Education
Iris Evans, Minister of International and Intergovernmental Relations
Ron Liepert, Minister of Energy
Luke Ouellette, Minister of Transportation
Mel Knight, Minister of Sustainable Resource Development
Alison Redford, Minister of Justice and Attorney General
Rob Renner, Minister of Environment
Gene Zwozdesky, Minister of Health and Wellness
Yvonne Fritz, Minister of Children and Youth Services
Jack Hayden, Minister of Agriculture and Rural Development
Ray Danyluk, Minister of Infrastructure
Mary Anne Jablonski, Minister of Seniors and Community Supports
Lindsay Blackett, Minister of Culture and Community Spirit
Heather Klimchuck, Minister of Service Alberta
Cindy Ady, Minister of Tourism, Parks and Recreation
Hector Goudreau, Minister of Municipal Affairs
Jonathon Denis, Minister of Housing and Urban Affairs
Thomas Lukaszuk, Minister of Employment and Immigration
Darryel Sowan, Director of Livelihood
Chiefs Livelihood Committee (CLC)
Consultation Technical Team (CTT)

APPENDIX A

GENERAL CONCERNS WITH ALBERTA'S APPROACH TO CONSULTATION

As explained more fully below, discussions at the April, June, August and September meetings identified the following flaws and issues with Alberta's current approach to consultation under the *Consultation Policy*:

1. Alberta has too narrow a view of First Nations' rights

Alberta takes a very limited approach to what constitutes the section 35 rights of our First Nations, it ignores the oral promises made in the Treaty No. 8 and the dynamic nature of the Treaty, and it lacks any focus on what information and processes are required for the long-term sustainability of those rights.

The Treaty is a living document that continues to evolve and it is well established that our Treaty rights are not "frozen in time".⁷ The written text of the Treaty is not a static and final accounting of our rights. Alberta approaches our Treaty rights as a noun, rather than a verb, as though our rights are written in stone, that they do not change, and that the places in which we exercise our rights do not and cannot change. Many cases have established that rights can, and in some cases must, be read into the Treaty to give meaning to express Treaty terms or to provide meaningful contemporary applications of rights.⁸ As an obvious example, if First Nations are pushed out of areas due to industrial development, we will have to move elsewhere. Rather than understand that we have always had to adapt to changing circumstances, Alberta's approach, in fact, does the opposite. It ignores the impacts of development and Alberta officials have, in fact, been trying to confine us to smaller and smaller "consultation areas." That approach does not serve our interests or reflect the nature of our Treaty rights – it appears to be an attempt by Alberta to artificially create non-overlapping areas where consultation must take place.

Further, the entrenchment of our rights in s. 35 of the *Constitution Act, 1982*, was not an acknowledgement of a static set of rights, but rather, it was a recognition and affirmation of a body of generative rights which bind the Crown to take positive steps to identify First Nations' rights in a contemporary form, with the active participation of our First Nations.⁹ As the Supreme Court of Canada stated clearly in *Sparrow*, section 35 was not enacted to maintain the *status quo*.

Alberta has refused to address claimed Treaty rights in the course of consultation under the current *Consultation Policy*. This approach is not defensible and is inconsistent with the dynamic and flexible nature of Treaty rights. The Supreme Court clearly sets out a framework for addressing claimed rights in the context of consultation and accommodation in the *Haida* case. First Nations must sufficiently describe the rights we are claiming and provide some evidence and reasoning in support of the rights. For its part, the Crown is obliged to assess strength of the claimed right and consult (and accommodate) accordingly. Dealing with claimed rights is not easy but simply denying the existence

⁷ *R. v. Sundown*, [1999] 1 S.C.R. 393, para. 32.

⁸ *Sundown*, supra.; *Marshall*, supra, para. 78.; see also: *R. v. Sappier*, 2004 NBCA 56; *R. v. Cote*, [1996] 3 S.C.R. 136; *R. v. Sioui*, [1990] 1 S.C.R. 1025; *R. v. Simon*, [1985] 2 S.C.R. 387; *Claxton v. Saanichton Marina Ltd.*, [1989] 3 C.N.L.R. 46 (BCCA);

⁹ *Tsilhqot'in Nation v. British Columbia*, 2007 BCSC 1700, para 1364; See also Brian Slattery, *Aboriginal Rights and the Honour of the Crown*, (2005), 29 S.C.L.R. (2d), pp. 435-443; and Brian Slattery, *The Generative Structure of Aboriginal Rights*, (2007) 38 S.C.L.R. (2d).

of a claimed right is not an acceptable approach.¹⁰ Indeed, the Supreme Court has given clear direction that Treaty rights should be accommodated through negotiation and consultation rather than by litigation.¹¹

The duty to consult and accommodate similarly applies to land claims, particularly those that have been accepted by either Canada or Alberta for negotiation. It is not honourable for the Crown to deal with lands and resources that are the subject of accepted land claims without significant consultation and accommodation.

First Nations and Alberta also have divergent views with respect to the effect of the Treaty on claims to Aboriginal rights and title. There is no definitive case on this point. Accordingly, it is not honourable for Alberta to unilaterally impose its position on these matters. Consultation must afford an opportunity to those First Nations who are advancing Aboriginal title and rights claims to present evidence and arguments in support of such claims.

2. Alberta's approach to consultation lacks precision

There is very little discussion of process-related issues concerning consultation and accommodation, such as how potential adverse impacts on First Nation rights and interests are to be determined (i.e., when will the duty be triggered), nor is there any guidance on how a decision maker would assess the strength (or weakness) of a First Nation's claim and the degree of consultation required - e.g., who will determine the required level of impact and therefore consultation required? Presumably, it leaves this important decision to Alberta officials but does not provide guidance on what information is required, what criteria should be employed, etc. This lack of precision has, in turn, allowed for inconsistent approaches within Alberta government departments, and across Alberta government departments as to whether consultation is required and as to the degree of requisite consultation. Consultation has also been significantly challenged by the fact that Alberta decision makers often claim that they do not have the authority or mandate to make independent decisions with respect to consultation and how it affects our Treaty rights.

3. There are no standards against which to assess consultation and accommodation

Alberta's approach lacks a mutually agreed-upon set of standards or objectives against which consultation and accommodation can be measured. This has also lead to wildly varying approaches to consultation from one ministry to another and even within the same ministry. It also promoted inconsistent approaches to consultation with industry project proponents.

4. Alberta has failed to recognize and implement the Duty to Accommodate

Alberta minimizes and downplays the need for accommodation and the means by which accommodation might take place and what kinds of accommodations may be available (in *R. v. Kapp*, the majority of the court makes it clear that both consultation and accommodation are constitutional duties). Alberta simply assumes that any form of mitigation proposed by a company, no matter how minimal, will be acceptable.

Consultation and accommodation with respect to our Treaty hunting, fishing, trapping and gathering must also take into account other binding legal principles. Alberta has a constitutional duty to ensure a

¹⁰ *Haida*, supra, para. 3 – 38; see also: *R. v. Badger*, [1996] 1 S.C.R. 771, para.97.

¹¹ *R. v. Marshall (2)*, [1999] 3. S.C.R. 533, para. 22; *Haida*, supra., para. 47.

sustainable supply of fish and game for Treaty rights.¹² The reduction or degradation of habitat that supports fish and wildlife can constitute an infringement of Treaty rights and an unreasonable limitation of these rights.¹³ When the Crown is making decisions about the management and allocation of fish and game and the management of related habitat, the *Sparrow* doctrine of priority must not only be respected, it must be a central consideration in any consultation and accommodation.

5. Alberta delegates substantive aspects of project specific consultation to industry

Alberta allows for a great deal of delegation of consultation obligations to industry – in a number of instances, it is not only the procedural aspects of consultation that are being delegated, but virtually the entire substantive duty as well – Alberta appears to see its duty as that of a “referee” – delegating practically all aspects of consultation to industry is akin to putting the fox in charge of the hen-house – industry has the goal of pushing forward its projects and of minimizing the concerns of First Nations. In addition, Alberta has no clear understanding of what is procedural or substantive consultation.

6. Environmental Assessments and similar processes are developed without the participation of First Nations

First Nations have repeatedly raised concerns about the lack of any meaningful inclusion of our rights in environmental assessment processes either generally or as a specific topic in Environmental Assessments (“EA”) and other processes. To be clear, Alberta has rejected an approach that states that the impacts of proposals and developments will be measured against the ability of First Nations to exercise our rights now and into the future. This plays out in areas such as the scoping of projects for EA development of information requirements in terms of reference, etc. Those concerns have been downplayed and ignored. Alberta’s consultation approach does not address this important issue and allows decision makers to continue to ignore First Nations procedural and substantive concerns about our rights in this important area. Time and time again, our concerns about EA are ignored by Alberta Environment. Some of our concerns include:

- Failure to develop any thresholds, criteria or measures to assess the impacts of development on our ability to exercise our section 35 rights now and into the future.
- Failure to seriously consider and accommodate our procedural concerns with respect to terms of reference for EA.
- Failure to assess direct, indirect and cumulative effects of resource development of our rights, including a failure to consider what information is required to undertake assessments on direct, indirect, and cumulative impacts of development on our rights.
- Failure to understand, much less address, the key cultural and social impacts of development on our rights – Alberta simply assumes that standard EA processes will deal with these concerns – this relates to the failure to consider the Aboriginal perspective in decision making – the importance of place, and the cultural elements underlying the passing down and exercise of our rights is ignored by Alberta.
- Failure to consult with us on the scoping of projects for Environment Assessments (EA) purposes.

¹² *R. v. Badger*, [1993] C.N.L.R. 143; 1993 CarswellAlta 306 (ABCA), paras.29-30; *Badger* (SCC), supra., paras. 7 & 9, 47, 70.

¹³ *Tsilhqot’in*, supra., paras. 1272-75, 1288.

- Failure to undertake cumulative effects assessment to all resource allocation development decisions.

7. Consultation must be structured on a government-to-government basis

Consultants working for industry tend to approach selected groups of members or Elders and, in many cases, bypass First Nation governments. Alberta should be more directly involved in consultation to ensure consultation is aboveboard and that such practices are not accepted. Any new approach to consultation must make it clear that this cannot be allowed.

8. The capacity to consult is a persistent hindrance to meaningful consultation

There are no specifics in respect of capacity including that the government does not direct industry to provide capacity funding to participate in the process of consultation. A regulatory review of a large project can be costly and time-consuming. There appears to be an assumption among Alberta officials that First Nations have endless amounts of money and capacity to conduct large baseline studies, to gather information, to participate in all kinds of consultation processes, and the like. We require the capacity to consult our members, to attend meetings, to hire technical experts to review the voluminous submissions and to otherwise participate meaningfully in those processes. A small amount of capacity funding is wholly inadequate, yet the policy does not require industry to provide capacity funding to First Nations for industry-driven projects. For example, this leads to the problem that SRD approves projects over the capacity-related objections of First Nations, on the basis that industry is not required to provide funding. This also allows certain industry groups to avoid paying for any capacity, while other companies do provide some capacity.

9. There is a general lack of clarity regarding what role First Nations input should have

There is no discussion of how our input will be taken into account, what role First Nations will play in terms of determining what information is required to determine potential adverse impacts or infringements, or what information ought to be required in decision-making about resource development. As things now stand, First Nation's concerns about information requirements are largely ignored. There is no real attempt by Alberta to listen to First Nations about our funding and process-related concerns. The scepticism discussed earlier is especially acute in terms of funding issues – as Alberta pushes forward with all kinds of decisions, absent First Nations having sufficient capacity to gather information and participate, it is easy to draw the inference that Alberta's concern is more about court proofing than reconciliation.

10. Consultation occurs on a project-by-project basis, devoid of critical information about cumulative impacts on First Nations' rights

A particularly contentious issue is the degree to which the direct, indirect and cumulative impacts of development ought to be assessed in decision-making processes and what studies and information are required to assess those kinds of impacts on our rights. We have long sought a say in developing terms of reference or criteria by which impacts ought to be assessed against our ability to exercise our rights now and in the future. There is no requirement in the policy that this sort of input will be seriously considered – in fact, Alberta Environment and Sustainable Resource Development consistently ignore such input.

11. Consultation rarely, if ever, occurs at the strategic planning stage

Alberta Energy expressly refuses to consult at the tenure-granting stage. This is extremely troubling. The granting of tenures/mineral dispositions is a key strategic planning stage. Once tenures are granted or dispositions made, there is an expectation on the part of the purchaser or disposition holder that development will be permitted. Certain legislation may, in fact, require development to take place. Once the tenure is granted, the possibility of no development taking place in a particular area may be foreclosed and other kinds of accommodation may be foreclosed, irrespective of the concerns raised by First Nations. Since there is no current process by which Alberta analyzes existing development or planned development on tenures that have already been granted and how such current or future development affects section 35 rights, it is crucial that such analysis be done before more tenures are granted. There is no legal impediment to consultation prior to posting lands for sale or disposition. British Columbia, as one example consults prior to the grants of tenure/sale of lands. This is simply a choice by Alberta and one we feel is ill-advised.

12. There is a Duty to Consult in relation to Private Lands

The policy is silent on whether or not consultation ought to take place in respect of what the Province terms “private” lands. We do not accept that there is no duty to consult or accommodate where lands are deemed to be “private.” *Badger* and other cases state that Treaty rights may be exercised on private lands where there is no visible, incompatible use of those lands. We are also not consulted on decisions to turn Crown lands into private lands. Moreover, we note that consultation is required, notwithstanding that the lands are private, where:

- There are renewals or extensions of any approvals, tenures, and leases that created the private lands;
- Where development on private lands has the potential to directly, indirectly, or cumulatively adversely impact upon the meaningful exercise of our inherent and Treaty protected rights on Crown land or on other lands to which we have a right of access; and
- Where development on private lands has the potential to injuriously affect our inherent Treaty protected rights on Crown lands or on other lands to which we have a right of access.

13. The Duty to Consult and Accommodate applies to decisions that affect Reserve Lands

The current *Consultation Policy* does not adequately address the critically important issue of the duty to consult and accommodate as it relates to reserve lands. Although Alberta does not have jurisdiction to make decisions directly with respect to reserve lands, Alberta can make decisions and take actions affecting traditional lands that have affects on reserve lands along with having lasting and profound impacts on our ability to use and enjoy reserve lands. Negative impacts of decisions concerning off reserve lands can have an adverse impact on reserve lands and constitute an interference with fundamental Treaty rights.

Reserves lands are a core term of the Treaty. It is well established that it was the common intention of both First Nations and the Crown that reserve lands would serve as the basis for a transition to a new economy.¹⁴ First Nations have an established Treaty right to their respective reserve lands and to the

¹⁴ For example: Richard H. Bartlett, *Aboriginal Water Rights in Canada: A Study of Aboriginal Title to Water and Indian Water Rights*, Canadian Institute of Resource Law, Saskatoon, April 1988, pp. 19-20, 26; Arthur J. Ray, Jim Miller, and Frank Tough, *Bounty and Benevolence*, McGill-Queen’s University Press 2000, Montreal, pp. 71, 137-139, 168, 199; Treaty 7 Elders, et al, *The True Spirit and Original Intent of Treaty 7*, McGill-Queen’s University Press 1996, Montreal, pp. 121-123, 146, 210, 312-313; Sarah Carter, *Lost*

use and benefit of those lands – this is beyond dispute.¹⁵ In addition to being a term of the Treaty, First Nations’ interests in reserve lands are a form of Aboriginal title derived from our prior historic occupation of our lands.¹⁶ Moreover, constitutionally, there are a number of provincial laws which cannot apply on our reserves. Accordingly, any potential impacts on reserve lands are impacts on a core Treaty right and our Aboriginal title to reserve lands. Therefore, there is always a duty to consult with respect to potential impacts on our reserve lands. Most often, such impacts will require deep consultation, and in those instances where potential impacts are significant, the full consent of a First Nation will be required.¹⁷

14. Municipal decisions and actions can impact First Nations’ rights

Alberta’s approach to consultation fails to address the reality that the decisions of municipal districts, towns and cities have significant potential to impact First Nations’ rights and interests. Municipal authority and powers are delegated from the provincial Crown. Many functions and decisions of municipalities can impact First Nations. For example, decisions to locate waste disposal sites, feedlots, construct highways, and zone development can have significant impacts on First Nations’ reserve lands and other Treaty rights. More general planning decisions and policy initiatives can influence long term land use, infrastructure planning, and water quality and quantity, in ways that impact First Nations. Many First Nations repeatedly expressed this concern to Alberta during the development of the *Consultation Policy* but the issue has remained unaddressed. Any new approach to consultation has to acknowledge that as delegates of the Crown, municipalities can make decisions and set policies that may impact First Nations and, therefore, engage the duty to consult. Alternatively, Alberta must ensure that, where necessary, it exercises oversight to ensure the adequacy of consultations related to municipal decisions to ensure that the Crown’s duty to consult is satisfied. Addressing municipal consultation would be consistent with the approach taken by other provinces.¹⁸

15. Alberta has an obligation to be forthright about consultation

Alberta has been unwilling to confirm, verbally or in writing, whether certain meetings and processes are consultation or part of the consultative process. On occasion, Alberta officials have been so inconsistent as to communicate that certain processes are both consultation and not consultation. Some First Nations have been assured by Alberta Environment officials that a meeting or series of meetings are not consultation, only to be told later by Alberta Justice that such assurances cannot be relied on. In regulatory processes, First Nations have had to ask for consultation records that industry delivers to Alberta officials, in which industry purports to have “consulted.” This is the case even though Alberta is relying on those records as part of meeting its own consultation obligations. The honour of the Crown does not support a “shell game” approach to consultation. First Nations are entitled to clarity,

Harvests: Prairie Indian Reserve Farmers and Government Policy, McGill-Queen’s University Press 1990, Montreal, pp. 43-44, 49, 52, 55-57, 78; Richard T. Price, ed., *The Spirit and Intent of the Alberta Indian Treaties*, 3rd ed., University of Alberta Press, Edmonton, 1999, pp. 31, 141.

¹⁵ See: s.10 of Schedule (2), *Constitution Act, 1930*; Since 1876 the *Indian Act* has contained the recognition that reserves are for the “use and benefit” of First Nations: *Indian Act*, S.C. 1876, c. 18, s. 4; *Indian Act*, S.C. 1880, c. 28, s. 6; *Indian Act*, R.S.C. 1886, c. 43, s. 2(k); *Indian Act*, R.S.C. 1906, c. 81, s. 2(i); *Indian Act*, R.S.C. 1927, c. 98, s. 2(j); and *Indian Act*, S.C. 1951, c. 29, s. 2(0); *Indian Act*, R.S.C., C.1-5, s.2(1).

¹⁶ *Guerin v. Canada*, [1984] 2 S.C.R. 335, para.86.

¹⁷ *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, paras. 168-169.

¹⁸ Government of Saskatchewan, *Draft First Nations and Métis Consultation Framework*;

honesty, and forthrightness from the Crown and its representatives. Nothing less will meet with the honour of the Crown obligations.¹⁹

Across Alberta, we have consistently been presented with pre-determined, fully developed consultation plans. Rarely, if ever, are First Nations asked by Crown officials for input into consultation processes. Project proponents have no better record in this regard. Consultation about the scope and terms of the consultation process itself is a critical matter that can determine whether consultation can be meaningful. The Crown must work with First Nations at the earliest stages to determine what rights and interests are at issue, understand which First Nation officials and communities need to be involved and to ensure that Crown officials involved in the consultation process have the capacity and authority to meaningfully consult and accommodate if necessary.²⁰

16. Alberta must be flexible and conduct itself honourably with respect to Traditional Territories and Traditional Knowledge

Alberta's approach to consultation must be sensitive to and respect the reality that First Nations' traditional territories overlap and that some First Nations have different, and occasionally contrary, perspectives with respect to traditional territories. Any efforts by Alberta to create maps or databases that claim to represent discrete and non-overlapping traditional territories would be, simply put, untrue and an attempt to oversimplify consultation for the benefit of government and industry. First Nations are also concerned that Alberta's undue emphasis on "dots on a map" and traditional use sites of an historical nature, has resulted in a serious loss of focus on impacts to on-going Treaty hunting, fishing, trapping, gathering, and other traditional land uses on reserve lands. This approach to studying traditional use and building into the consultation process does not reflect our historical land use patterns and the way in which our peoples continue to use the land for Treaty rights and traditional use purposes.

¹⁹ *Mikisew Cree First Nation v. Canada*, 2005 SCC 69, para.33; *Haida Nation v. British Columbia*, 2004 SCC 73, para.41; *R. v. Marshall*, [1999] 3 S.C.R. 456, para. 49.

²⁰ *West Moberly First Nation v. British Columbia*, 2010 BCSC 359, para.54 & 55; *Dene Tha' First Nation v. Canada*, 2006 FC 1354.

APPENDIX B

SUGGESTED APPROACH TO CONSULTATION

In our view, a negotiated consultation agreement should also include a consultation process or protocol containing the following elements:

- A. A mutually agreed-upon set of objectives and interests (see our views on this matter above) against which consultation will be measured.
- B. Individual First Nations may use the following principles to assess the adequacy of consultation:
 - The Crown's "taking up" of lands and resources for development are subject to the duty to consult and accommodate.
 - Consultation is an ongoing process and is always required.
 - Consultation must be conducted with the genuine intention of seriously considering and substantially addressing the concerns of First Nations and wherever possible, demonstrably integrating the concerns of the First Nations within any Proposal – this extends to both procedural (process) and substantive concerns.
 - Consultation must take place early in any Proposal before important decisions are made, including at the strategic planning stage of any Proposal and the tenure-granting/land sale stage.
 - The duty to consult is not met by addressing only the site-specific impacts of any decision, but must also seriously consider and substantially address the potential indirect, derivative, induced and cumulative impacts of other existing, planned, or reasonably foreseeable industrial development(s) on our rights, including injurious affection related thereto.
 - First Nations need adequate resources to assess the potential impacts of any decision on their rights and interests, including the identification of any mitigation and accommodation opportunities in relation to any decision. In order to be able to consult in a meaningful fashion, the Crown and third parties must be required to negotiate adequate funding with First Nations that enables us to carry out our consultation obligations and the Crown will not authorize development until companies have demonstrated that they have provided such funding.
 - In carrying out consultation in relation to any Proposal, First Nations, the Crown and, if appropriate, third parties, have reciprocal obligations of reasonableness, good faith, and cooperation.
 - Any consultation process and its outcome must be responsive to the interests and concerns of our First Nations.
 - The nature of consultation, compensation and accommodation will vary depending upon the degree of potential adverse impacts on and infringements of the rights of our First Nations.

- Unless a First Nation delegates consultation to another entity or organization, any Crown and third party consultation must be specific to the rights, claims and traditional land uses of the particular First Nation which may be adversely affected or infringed by a decision.
- Communication must be open, honest and clear.
- The Crown and third parties have a positive obligation to provide full information to our First Nations on an ongoing basis, including new information as it becomes available, so that we can understand the potential direct, indirect and cumulative impacts of any decision on our rights and interests before a decision is made – where First Nations lack sufficient information to assess impacts, the Crown and industry may have to develop additional information through studies and reports – First Nation requests for additional information must be seriously considered – this is why First Nations input into terms of reference are critical.
- Based on the resources available, First Nations will outline their concerns with clarity, focusing on the potential direct, indirect and cumulative impacts of any development or issue on their rights.
- In any public regulatory process, the Crown and third parties must consult with us about the design of any regulatory review process for any Proposal, including the role of our First Nations in any such process; the screening and scoping of a proposal for environmental assessment under federal and/or provincial law; the drafting of Terms of Reference (“TOR”) for an Environmental Impact Assessment (“EIA”) or its equivalent under federal or provincial law; and the development of cumulative effects assessment and socio-economic impact assessment. More generally, the Crown must consult with us about the design of any consultation process, including the Alberta *Consultation Guidelines* and revisions thereto, as well as the design of any consultation processes for any Crown initiatives such as the LUF.
- Consultation with First Nations is a separate and distinct process from any public consultations conducted by the Crown or by Crown agencies through legislation, regulations or policy and the carrying out of any public hearings for Proposals under federal or provincial law is not a substitute for discharge of the Crown’s duty to consult, although aspects of such consultation could be used in a separate and distinct process.
- In addition to the foregoing, if a decision has the potential to infringe a First Nation’s Treaty or Aboriginal rights, justification and accommodation of such a potential infringement of that First Nation’s rights requires the following:
 - *Priority* to be given to the First Nation’s rights versus those of non-First Nation stakeholders;
 - *Minimal impact* on a First Nation’s rights;
 - *Mitigation measures* to avoid impacts and to ensure that any impact that does occur is “as little as possible” and to ensure that First Nation concerns are “demonstrably integrated” into any plan of action;
 - *Fair compensation* for unavoidable infringements; and

- ***Other efforts*** to ensure sensitivity and respect of the First Nation's rights.

Although these consultation requirements are pre-requisites for the validity of government action in our view, they do not end at the decision-making stage. They are ongoing and continue through the life of any Proposal, including the construction, operation and de-commissioning stages.

Process for Consultation

a. Initial Information Requirements

Although our First Nations may have different suggestions for how consultation will take place on the ground, an agreed-upon consultation should provide the following kinds of specific detail:

- A list of specific decisions that will trigger the duty to consult, and which will ensure early notification – this should be based on an agreed-upon set of decisions which do and do not trigger the duty to consult – to the extent that procedural aspects of consultation are delegated to industry, any notification should be well before the application is submitted to the regulator or decision maker, so that First Nations have time to give their input on various process-related matters (required studies, TOR, etc.).
- Each party involved in the consultation should appoint, in writing, someone responsible for carrying out the consultation and the consultation policy should make clear that any attempt to circumvent the “official” person or body responsible for consultation will not constitute the legally-required consultation.
- Our First Nations expect to receive copies of all applications, policies or other decisions which trigger the duty to consult in both electronic and hard copy form.
- In order to allow us to understand the issue that forms the basis of consultation, we expect to receive information on:
 - the nature and scope of the decision;
 - the nature and scope of any future contemplated conduct, such as regulatory documentation related to the decision, or applications for future growth phases related to the decision;
 - the reasons for or purpose of the decision;
 - the timing of the contemplated conduct, including all applicable regulatory timelines;
 - the location of the contemplated conduct;
 - the duration of the contemplated conduct;
 - the potential risks associated with the contemplated conduct;
 - the proposed measures to be undertaken and methods to ensure inclusion of Traditional Use and Traditional Ecological Knowledge of our First Nations;

- a plan for how we will be consulted and included in the development of studies related to the decision, including in the pre-application phase and in all aspects of the regulatory review of the decision;
 - the identification of alternatives to the contemplated conduct; and
 - identification of who will be involved in carrying out the contemplated conduct, including any agents or contractors working for the Crown or third parties.
- Documents available to be reviewed, in hard copy and electronic form including, but not limited to:
 - i. applications;
 - ii. studies;
 - iii. reports, such as in respect of seismic or exploration phases of the decision;
 - iv. any previous assessments, studies or reports in respect of any phase of the decision including the exploratory stage, or in the vicinity of the decision that are known to or in the possession of the Crown or industry;
 - v. information on applicable legislation, policies, guidelines and regulations related to the decision or which decision;
 - vi. information on any deadlines or filing dates related to the decision; and
 - the names, addresses, emails, fax and telephone numbers for any relevant Crown decision makers related to the Proposal as well as identification of contacts for industry Proponents
 - If there is any change to information required to be delivered to the First Nation, or if new or additional information becomes available during the pre-application or regulatory review of the decision, this further information shall be delivered to the First Nation.

b. Processing of Information – General Kinds of Decisions

Again, while the particular steps may differ from one First Nation to another, some of the key components of a consultation approach would be:

- The First Nation will conduct a preliminary review of the information in a specified period of time and indicate whether it wishes to be consulted further and, if so, the First Nation will set out a preliminary list of its concerns.
- The consultation policy will specify such time periods that are mutually acceptable, and will ensure that time periods for response respect the culture of the First Nation and do not “count against” the First Nation when the First Nation is closed, such as in the Christmas season.

- The First Nation may request, and the Crown and industry shall attend, any preliminary meetings to discuss among other things:
 - the nature of the decision and the Crown’s regulatory review process or other approval process contemplated, the First Nation’s initial questions or concerns about the regulatory review process, if any, as well as time lines for the First Nation’s review of the decision;
 - the consultation obligations of the Crown and third party in relation to the decision, how and when they will be carried out, including appropriate and acceptable time lines for the First Nation to consult in relation to the decision;
 - appropriate information requirements, including identification of information gaps, for the Crown and third parties to facilitate the First Nation’s ability to determine and assess the potential impacts of the Proposal on their rights and interests; and
 - an appropriate budget provided by the Crown and/or industry and work plan for the First Nation’s review of the decision and for the First Nation to engage fully and meaningfully in the regulatory review process for the decision.²¹
- As noted earlier, Alberta must recognize that First Nations’ ability to participate fully and meaningfully in consultation is dependent on receiving adequate funding to do so. Provided that adequate technical/financial assistance is made available by the Crown and/or industry to our First Nations, we will conduct a technical review of the decision and will hold internal discussions with our Leadership and Community to determine and document our issues and concerns in relation to the direct, indirect and cumulative impacts of the decision on our rights and interests.
- Following the above steps, the First Nation will communicate any concerns arising thereunder to the Crown and the third party, as well as recommendations on how such concerns can be addressed, accommodated, or mitigated, including in relation to any compensation related thereto that may be required.
- The Crown and the third party will engage in consultation with the First Nations to seek to address and accommodate those concerns.
- If consultation is delegated to a third party, the third party will provide monthly reports/consultation summaries to the First Nation before submitting those reports to the Crown, so

²¹ Depending on the nature of the decision and the potential adverse impacts on our First Nations rights and interests, the budget and work plan will include items such as the carrying out of a traditional use study and collection to traditional ecological knowledge, if such information has not already been gathered within the vicinity of the project or decision, or an updating of information relevant to the vicinity of the project or decision; funding for legal and technical advice related to the decision, funding for a third party review of the decision as the context requires (including, but not limited to, a federal or provincial environmental assessment process), funding for community meetings and information sessions related to the decision and other related matters. The work plan will also set out time lines and a process for First Nation internal community engagement in respect of the decision. The work plan may also include time lines for our First Nation’s review of, and input into, various stages of the environmental or regulatory review process such as commenting on TOR for an EA, scoping of the EA, identification of impacts to be studied in the EA, and related matters.

Any such funding would be in addition to the core funding provided by AAND.

that the First Nation can verify the accuracy of the information contained therein. If the Crown produces consultation reports or summaries, the First Nation will be provided with copies of such information on a monthly basis in order to verify the accuracy of the information contained therein.

- Prior to making a decision, if requested by the First Nation, the Crown will meet with the First Nation to discuss, among other things, the basis upon which the decision will be made, how the First Nation's issues and concerns were addressed, including concerns in relation to information gaps and, if those concerns have not been addressed, the reason(s) why those concerns have not been addressed.
- In the event that the concerns or some of those concerns cannot be resolved, the First Nation will discuss with the Crown and third parties alternative methods of resolving the dispute, including various forms of Alternative Dispute Resolution ("ADR"). However, if the First Nation's concerns cannot be resolved in any process set out herein or through ADR, our First Nations retain their full right to participate in any regulatory proceedings related to the referral and to raise its concerns in relation to potentially impacted rights in any court or other proceeding.
- Once a decision is made, if requested by the First Nation, the First Nation will receive a written copy of the decision including information on how its concerns were addressed. If those concerns were not addressed, the First Nation will receive a written explanation for why those concerns were not addressed.
- All TUS and TEK information that the First Nation provides to the Crown or third parties in relation to a decision will be kept in strict confidence and that information will not be released to any third party without the written consent of the First Nation unless disclosure of such information is required by law or unless that information is already in the public domain. The First Nation will treat Crown and third party information in the same manner.
- The First Nation will negotiate with the Crown or any third party the terms and conditions upon which any information can be used in any regulatory review processes, other public processes or court proceedings.

c. Consultation Process for Complex Decisions

In addition to the processes and steps set out above, the following additional consultation would be required in respect of any large-scale projects or processes such as those related to oil sands development, uranium, hydro-electric, nuclear power, any decision which triggers a federal or provincial environmental assessment, as well as in respect of any Crown-led initiative such as LARP and IFN.

- If requested by the First Nation, the Crown and any industry proponent of a decision will engage in face-to-face consultation concerning the development of TOR for a project. Among other things, such consultation will focus on the information required to be developed by the Proponent (including information required to assess potential direct, indirect and cumulative impacts on our rights and interests, the screening and scoping of the Proposal for regulatory review purposes, the identification of cumulative impacts and effects to be assessed, how our First Nations will be consulted in the regulatory review

process and how TUS/TEK will be considered and incorporated in the environmental assessment (“EA”) or EIA for the project.

- If requested by our First Nations, the Crown will consult with us prior to any determination that an application for a project is complete for regulatory approval.
- We expect to be consulted on the information to be developed for any decision or process so as to ensure that potential impacts on our rights and interests will be taken into account – that might include baseline information, biophysical or other studies to be carried out, etc.
- Many of our First Nations have asked Alberta to work with us to carry out a traditional resource plans or studies which examine the current and future resource, environmental and ecosystem needs of the First Nation to meaningfully carry out their rights now and in the future including, but not limited to:
 - i. Quality and quantity of wildlife species required;
 - ii. Quality and quantity of aquatic species required;
 - iii. Quantity and quality of plants or other things gathered; and
 - iv. Quantity and quality, as the context requires, of air, water and ecosystems required to support the exercise of the First Nation’s rights;
 - v. Inclusion or understanding of information to consider the cultural impacts of decisions on our rights
- Meaningful incorporation of our TUS/TEK information in relation to the assessment of impacts through consultation and in respect of the regulatory review of any decision;
- A mechanism to ensure that information gaps in any decision or in any regulatory review process are identified and addressed prior to the issuance of any federal and/or provincial approval of a decision;
- Ensuring that the full social, cultural, environmental, health and economic impacts of decisions are assessed against our rights;

d. Accommodation

Depending on the results of the consultation carried out, our First Nations will work with the Crown and industry to identify forms of accommodation that are acceptable to our First Nations to address our concerns. Such forms of accommodation may include, but are not limited to:

- a. the decision maker rejecting a decision or project, delaying a decision on a decision or project, revocation of the proposal by a third party or other proponent, or changing the decision or project based on the concerns and/or views expressed by the First Nation through consultation;
- b. addressing the procedural concerns of our First Nations, by for example developing specific information requirements to assess the potential impacts of the decision on our rights within the regulatory review process or other public processes;

- c. early engagement of our First Nations in planning related to a decision, including development of the regulatory review process for a decision or other public processes and our roles and participation in such processes;
- d. negotiation of an Impact-Benefit Agreement, including funding to enable our members and businesses to take advantage of any employment and/or economic opportunities related to the Proposal, including forms of economic benefit beyond jobs or contracts;
- e. inclusion of our First Nations in revenue sharing or some other means by which we share in the wealth of the Crown, outside of provisions in an Impacts-Benefit Agreement;
- f. mitigating the impacts of a project, including a meaningful First Nation role in the monitoring of impacts of a project – this would need to involve a specific discussion of so-called reclamation – as we are concerned about the continued reliance of the Crown and industry on measures that have not been tested and which effectively tell us to suspend the exercise of our rights in certain areas for 40 years or more;
- g. compensation for adverse impacts on, or infringements of, our rights, including financial or non-financial compensation (such as protected areas for exercising our rights); and
- h. Negotiation of other kinds of agreements, such as exploration agreement related to development.

APPENDIX 3 – REFERENCES TO ABORIGINAL PEOPLES AND INTERESTS IN THE RAC VISION DOCUMENT AND PROBLEMS WITH SUGGESTED RAC APPROACHES

Page	Section	Subheading	Issue	Proposed Resolution under the LARP	Comments
2	1.0: Introduction: Background	1.1.2: Lower Athabasca Region	“The scope and pace of development has had significant impacts on aboriginal peoples in the region and their way of life.”		There have been and continue to be adverse impacts on aboriginal and Treaty rights. The RAC Document largely ignores those impacts on rights.
3	1.0: Introduction: Developing the Lower Athabasca Regional Plan	1.2.1: Regional Planning Process	Next stages in determining the content of the LARP	Development of LARP will continue to be informed by Albertans through public, stakeholder and aboriginal consultations.	
3	1.0: Introduction: Developing the Lower Athabasca Regional Plan	1.2.1: Regional Planning Process	Components of a comprehensive planning process	Aboriginal traditional knowledge should be incorporated in planning processes to the extent possible.	A commitment to integrate aboriginal traditional knowledge is not reflected in the scheme or priorities of the RAC Document.
6	1.0: Introduction: Developing the Lower Athabasca Regional Plan	1.2.2: Key Components for Phase One of the Lower Athabasca Regional Plan	Understanding priority values and how those values are affected by land-use decisions	Aboriginal traditional knowledge should be utilized, and aboriginal knowledge holders involved early on in the process.	Aboriginal traditional knowledge is just one of 10 other factors and the RAC Document contains no methodology or demonstrable commitment to incorporate it.
8	2.0 Lower Athabasca Regional Plan	2.1: Vision Statement	Balancing sustainable economic, social and environmental outcomes	Consider aboriginal knowledge when considering traditional and community knowledge, sound science, innovative thinking, and accommodation of rights and interests of all Albertans.	To the extent that LARP is a balancing exercise, that balance must take place within the constitutional structure of Canada which requires that section 35 rights be recognized and protected. What parts of the LARP Vision demonstrate that aboriginal knowledge and rights were seriously considered in the RAC Document?

Page	Section	Subheading	Issue	Proposed Resolution under the LARP	Comments
11	2.0 Lower Athabasca Regional Plan	2.2: Outcome 1: The Economy of the Region Grows and Diversifies	Objective 1.6: Increased participation of aboriginal peoples in the regional economy.	Strategies include increasing education, promoting aboriginal business capacity, and collaborating on compensating for infringement of constitutional rights	<p>The language utilized here is more aspirational than the other objectives in this regional economic growth objective.</p> <p>Furthermore, many of the items listed here are repetitions of the same basic ideas (b, c, d, and g all relate to increased business opportunities; a, e, and f are different ways of restating the need to increase educational opportunities). While business opportunities are important to First Nations, they cannot be a substitute for maintenance of section 35 rights, at least not unless First Nations agree.</p> <p>If a regional plan is serious about mitigating impacts on aboriginal peoples and protecting their constitutional rights, why is compensation for ongoing and future infringements part of the plan? Why is compensation the focus, rather than preservation of the rights?</p>
12	2.0 Lower Athabasca Regional Plan	2.2: Outcome 2: Infrastructure and Community Development Needs are Anticipated, Planned and Provided Effectively and Efficiently	Objective 2.1: Communities are sustainable, liveable, and use sound land-use planning principles	In addition to 7 non-aboriginal strategies, work with aboriginal peoples who develop sustainable social and economic development plans, consistent with traditional stewardship principles.	<p>The Crown should work with all aboriginal peoples affected in the LARP area.</p> <p>None of the infrastructure strategies listed in this objective addresses aboriginal peoples or interests or section 35 rights.</p>

Page	Section	Subheading	Issue	Proposed Resolution under the LARP	Comments
13	2.0 Lower Athabasca Regional Plan	2.2: Outcome 2: Infrastructure and Community Development Needs are Anticipated, Planned and Provided Effectively and Efficiently	Objective 2.2: Infrastructure is provided to support population growth and economic development	Give consideration to, among 11 other factors, the special/unique circumstances of aboriginal peoples in planning and funding allocations for physical and social infrastructure.	The infrastructure strategies and plans in Objective 2.2 only minimally address aboriginal peoples and do nothing to address the impacts of population growth and infrastructure, such as transmission lines, on aboriginal and treaty rights in the Lower Athabasca region, including protecting aboriginal access to lands.
15	2.0 Lower Athabasca Regional Plan	2.2: Outcome 3: Economic Growth is Achieved Through Integrity and Respect for Management Systems	Objective 3.1: The environment's natural processes and natural resources are understood, respected and cared for.	In addition to 5 other strategies, support development of education programs to present the region's unique cultural and aboriginal history.	For the environment's natural processes and natural resources to be understood, aboriginal knowledge and use of the land must be utilized and respected, not merely presented. This objective completely avoids aboriginal traditional knowledge, preferring to incorporate aboriginal history as if aboriginal cultures were dead.
15	2.0 Lower Athabasca Regional Plan	2.2: Outcome 3: Economic Growth is Achieved Through Integrity and Respect for Management Systems	Objective 3.2: Land, air, water and biodiversity are monitored and reported	Work with local communities and aboriginal peoples to identify stewardship responsibilities, aboriginal knowledge of historical changes and roles for aboriginal peoples in various monitoring and reporting measures.	This commitment to work with aboriginal peoples is hollow as 1) no process or thresholds are contemplated with input from First Nations and 2) the Lieutenant Governor in Council is given the authority to disregard, amend and reject any stewardship recommendations under the <i>Land Stewardship Act</i> .

Page	Section	Subheading	Issue	Proposed Resolution under the LARP	Comments
16	2.0 Lower Athabasca Regional Plan	2.2: Outcome 3: Economic Growth is Achieved Through Integrity and Respect for Management Systems	Objective 3.2: Land, air, water and biodiversity are monitored and reported	Work with aboriginal peoples to utilize aboriginal knowledge of historical changes in water quality and quantity, air quality, land and biodiversity and establish firm baselines for measurement in the region.	Aboriginal people must be consulted regarding appropriate baselines and how their knowledge will be utilized in assessing changes, mitigating impacts and ensuring protection of aboriginal and treaty rights. This objective falls short of all of these.
17	2.0 Lower Athabasca Regional Plan	2.2: Outcome 4: Land Uses are Responsible and Sustainable to Conserve Ecosystems and Biodiversity	Objective 4.1: Landscapes are managed to maintain and enhance ecological integrity and human health	In addition to 8 other strategies for maintaining ecological integrity, use aboriginal traditional knowledge to enhance understanding of cumulative effects and develop appropriate mitigation/minimization strategies.	Any assessment of cumulative effects must include an analysis of whether aboriginal or treaty rights have been infringed. The plan should also describe how the enhanced understanding of cumulative effects will be used in the planning process and should make provision for further research into the health effects of development in the LARP area. Again, under the <i>Land Stewardship Act</i> , the Lieutenant Governor in Council can disregard, amend or reject any effort to address cumulative effects in LARP.

Page	Section	Subheading	Issue	Proposed Resolution under the LARP	Comments
18	2.0 Lower Athabasca Regional Plan	2.2: Outcome 4: Land Uses are Responsible and Sustainable to Conserve Ecosystems and Biodiversity	Objective 4.2: Disturbed land is reclaimed in a timely, progressive and aggressive manner	Make researching successful reclamation methods a priority, but start now to work with aboriginal peoples and multi-stakeholder organizations to co-ordinate reclamation.	<p>It is inappropriate for this objective, which relates to responsible and sustainable land uses, to consider aboriginal peoples only at the stage of reclamation. Also, this and other references to “reclamation “continues the “just trust us it will work” approach to reclamation, which is inappropriate. Developing a reclamation plan for the entire mixed use resource area (60% of the LARP area) demonstrates a failure to seriously address which lands are socially and culturally more important to First Nations, the potential for mutually exclusive land uses in the mixed use area, and requirements under s.35(1) of the <i>Constitution Act</i> such as minimal impairment.</p> <p>Timelines must be created in consultation with First Nations for this objective.</p>
18	2.0 Lower Athabasca Regional Plan	2.2: Outcome 4: Land Uses are Responsible and Sustainable to Conserve Ecosystems and Biodiversity	Objective 4.3: Regional biodiversity and ecosystem function is conserved and enhanced	Create management plans for conservation areas and multi-use areas which utilize traditional aboriginal knowledge and involve aboriginal knowledge holders.	<p>Again, the creation of management plans is a hollow promise given the scheme of the <i>Land Stewardship Act</i>.</p> <p>Furthermore, given that RAC Document’s land-use classification system already defines how competing uses are to be balanced, the promise of meaningfully incorporating aboriginal knowledge provides nothing to LARP.</p>

Page	Section	Subheading	Issue	Proposed Resolution under the LARP	Comments
18	2.0 Lower Athabasca Regional Plan	2.2: Outcome 4: Land Uses are Responsible and Sustainable to Conserve Ecosystems and Biodiversity	Objective 4.3: Regional biodiversity and ecosystem function is conserved and enhanced	In addition to other knowledge bases, develop a traditional knowledge base of the impacts of individual and cumulative industrial activities on biodiversity and ecosystem functions through time.	LARP provides no guidance how this knowledge base is to be incorporated or used together with other scientific and socio-economic data.
19	2.0 Lower Athabasca Regional Plan	2.2: Outcome 5: The Integrity of Air and Water are Managed Through Responsible Stewardship	Objective 5.2: Water quality and quantity is managed to enhance and maintain ecological integrity and human health	Recognize downstream water requirements of the NWT and Saskatchewan.	Why are downstream water requirements of the NWT and Saskatchewan to be recognized, but not First Nation downstream water requirements within the LARP area?
22	2.0 Lower Athabasca Regional Plan	2.2: Outcome 6: People-friendly Communities are Created Throughout the Region	Objective 6.3: Cultural diversity is valued	Develop opportunities to work with aboriginal elders and peoples to develop cultural-historical learning opportunities in the region.	Using elders and other aboriginal knowledge holders as a tool for cultural diversity minimizes the role they should play in the land-use planning process and minimizes the link between their information and treaty rights.
22	2.0 Lower Athabasca Regional Plan	2.2: Outcome 6: People-friendly Communities are Created Throughout the Region	Objective 6.3: Cultural diversity is valued	Maintain opportunities for community traditional use activities such as hunting, fishing, trapping, country foods and camping.	This is a constitutional requirement.

Page	Section	Subheading	Issue	Proposed Resolution under the LARP	Comments
22	2.0 Lower Athabasca Regional Plan	2.2: Outcome 6: People-friendly Communities are Created Throughout the Region	Objective 6.3: Cultural diversity is valued	Develop a place name program and consider converting culturally/historically significant sites/features to those names.	Aboriginal <i>control</i> over culturally/historically significant sites is vital for the protection of aboriginal and treaty rights and for LARP to seriously address cultural diversity. Renaming sites is not a sufficient land-use plan. Furthermore, simply protecting sites while other parts of the Traditional Territories around those sites are effectively run over does not live up to the requirements of section 35.
22	2.0 Lower Athabasca Regional Plan	2.2: Outcome 6: People-friendly Communities are Created Throughout the Region	Objective 6.4: Significant historical resources are protected and historical themes are identified and developed.	Support aboriginal communities' leadership to develop management procedures to preserve and protect aboriginal peoples' historic and ceremonial sites that are significant to aboriginal peoples so that they can be preserved and protected as appropriate under existing legislation.	Aboriginal <i>control</i> over these sites is vital for the protection of aboriginal and treaty rights and for LARP to seriously address cultural diversity. Furthermore, simply protecting sites while other parts of the Traditional Territories around those sites are effectively run over does not help.
23	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.1: Aboriginal peoples are included in land management planning		Again, the creation of land management plans is a hollow promise given the absolute and unfettered authority of the Lieutenant Governor in Council under the <i>Land Stewardship Act</i> .

Page	Section	Subheading	Issue	Proposed Resolution under the LARP	Comments
23	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.1: Aboriginal peoples are included in land management planning	Work with aboriginal peoples to develop local learning opportunities for youth regarding cultural values, social responsibility, stewardship roles, etc.	While education is important, the limited protection of aboriginal rights and interests and the minimal guarantees of meaningful inclusion of aboriginal peoples in management planning limit the efficacy of this proposal.
23	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.1: Aboriginal peoples are included in land management planning	Ensure meaningful consultation with aboriginal peoples.	This is a constitutional requirement and includes, where appropriate, accommodation. The consultation process between the Crown and affected aboriginal peoples should be defined. Alberta's Consultation Policy and Guidelines are unilaterally imposed and do not meet legal requirements.
23	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.1: Aboriginal peoples are included in land management planning	Work with aboriginal peoples to improve quality of information to inform and co-ordinate current planning processes, infrastructure and services planning.	The value of this recommendation is uncertain given other flaws set out in this letter. The RAC Document provides no guidance or assurances as to what is to be done with this information.
23	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.1: Aboriginal peoples are included in land management planning	Provide information and funding assistance to aboriginal peoples to participate in the development of land-use plans.	Funding must be sufficient for meaningful participation and requires meaningful incorporation of First Nation views.

Page	Section	Subheading	Issue	Proposed Resolution under the LARP	Comments
23	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.2: Land-use planning processes balance the constitutionally protected rights of aboriginal peoples and the interests of all Albertans	Balance aboriginal rights with many other interests.	Constitutionally protected aboriginal rights are not subject to s.1 of the <i>Charter</i> and cannot be simply balanced with other non-constitutionally protected interests. For "balancing" not to violate the Constitution, it must be done under the justified infringement analysis required by s.35(1) of the <i>Constitution Act, 1982</i> .
23	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.2: Land-use planning processes balance the constitutionally protected rights of aboriginal peoples and the interests of all Albertans	Work with aboriginal peoples to develop formal roles and responsibilities for aboriginal peoples in land-use planning and environmental assessment/monitoring.	Again, this conflicts with the absolute and unfettered authority of the Lieutenant Governor in Council under the <i>Land Stewardship Act</i> . Furthermore, how environmental assessment and monitoring data will be used under LARP must be defined for this to demonstrate a real commitment to respect aboriginal and treaty rights.
23	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.2: Land-use planning processes balance the constitutionally protected rights of aboriginal peoples and the interests of all Albertans	Work with aboriginal peoples to develop engagement strategies for aboriginal peoples in land planning and decision-making.	Again, this conflicts with the absolute and unfettered authority of the Lieutenant Governor in Council under the <i>Land Stewardship Act</i> . For "balancing" not to violate the Constitution, it must be done under the justified infringement analysis required by s.35(1) of the <i>Constitution Act, 1982</i> .
23	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.2: Land-use planning processes balance the constitutionally protected rights of aboriginal peoples and the interests of all Albertans.	Assess the state of knowledge of fish and wildlife resources and effectively manage allocations that affect aboriginal peoples' rights.	How this data will be used under LARP must be defined for this to demonstrate a real commitment to respect aboriginal and treaty rights. Under the <i>Land Stewardship Act</i> the Lieutenant Governor in Council can disregard any such information.

Page	Section	Subheading	Issue	Proposed Resolution under the LARP	Comments
23	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.2: Land-use planning processes balance the constitutionally protected rights of aboriginal peoples and the interests of all Albertans	Work with aboriginal peoples to generate land-use options for mitigation, accommodation and reconciliation of rights.	Where and how is this to happen? There is no recommendation for legislative and regulatory change and the RAC Document is focused primarily on pushing ahead on development, with little or no concern with section 35 rights.
23	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.2: Land-use planning processes balance the constitutionally protected rights of aboriginal peoples and the interests of all Albertans	Support the ability of aboriginal peoples to exercise traditional uses of the land.	This is a constitutional requirement, but the LARP proposal is so minimally described as to render any assurances meaningless. For "balancing" not to violate the Constitution, it must be done under the justified infringement analysis required by s.35(1) of the <i>Constitution Act, 1982</i> .
23	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.2: Land-use planning processes balance the constitutionally protected rights of aboriginal peoples and the interests of all Albertans	Encourage aboriginal peoples to share traditional use information.	For this proposal to have meaning, LARP must ensure adequate safeguards exist for the protection and appropriate use of such information and for the information to be integrated into planning at an early stage. Moreover, depending on the information received, there needs to be a recognition that some development should be limited or non-existent in certain areas.
23	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.2: Land-use planning processes balance the constitutionally protected rights of aboriginal peoples and the interests of all Albertans	Work with aboriginal peoples in establishing roles pertaining to reclamation and reuse of reclaimed lands for traditional uses.	Aboriginal peoples should be involved in land use decisions prior to reclamation. Moreover, reclamation is often guess work with no demonstrable results showing that the reclaimed land can support the exercise of rights from an Aboriginal perspective.

Page	Section	Subheading	Issue	Proposed Resolution under the LARP	Comments
24	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.2: Land-use planning processes balance the constitutionally protected rights of aboriginal peoples and the interests of all Albertans	Assess the impacts of development and increased regulation on local trapping and treaty activities.	<p>This is an obligation of the Crown at all times and must include an assessment of preferred locations for exercising treaty rights, undue hardship, and alternatives for minimal impairment, among other considerations.</p> <p>In addition to assessing impacts, LARP must also include planning strategies that address limiting or preventing development when treaty activities are affected.</p>
24	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.3: Opportunities for traditional uses within the region are maintained and enhanced		<p>This is an obligation of the Crown at all times.</p> <p>Again, this conflicts with the absolute and unfettered authority of the Lieutenant Governor in Council under the <i>Land Stewardship Act</i>.</p>
24	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.3: Opportunities for traditional uses within the region are maintained and enhanced	Support aboriginal communities' ability to exercise traditional uses.	This is an obligation of the Crown at all times.
24	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.3: Opportunities for traditional uses within the region are maintained and enhanced	Maintain populations of game species to support aboriginal traditional use and recreational hunting and fishing, including commercial guide outfitting.	This is an obligation of the Crown at all times.

Page	Section	Subheading	Issue	Proposed Resolution under the LARP	Comments
24	2.0 Lower Athabasca Regional Plan	2.2: Outcome 7: Aboriginal Peoples' Rights, Traditional Uses and Values are Respected and Reflected in Planning	Objective 7.3: Opportunities for traditional uses within the region are maintained and enhanced	Support aboriginal communities to undertake community subsistence/traditional use needs assessment.	Recognizing and protecting aboriginal and treaty rights is a constitutional obligation at all times.
26	3.0: Land-use Classification System	3.1.2 Conservation	Criteria for the classification of conservation areas	One criterion for the conservation classification is that an area support aboriginal traditional uses.	This fails to assess lands that formerly supported aboriginal traditional uses and the cultural, social spiritual and historical reasons why some lands may be of more importance than others.
26	3.0: Land-use Classification System	3.1.2 Conservation	Incorporation of aboriginal uses in conservation areas	Aboriginal uses will be permitted where they will be consistent with overall conservation strategies.	<p>Even where there are valid conservation objectives, any infringement of aboriginal and treaty rights must meet the standard of justified infringement, including priority allocation of resources.</p> <p>To the extent that permits are to be required, the province must justify this prima facie infringement, keeping in mind the jurisprudence and the legal obligations under Treaty 8 not to restrict access for hunting, fishing and trapping.</p> <p>When read together with SRD's Proposed Public Lands Administration Regulation and other parts of the RAC Document, exercise of section 35 rights and traditional uses becomes a low-level priority, with ever more restrictions placed thereon. The RAC Document makes planning proposals without consideration of the other restrictions being considered and implemented by Alberta already.</p>

Page	Section	Subheading	Issue	Proposed Resolution under the LARP	Comments
27-8	3.0: Land-use Classification System	3.1.3 Mixed-use Resources	60% of the LARP land area is classified as mixed-use resource, and therefore intended to “encourage and support economic activities associated with resources development”	Respect the integrity of known significant cultural resources and aboriginal traditional use, while maintaining the long-term priority of harvesting forests and extracting bitumen.	This fails to recognize priority in access to resources, minimal impairment, preferred means for exercising rights, consultation requirements, etc. and makes exercise of constitutionally-protected rights less important than permitted industrial uses.
32	3.0: Land-use Classification System	3.1.5 Recreation and Tourism	Increasing regional recreation and tourism opportunities through the creation of new recreation areas and enhancements	<p>Include aboriginal peoples in the planning of recreation and tourism opportunities and in the creation of aboriginal tourism opportunities.</p> <p>Classified Lake Athabasca as “Semi-Primitive Mechanized” where recreation and tourism is to be the primary use.</p>	<p>Aboriginal uses in areas over which treaty guarantees access, hunting, fishing, trapping and gathering must be primary uses for LARP to respect the constitutional framework of Canada.</p> <p>Furthermore, given that LARP’s land-use classification system defines how competing uses are to be balanced, the promise of meaningfully incorporating aboriginal knowledge provides nothing to LARP.</p>
33	3.0: Land-use Classification System	3.2.2 Multi-use Corridor Overlay	Multi-use corridors are a priority on the Land-use Framework	<p>Use a multi-stakeholder planning process.</p> <p>Manage access and use in river corridors to protect the traditional practices of aboriginal peoples, and consider aboriginal traditional knowledge in developing management tools.</p>	This overlooks the absolute and unfettered authority of the Lieutenant Governor in Council under the <i>Land Stewardship Act</i> .

Page	Section	Subheading	Issue	Proposed Resolution under the LARP	Comments
34	3.0: Land-use Classification System	3.2.River Corridor Overlay	River corridors are an important landscape feature	The maintenance of aboriginal traditional uses and cultural resources is "important".	The minimal mention of aboriginal use of the Athabasca River and other waterways for travel and for the exercise of treaty rights demonstrates a lack of understanding of aboriginal and treaty rights in the area.

Appendix 2:

September 28, 2010 Joint Submission of Athabasca Chipewyan First Nation (ACFN) and Mikisew Cree First Nation (MCFN) to the Land Use Secretariat of a Proposal to Develop ACFN and MCFN Traditional Land and Resource Use and Management Plans (TLRUMP)



Athabasca Chipewyan First Nation
Industry Relations Corporation
110B -9816 Hardin Street
Ft. McMurray, AB T9H 4K3



Mikisew Cree First Nation
Government and Industry Relations
Suite 208, 9715 Main Street
Fort McMurray, AB T9H 1T5

September 28, 2010

Land Use Secretariat
9th Floor, 10035-108 Street
Centre West Building
Edmonton, AB T5K 2G8

P: 780-644-7972
F: 780-644-1034

Attention: Dave Bartesko

[Via email: dave.bartesko@gov.ab.ca]

Dear Dave,

RE: Traditional Land and Resource Use Management Plan

On September 20, 2010, you were copied on the submission to Alberta Environment and the Canadian Environmental Assessment Agency by Athabasca Chipewyan First Nation and Mikisew Cree first Nation of a proposal to develop a Traditional Land and Resource Use Management Plan (TLRUMP). Today, we wish to submit the proposal directly to the Land Use Secretariat and to clarify the need for the TLRUMP to be developed as part of, and integrated into, the LARP through direct dialogue about how the interests of our respective governments converge.

Alberta recognizes the need to develop thresholds for environmental management as part of LARP and has also requested that ACFN provide specific information on traditional land and resource use so that this information may be considered in LARP development. The purpose of a TLRUMP is to provide scientifically credible and culturally appropriate information on the land and resource requirements of ACFN for the meaningful exercise of Treaty 8 rights now and into the future. The TLRUMP will develop thresholds regarding Aboriginal rights and livelihood. A TLRUMP would provide information necessary to uphold Objectives 7.1 through 7.3 expressed in the RAC Vision statement.

As proposed in ACFN's letter of September 8, ACFN is interested in engaging in dialogue with the Land Use Secretariat about how we may work collaboratively to ensure that the TLRUMP can inform LARP so that ACFN's livelihood rights can be sustained

into the future. Mikisew Cree is also interested in engaging in collaborative dialogue on this issue.

We look forward to a timely response, and are prepared to meet at your earliest convenience to advance this important discussion.

Yours truly,



Lisa King
ACFN IRC, Director



Melody Lepine
MCFN GIR Director

cc: Athabasca Chipewyan First Nation Chief and Council
Lisa Schaldemose, Fort McKay First Nation IRC Director
Shawn Janvier, Chipewyan Prairie First Nation IRC Director
Robert Cree, Fort McMurray First Nation IRC Director
Morris Seiferling, Commissioner, Land Use Secretariat
Honourable Len Webber Minister Aboriginal Relations



Athabasca Chipewyan First Nation
Industry Relations Corporation
110B -9816 Hardin Street
Ft. McMurray, AB T9H 4K3



Mikisew Cree First Nation
Government and Industry Relations
Suite 208, 9715 Main Street
Fort McMurray, AB T9H 1T5

Proposal to Develop Athabasca Chipewyan First Nation and Mikisew Cree First Nation Traditional Land and Resources Use Management Plans (TLRUMP)

Submitted to:

Dave Bartesko, Land Use Secretariat

Submitted by:

Lisa King, Athabasca Chipewyan First Nation Industry Relations Corporation

Melody Lepine, Mikisew Cree First Nation Government and Industry Relations

September 28, 2010

1. Introduction

The Athabasca Chipewyan First Nation (ACFN) and Mikisew Cree First Nation (MCFN) are proposing to each individually develop Traditional Land and Resource Use Management Plans (TLRUMP). A TLRUMP would provide information necessary to understand the land and resource uses, interests and rights of the First Nations in Provincial and Federal land and resource management planning, decision-making and consultation processes. The TLRUMP will provide information critical to sustaining livelihood rights in the Lower Athabasca Regional Plan (LARP).

This concept was first provided to the Government of Alberta (Alberta Sustainable Resources Development) as a “Traditional Resource Use Plan” in the October 31, 2008 joint submission of MCFN and Chipewyan Prairie Dene First Nation (CPFN) on the Land Use Framework. Since then, the concept has been expanded upon in proposal to Alberta Environment and the Canadian Environmental Assessment Agency on September 20, 2010. While that proposal was copied to Dave Bartesko of the Land Use Secretariat, it is now being provided directly to the Land Use Secretariat as ACFN and MCFN consider it essential to the planning and consultation process for LARP.

This proposal for a TLRUMP includes the following:

- Study Purpose and Objectives
- Study Rationale
- Study Methodology
- Study Work plan
- Summary of TLRUMP Deliverables
- Timelines and budget

ACFN and MCFN have already presented this proposal to AENV, CEAA, and will be presenting it to potential Industry funders.

2. Study Purpose and Objectives

The purpose of the Traditional Resource Use Plan is to provide scientifically credible and culturally appropriate information on the land and resource requirements of ACFN and MCFN for the meaningful exercise of Treaty 8 rights now and into the future. Specific objectives of the TLRUMP study are to:

- Create an appropriate, culture-group specific vision for what constitutes the conditions for the meaningful practice of Treaty 8 rights currently and into the future;
- Identify the Valued Components (“resources or conditions”), tangible and intangible, that are central to the Aboriginal and Treaty Rights (“rights”) of the First Nations;
- Identify criteria and culturally appropriate indicators that can be used to measure the First Nations’ ability to practice these rights;

- Examine the current nature and extent of the Valued Components in the First Nations' Traditional Lands, and a historical baseline of these components;
- Identify the current and likely pressures, including but not limited to industrial development on the Valued Components;
- Predict the likely future nature and extent of the Valued Components in the First Nations' Traditional Lands;
- Identify broad land and resource management strategies, as well as possible mitigation tools, that can support and improve the continued meaningful exercise of Treaty 8 rights (e.g., key protected or conservation areas; hunting restrictions; setbacks; timing windows; among others);
- Integrate the information into appropriate information and management tool formats (e.g., GIS; planning documents; management objectives for particular use areas or districts; community based monitoring and adaptive management strategies) for use in resource and land use planning, decision-making and consultation processes;

Developing the TLRUMP will require in-depth community consultation, rigorous socio-economic research, and tools for managing, analyzing, and communicating this information as explained in the methods section of this proposal.

3. Study Rationale

Current land and resource use planning and decision-making (including regulatory EA processes) in Alberta do not analyze adequately the direct, indirect and cumulative impacts of development and land use on First Nations land and resource use, Aboriginal and treaty rights and interests. Project-specific approaches to environmental assessment, especially in absence of an appropriate cumulative effects management framework, do not yield a comprehensive understanding of impact to the First Nations. These gaps are compounded by a lack of capacity in First Nations communities to bring forward credible and relevant information to these processes in a timely fashion. The result is often errors in decision-making, misunderstandings, and conflicts due to inadequate information. This is particularly troublesome in the Lower Athabasca Region given the sheer number of operating, proposed and potential oil sands development in the Traditional Lands of the two First Nations.

A TLRUMP is meant to be a tool facilitating more timely and effective integration of ACFN and MCFN information and interests into decision making and planning processes. This will result in greater capacity for each First Nation to provide critical inputs of information at all stages of the EIA/regulatory process, allowing EIA and consultation to proceed substantively at the same time, and establishing earlier in the process how Aboriginal and treaty rights may be impacted. Meaningful and adequate accommodation measures can then be built into the EIA mitigation process. The coherent TLRUMP and supporting studies are expected to increase the First Nations-specific data consistency, timeliness and availability for proponents.

Developing a TLRUMP would have benefits for Crown consultation, land and resource use planning, environmental impact assessment, regulatory stages of approvals, cumulative effects monitoring and management, and other elements of decision-making. Benefits include:

- Timely data that is accessible by project for government and proponents;
- Data consistency;
- A streamlined consultation process; and
- Increased capacity for ACFN and MCFN.

4. Study Methodology

Geographic scope of study

The studies will be limited to impacts on traditional use and practices within ACFN and MCFN traditional lands, as well as mobile resources (e.g., water, air, wildlife) that seasonally reside within or travel through traditional lands that may be impacted by activities outside those lands.

Temporal scope of study

A principle of good EIA practice is that the baseline conditions wherever possible should be those conditions that were present prior to industrial development occurring (in this case, around 1965), or where that data is not available or sparse, an examination of trends in conditions over time somewhere in between “pre-development” and the “present case” should be used. This study will ground the framework as far back in time as possible. Where data gaps are evident and assertions of change are uncertain, these will be identified and noted as limitations of the analysis.

Issues scope

The focus of the TLRUMP differs from that of many other impact assessment studies by focusing on the intersection of impacts on rights and impacts on resources.

The First Nations maintain that each have Treaty and Aboriginal rights protected by section 35 of the *Constitution Act, 1982*. For the purposes of the study, Treaty rights include hunting, fishing, trapping and gathering. This includes incidental rights that support the meaningful practice of the treaty right, including sufficient quality and quantity of required traditional resources within traditional lands. For example, the right to hunt can only be meaningfully practiced when there is adequate amounts of *healthy game* (e.g., within the range of natural variation for the species; healthy as evaluated from the perspective of the harvester) within areas that are accessible to harvesters.

Identification of First Nations-specific limits of acceptable change for key “rights-based resources” is thus central to both EIA and Crown s.35 consultation.

In addition, the practice of these rights may be influenced by a variety of other factors related to environmental impact concerns, such as a lack of faith in the health associated with consuming country foods. Thus, while these underlying Treaty and Aboriginal rights and the resources required to

meaningfully practice these rights are at the foundation of the proposed TLRUMP, the First Nations will take a broader perspective on what the exercise of those rights mean in terms of social, economic, and cultural health and well-being of each First Nation. A community vision concerning the relationship between the land and the people (including health, well-being and culture) is required in order to define this broader perspective. The community vision will provide the basis for an assessment framework for linking impacts to traditional resources to impacts to culture, community health and well-being.

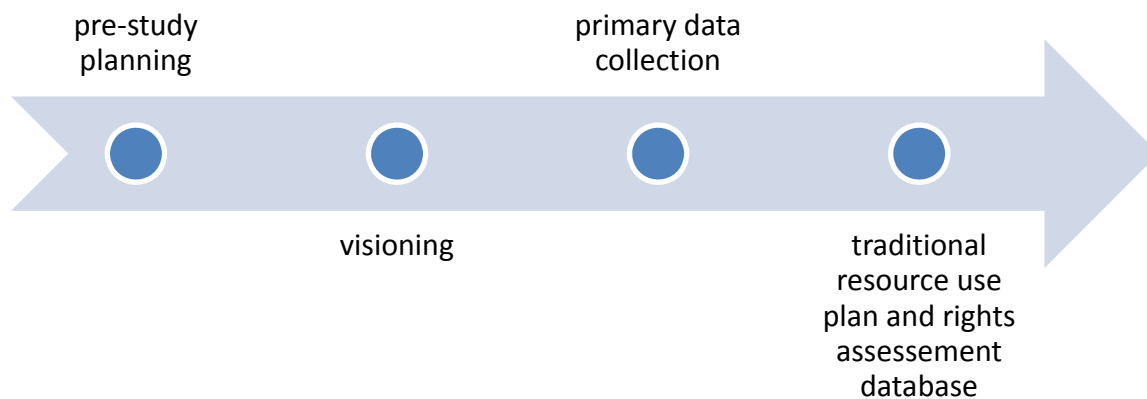
Project capacity and staff

A committee from each Nation will be formed to provide input into key research stages, to work closely with the interdisciplinary research team to understand the key issues of concern, to advise on liaising with the remainder of the community and on the selection of participants for workshops, interviews (and fieldwork).

We anticipate that an interdisciplinary research team consisting of people with social science, landscape ecology, GIS mapping expertise, traditional use practitioners, ecology, land and resource planning and project management expertise would be key to successful completion of the TLRUMP

5. Study Work Plan

The First Nations propose a four phase Work Plan for this study proceeding from high-level planning and visioning, through detailed data collection, to the production of tools and deliverables.



Phase 1: Pre-Study Planning

In this phase, we will build the project team, hold government to government meetings, agree on project methodology, set up data management and communications protocols, define research protocols (e.g., Traditional Knowledge or Ethics Protocols) and finalize the study scope.

Phase 2: Visioning

Phase 2 focuses on developing a community vision for the Traditional Land Use Plan. Sessions in Fort Chipewyan, Fort McMurray, Fort Smith and Edmonton will focus on culture and well-being in relation to traditional resources. For example, what vision do people have for continuing their way of life? What are the key practices, resources and relationships needed for health and well-being to be maintained? The vision that is identified through these sessions will be used to identify the first draft of the core valued components for the TLRUMP.

A research and gaps analysis exercise will be done to surface any existing knowledge and data related to these valued components, the result of which will be a State of Knowledge report. Sources will include:

- Collection and analysis of existing secondary data from environmental assessments. This will involve drawing together all existing completed environmental assessment reports on operating and proposed developments in the region. Analysis of the reports will focus on the core areas of focus, such as traditional use, food security issues, culture and social and economic impacts, with reports and data mainly from consulting companies hired by the oil sands producers.
- Collection and analysis of existing secondary data from internal community sources. This will involve drawing together all the data that has been collected in the past by consultants.

Full-day workshops, open to all First Nation community members, are then envisioned again in Fort Chipewyan, Fort McMurray, Fort Smith and Edmonton. The Project Team will provide short presentations about the valued components, criteria and indicators that have emerged through the vision sessions, and the “State of Knowledge” report.

Community members can provide input on whether these are the culturally relevant and accepted valued components to understand the present and trends in the health of the environment and the associated ability to exercise land-based Aboriginal and Treaty rights. They will then be asked to suggest management objectives and planning tools (e.g., zoning, restricted areas, among others) for each valued component.

These visioning sessions will allow community members to provide input on the accuracy of the State of Knowledge report, to review proposed study scopes, parameters, and methods, and to identify any additional work being conducted (or already completed) by any other stakeholders in the region (e.g., developers, AENV, and CEMA).

The key goal of this phase will be to build a preliminary model for the TLRUMP, to be tested and validated in the next phase.

Phase Three: Primary data collection and analysis

Data will be gathered on selected valued components, criteria and indicators related to the TLRUMP. This will include surveys, interviews, focus groups, TUS and TEK inputs, mapping and modelling exercises. The focus of this work will be to establish the conditions needed for the practice of rights, and gather the data on all the key valued components that were identified in earlier phases.

The focus of the interviews, focus groups and research in this stage will be to establish the geographic scale for resources for practicing rights, the required condition of the resources, and the future strategies that might need to be implemented to protect rights. Research in this phase will:

- Identify why the protection of resources is culturally important to both First Nations, including ACFN and MCFN defined concepts of environmental stewardship;
- Identify what pressures (e.g., road access and habitat fragmentation) have been threats to the meaningful practice of Treaty 8 rights;
- Identify what resources are integral to the meaningful practice of Treaty 8 rights;;
- Integrate the information into an appropriate management tool format (e.g., GIS; planning documents) for use by decision-makers;
- Determine the socio-cultural, ecological and economic conditions (including desired conditions of manageable or acceptable change) that support the meaningful practice of Treaty 8 rights for each identified resource currently;
- Recommend land and resource management strategies, including monitoring, that would ensure the continued meaningful exercise of Treaty 8 rights (e.g., protected or conservation areas; hunting restrictions; setbacks; timing windows; etc.); and,
- Develop Aboriginal and treaty rights enhancement strategies and a suite of mitigation measures for the exercise of rights that are grounded in cultural realities.

Phase Four: Traditional Land and Resource Use Management Plan (TLRUMP)

The purpose of the TLRUMP is to provide credible, sufficient, defensible, and reliable information on the land and resource needs of the First Nations for the meaningful exercise of their Treaty 8 rights within their Traditional Lands now and into the future. At this point, the TLRUMP will be presented to the communities, with a focus on reporting on the current state of the traditional resources. This effort will be twinned with proactive development of strategies and tools for maintaining the health of the traditional resources of the region that people depend on for practice of Aboriginal and treaty rights. A variety of management options will already have been developed, which will then be field tested with the communities, and negotiated in government to government tables, where appropriate. For example, where there is an existing threat to traditional resources, there may need to be both government and community strategies in place for management and mitigation.

6. Summary of TLRUMP Deliverables

The specific outcomes of developing the TLRUMP will include:

- Baseline and trend dataset for valued components related to traditional resources, with qualitative and quantitative components;
- A State of Knowledge report on the valued components that have been community selected, bringing together data and knowledge from disparate sources;
- A pressure-state-response framework from the cultural framework that illustrates pathways of change. This will enable future impact assessments to accurately model their own impact pathways and predict changes;

- Mapping of areas of special sensitivity (confidentiality provisions may apply to external use); and,
- Replicable, community-accepted methods of assessment (thus applicable for both future project-specific and cumulative effects assessments).

The primary deliverable to Government will be a **Traditional Land Resource Use Plan Management and Assessment Framework** that includes the following:

- MCFN and ACFN Guidelines for assessing Traditional Land and Resources. This guidance document will provide clear expectations for proponents regarding the process for accessing traditional land and resource data from MCFN and ACFN, as well as guidelines for quality traditional use, socioeconomic and ecological research;
- Management objectives, criteria and thresholds for traditional lands and resources; and
- Management and mitigation options for traditional lands and resources.

In order to enable implementation of the TLRUMP, it is necessary to develop internal capacity within ACFN and MCFN. This will consist of an internal database, data management procedures and formalizing functional roles within each organization. While this “deliverable” is internal, we can provide a report to our external funders on the structure of this system (the guidance document mentioned above).

7. Timelines and Budget

Provided the required funding is made available, this project will be completed within two years, with the following schedule, deliverables and updates to funders. The cost for each individual First Nation (ACFN and MCFN) to complete a TLRUMP specific to their First Nation is anticipated to be \$1,435,500 (total budget of \$2,871,000).

Project Phase/Step	Estimated Timeline	Deliverables	Consultants	Community engagement	Project Manager	
Phase 1	Month 1	Project team formation	\$10,000	0	\$5,000	
Phase 2	Months 2-4	Vision sessions	\$25,000	\$100,000	\$15,000	
	Months 5-8	State of knowledge report	\$60,000	0	\$15,000	
	Months 8-10	Testing of VCs, criteria and indicators with communities	\$25,000	\$100,000	\$10,000	
	Months 7-16	Design of dataset for VCs, criteria and indicators	\$200,000	\$50,000	\$50,000	
Phase 3	Months 15-19	Community data reports and management systems	\$300,000	\$50,000	\$15,000	
Phase 4	Months 18-24	TLRUMP planning and validation	\$150,000	\$100,000	\$25,000	
		Subtotal of costs	\$770,000	\$400,000	\$135,000	\$1,305,000
		Administration (10%)				\$130,500
		Total project value per First Nation				\$1,435,500
		x 2				\$2,871,000

Appendix 3:

ACFN October 2008 Submission of a Proposal for Co-management of Richardson Backcountry to Alberta Sustainable Resources Development

- PROPOSAL -

**CO-MANAGEMENT
OF
RICHARDSON BACKCOUNTRY**

**Submitted to Dave Bartesko, Land-use Framework,
Sustainable Resources Development, Government of Alberta**

Submitted by Athabasca Chipewyan First Nation

October 22, 2008

INTRODUCTION

Athabasca Chipewyan First Nation (ACFN) is pleased to present this preliminary proposal for the creation of a co-management zone encompassing the area known as Richardson Backcountry. Richardson Backcountry extends north from the 27th Baseline to the southern shore of Lake Athabasca and the Delta, is bordered to the west by the Athabasca River and the Wood Buffalo National Park and extends east into Saskatchewan (Figure 1). It is the heartland of our traditional lands and we consider it a “survival area” that supports ecological and socio-cultural landscape values integral to our identity as one of the aboriginal peoples of Canada. This proposal addresses co-management of only those portions of Richardson Backcountry that lie within the current administrative boundaries of the Province of Alberta. Although our vision for co-management goes beyond planning, this proposal focuses on the relationship between co-management of Richardson Backcountry and the regional planning process as described in the Draft Land-use Framework.

We thank all those who take the time to consider this proposal, and ask them to keep in mind the preliminary nature of the proposal and the proactive collaborative spirit in which it is intended. Although ACFN previously has communicated our concerns about management of Richardson Backcountry, we consider this proposal to be a “fresh start” in initiating new discussions about future possibilities for co-management of an area that constitutes the heart of ACFN’s traditional lands and is key to our cultural and socioeconomic sustainability over time. As such, we are open to input and ideas on how ACFN can achieve, in equal partnership with the Alberta Government, a new institutional arrangement that respects each party’s unique rights while working towards a common goal of achieving social-ecological sustainability within the Richardson Backcountry area. Clearly, then, this document must be considered as the first part of what must become an on-going dialogue.

PURPOSE & OBJECTIVES

The overall purpose of this proposal is to build upon ACFN’s long-standing goal to have increased involvement in the protection and management of the Richardson Backcountry. This proposal also builds on a desire, publicly expressed by Chief Adam and Council, for a new approach to the development of Crown lands in this region.

In the context of the finalization of the Land-use Framework and the creation of a regional plan for the northeast region of the province of Alberta by 2010, the specific objectives of the proposal are to:

- Gain a commitment to an eventual **co-management agreement** between the ACFN and province of Alberta, wherein :
 - Richardson Backcountry will be recognized as a separate and distinct planning area (sub-plan) within the Northeast Alberta region (Richardson Backcountry Co-management zone will hereafter be referred to as RBCZ);

- Have decision making for the RBCZ sub-plan require consensus between the provincial regional planning authority and the ACFN (and perhaps other aboriginal groups with an interest in the sub-plan area)
- Bring about inclusion of the possibility of co-management zones (and co-management zone agreements) provided for in the **provincial enabling legislation** for the regional planning process that is to follow the finalization of the Land-use Framework; this legislation should:
 - Include cumulative effects assessment and management as one of the topics to be covered by a sub-plan
 - Include access management as one of the topics to be covered by a sub-plan;
 - Include creation of protected/limited use areas as one of the possible topics to be covered by a sub-plan;
 - Have the sub-plan for the Richardson Backcountry area (and any other sub-plan) be binding on all provincial Ministers, agencies, and regulatory bodies, such as the Energy Resources Conservation Board;

RATIONALE

“Today’s rapid growth in population and economic activity is placing unprecedented pressure on Alberta’s landscapes... Our land, air and water are not limited. They can be exhausted or degraded by overuse... We have reached a tipping point, where sticking with the old rules will not produce the quality of life we have come to expect. If we want our children to enjoy the same quality of life that current generations have, we need a new land-use system.”

- Draft Land Use Framework, 2008, p. 1

The proposed Land-use Framework, and the regional planning process that will result, are an attempt to deal with the cumulative effects of growth on the landscapes of Alberta and the quality of life of Albertans. The imperatives leading the province towards regional planning apply with significantly increased importance in regard to the Aboriginal peoples whose traditional lands overlap, or lie within, the proposed boundaries of the North-east LUF Planning Region.

Significance of Richardson Backcountry Area to ACFN

ACFN is a Denesuline Nation and signatory to Treaty 8. As a Denesuline Nation our traditional lands are extensive; from time immemorial until recent history our people followed the natural migrations of the caribou, and, more recently, we have intensified our use in an area radiating outward from the Athabasca River Delta. Richardson Backcountry is the heartland of these traditional lands.

The Richardson Backcountry is, therefore, critical to securing our cultural, social and economic well-being into the future. As can be seen on Figure 1, the institutional landscape of ACFN’s traditional lands includes Federally-protected lands, various Provincial parks, protected and ecologically sensitive areas, and overlapping resource tenures. All of these administrative

boundaries represent decisions that have been made by the Provincial and / or Federal Governments without adequate or meaningful consultation with ACFN regarding the effects of those decisions on our Constitutionally-protected, and socio-culturally-significant, uses of our traditional lands and resources. All of these administrative boundaries have been established after the signing of Treaty 8 in 1899.

Industrial development in the southern portion of ACFN's traditional lands is resulting in the cumulative removal of lands, wildlife and fish habitat, destroying aesthetic and sensory landscape values integral to traditional use, and will affect the ability of our membership to practice their use of the lands for Treaty rights and procurement of resources and for cultural and spiritual renewal. The lands and water that lie within the administrative boundaries of Wood Buffalo National Park were intensively used and occupied by ACFN in historic times. Creation of the Park reduced our western land use area. And of, course, decisions taken in areas outside of our traditional lands, but upstream and upwind of them, have had effects as well. For example, changing water flow regimes as a result of the W.A.C. Bennett Dam have resulted in impacts to the ecology of the Athabasca River Delta, and as a result, to our ability to procure resources and to use the network of waterways as travel corridors linking our settlements and resource gathering areas (Tanner, Rigney and Kuschminder 2003).

The Richardson Backcountry area is the heartland of our traditional lands and is one of the areas that still retains ecological values that support our traditional use, values that go beyond the gifts of the land that we harvest, to include the aesthetic and spiritual integrity of the landscape. It is a "survival area" where our traditional lifeways, and the plant and animals species upon which our traditions depend, can be maintained (FMA 2005). Richardson Backcountry is recognized as "a unique landscape within the Province of Alberta" and its pristine ecological values have been recognized as having social and ecological value to the people of Alberta as evidenced by the creation of three wildland parks and the Athabasca Dunes Ecological Reserve (ASRD n.d; ANHIC 2003). The natural capital and ecological goods and services of the Richardson Backcountry area are key components to the success of achieving not only ACFN's long term goals in regards to social, economic and cultural well-being, but potentially to the goals expressed in the Land-use Framework, and other non-ACFN planning initiatives (e.g., CEMA's terrestrial land use framework).

There have already been impacts to the Richardson Backcountry area, and ACFN has expressed our concerns regarding those impacts. Impacts to the Delta have changed channel dynamics, reducing our traditional access routes to, and impacting fish spawning habitat at Jackfish Lake (otherwise known as Richardson Lake; Tanner, Rigney and Kuschminder 2003). Oil sands development has also had impacts. The growing population of Fort McMurray has resulted in increasing numbers of people who access the Richardson Backcountry area for recreational purposes. ACFN trapping cabins have been vandalized, the sensitive terrain and ecology of the area is being damaged by off-road vehicles, and there is increasing non-aboriginal hunting, fishing and camping taking place (Whenham 2006). ACFN previously has expressed concern

about these impacts, as well as about our need to have a better understanding of the impacts of oil sands development on the ecology of the Richardson Backcountry area (Whenham 2006). We are concerned about the cumulative impacts of oil sands development, uranium mining, forestry, increased hunting, recreational and other uses on the ecosystem goods and services of the area, upon which our sociocultural and long-term economic well-being depends.

The Alberta Government has, in the past, recognized that increasing land use conflicts in the Richardson Backcountry is an issue. To respond to that issue, the Alberta Government embarked upon a multi-stakeholder planning process to develop the Richardson Backcountry Access Management Plan (ASRD n.d.). During our participation in that process, we consistently expressed reasons why we should be considered, at the very least, the most significant “stakeholder” in the planning process, and our interest in Nation-to-Nation co-management of the Richardson Backcountry area. At that time, Sustainable Resource Development communicated to us that the Government of Alberta would not accept co-management. Although ACFN participated in that process initially, we withdrew due to our concerns that the Richardson Backcountry Management Plan would not recognize our constitutionally-protected Aboriginal and Treat Right in this area.

All of ACFN’s reserve lands are located within the area known as Richardson Backcountry (Figure 1). We, the ACFN, are undertaking a comprehensive community developing process, the long-term goal of which is to build communities at one or more of our reserves at Poplar Point, Jackfish and Old Fort. The Richardson Backcountry is integral to our long-term plans for cultural, social and economic sustainability. We have, in the past, stated our intent to pursue protection of the Richardson Backcountry. Unfortunately, we have had little opportunity to do so in a way that respects our status as a Nation and as a People with constitutionally-protected Aboriginal and Treaty Rights that are intimately related to our unique cultural identity as Denesuline who have occupied our lands since time immemorial.

ACFN is not just another stakeholder. We are a Nation that deserves the respect of a government-to-government relationship. A new approach recognizing this is vital to ACFN being able to achieve “quadruple bottom line” sustainability: ecological, economic, social and *cultural*. We are also a potentially-affected community of people who should be given priority in land and resource management decision-making in light of our constitutionally-protected rights, the relationship between our cultural identity, well-being and traditional lands, and the proximity of our reserve lands and future communities to the Richardson Backcountry (Colfer 1995). From the ACFN vantage point, given the current level of existing impacts, and the high likelihood for impacts to continue, it is our view that the Crown has a fiduciary duty to support ACFN in our efforts to protect our Nation, our People and our Culture from these impacts as it embarks on the regional planning process described in the LUF.

We have lived on these lands since time immemorial. Through that time we have acquired detailed traditional ecological knowledge about the Richardson Backcountry area. There is no party that has more right, or is better suited, to planning, managing and monitoring the heartland of ACFN's traditional lands. ACFN has embarked on community development and land use planning initiatives that must be integrated into any regional planning processes.

Striking a “Meaningful Balance” Between Constitutionally-Protected Aboriginal and Treaty Rights, and the “Public Interest”

One of the guiding principles in the Draft Land-use Framework is that land use decisions will be “[r]espectful of the constitutionally protected rights of aboriginal communities” and that to achieve this principle, the “Government of Alberta will continue to work with aboriginal communities on a government-to-government basis” (GoA 2008:10). Recent experience suggests, however, that there is potential for, a fundamental conflict between respecting constitutionally-protected rights on the one hand, and making what might be called public interest decisions, on the other.

The Land-use Framework will establish an overall vision and desired outcomes for land use decision-making in Alberta. This proposal being put forward here offers the possibility of a new calculation of a greater public interest – a public interest that is based on the idea of the land as the foundation of the economic, environmental and social well-being of the peoples of Alberta. Our Nation has recognized that principle since time immemorial; we now seek to bring it forward within the context of a new relationship with the Crown regarding the Richardson Backcountry. This new approach is a replacement for the existing system of land use regulation that is filled with the potential for conflict. For example, on March 14, 2002, Chief Archie Cyprien wrote to the Honorable Ralph Klein, Premier of the Province of Alberta, and the Honorable Pearl Calahasen, Associate Minister of Aboriginal Affairs regarding the leasing of land for an all terrain vehicle campsite at Jack Fish Lake (Richardson Lake). In that letter, Chief Cyprien stated that “the Chief and Council of ACFN were angered to have been advised” of leasing of land for establishing an all terrain vehicle campsite at Jack Fish Lake, “the heart of our traditional lands” that “is an area of great cultural and historical importance to our Community.” Chief Cyprien expressed further that the leasing of land for the campsite a “fundamental breach” of the “working relationship” between ACFN and the Government of Alberta, and that “if Alberta proceeds with this camp our First Nation will take all and any measures to oppose this action both the setting aside of the camp and its continued operation.”

CO-MANAGEMENT OF THE RICHARDSON BACKCOUNTRY

The Government of Alberta now has an opportunity to create, in partnership with ACFN, a model land use planning and decision-making framework that can achieve the principles of nation-to-nation relationships, protection of constitutionally-protected rights, and contributing to the adaptive capacity of ACFN to achieve socioeconomic and cultural sustainability. We, the ACFN, propose the establishment of an institution for adaptive co-management (including planning and decision-making) of the lands and resources within the area known as the Richardson Backcountry.

Co-management “broadly refers to the sharing of power and responsibility between government and local resource users” and is achieved through “various levels of integration of local and state level management systems” (Notzke 1995:187). “Adaptive co-management” is co-management based on the principles of adaptive management (Plummer and Armitage 2007). Although co-management encompasses a spectrum of arrangements based on the level of power-sharing (Figure 2), the type of arrangement that ACFN is referring to in this proposal is joint decision-making authority.

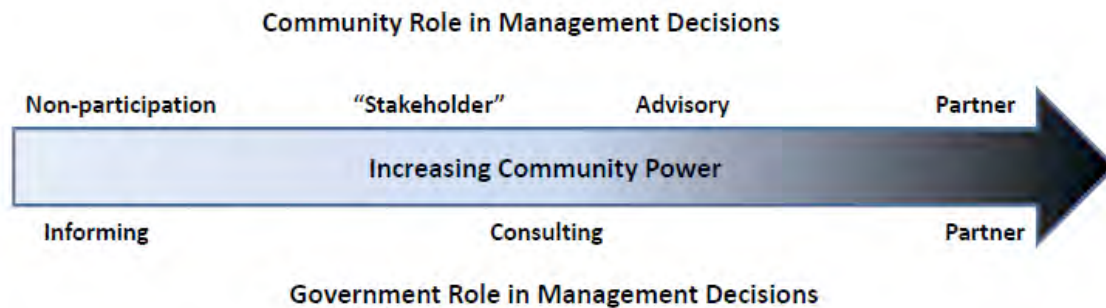


Figure 2 – Spectrum of Community Power in Land and Resource Management Decisions

Through joint decision-making authority over the planning for the use of the lands and resources within the Richardson Backcountry area, ACFN expects that management decisions will align more closely with our values and worldview and reflect the traditional ecological knowledge that we have about the land. It will provide us a means of exercising more control over our future. It will provide a better basis for resolving current and potential land use conflicts in the Richardson Backcountry area.

PROPOSED STRUCTURE & POWERS

It is proposed, for the purposes of further discussions, that planning for the Richardson Backcountry co-management area be undertaken by a joint board comprised of:

- Provincial Departments with authority for land and resource use decision-making, and possibly other government agencies (such as a Regional Health Authority)
- First Nations (at a minimum, ACFN)

The structure should ensure equal representation of First Nations values/interests with those of the Provincial government. This could occur by having the same number of First Nations representatives on the board as number of provincial representatives. Or, through rules on decision-making. For example, in order to counterbalance unequal representation, there could be a provision allowing First Nations representatives a “double vote” in which any action taken by the Board must be approved by both a majority of board members and a majority of First Nation members. This provision was included in the Little Red River Cree – Tall Cree First Nation Co-management Agreement (Appendix A). Of course, there remains much to be done on the exact structure of the Board. **The point is to ensure that there is the institutional means for ensuring that First Nations values/interests are given appropriate consideration and weight in decision-making.**

The Board would serve as a Sub-regional Planning Authority and would be responsible for the creation of a Sub-regional Land Use Plan for the RBCZ. In the creation of all planning documents that have potential to affect the interests of land users, the Board will follow an inclusive and participatory approach. Mechanisms for involvement of local land users in planning and decision-making processes will be employed. For example, a multi-land user committee could be established for access management planning. The interests and values of those land users whose well-being is closely linked to the ecological goods and services of the RBCZ will be given top priority in management decision-making.

KEY COMPONENTS

Some of the possible key components that would contribute to co-management of the Richardson Backcountry are summarized here. More discussion is required on how these components could be integrated and/or expanded upon.

“Joint Research” Approach

- Equality between ACFN and the Province of Alberta in identifying key issues, management objectives (such as establishing thresholds and other limits to growth), decision-making and all other aspects involved in the co-management of Richardson Backcountry lands and resources.

Comprehensive Baseline

- Develop a comprehensive baseline of the ecological, sociocultural and economic values of the Richardson Backcountry. This baseline should be based on an “ecosystem approach” that recognizes the interrelationship of ecological goods and services and human well-being (e.g., Millennium Ecosystem Assessment) especially in regards to the Aboriginal and Treaty Rights of First Nations and to human health.

Traditional Resource Plan

Establish a traditional resource plan (or some other plan or study) that examines the current and future resource, environmental and ecosystem needs of ACFN to carry out their Aboriginal and Treaty Rights in the Richardson Backcountry Area.

Land and Resource Valuation Study

- Compile a “natural capital” balance sheet of the existing state of the Richardson Backcountry area. Provide economic estimates of the value of the Richardson backcountry market-based and non-market based ecosystem services. Incorporate and reflect, in a culturally-appropriate way, ACFN perspectives and values.

Managing Growth

- Adopt the strategies for limiting impacts to management growth proposed by the Growth and Resource Management Working Group (Table 1).

Table 1 – Recommendations from the Growth & Resource Management Working Group

STRATEGY	APPROACH
Focus Management Approaches on Outcomes	<ul style="list-style-type: none"> ▪ Applying criteria for patterns of density, intensity or rates, and type of activity ▪ Limiting or capping specific activities ▪ Setting priority land-uses ▪ Increasing, decreasing or directing activities in certain areas
Three-Pronged Management Approach	<ul style="list-style-type: none"> ▪ Phasing activities over time and space
Establish Targets, Limits and Thresholds on Impacts	<ul style="list-style-type: none"> ▪ Identify and address “hotspots” and over-capacity areas immediately ▪ Integrate with other provincial planning initiatives ▪ Identify beneficial management practices ▪ Build on experiences of other jurisdictions
Account for Cumulative Effects to Manage Long-term Results	<ul style="list-style-type: none"> ▪ Implement legislation, regulation and/or policy to address cumulative effects ▪ Within legislation, establish a governing body for cumulative effects

(Source Praxis 2007:40-45)

Adaptive Cumulative Effects Assessment and Management

- Develop a cumulative effects assessment and management framework for the Richardson Backcountry area based on an integration of western science and traditional ecological knowledge.
- Include appropriate baseline data to provide meaningful information on the impacts of existing and planned proposals on Aboriginal and Treaty Rights, including changes in the patterns of resource use and the exercise of such rights by First Nations and the reasons for such changes.
- Through this framework, establish credible and detailed reclamation measures.
- Incorporate follow-up and monitoring measures. Involve the ACFN Community-based Monitoring program into monitoring and follow-up.
- **A key challenge will be to identify responsibilities for enforcement of terms and conditions of approvals where monitoring and follow-up show that such conditions are not being met.**

Modeling & Scenarios

- Use modeling and scenarios to develop forecasts of possible alternative futures to aid planning decision-making. Involve all potentially affected parties in model- and scenario-building exercises in order to build trust and increase understanding of potential trade-offs.

Inclusivity

- Ensure potentially affected parties are consulted and provided opportunities to participate in joint planning processes. Use tools to incorporate local knowledge, preferences and values into decision-making (e.g., Lynam, de Jong, et al. 2007).

RELATIONSHIP BETWEEN SUB-PLAN AND TEMF

The Terrestrial Ecosystem Management Framework (TEMF) is the Cumulative Environmental Management Association's (CEMA) recommended approach to managing the cumulative effects of development and resource use on ecosystems and landscapes in the Regional Municipality of Wood Buffalo (RMWB) (SEWG 2008). CEMA recommends that environmental indicators are maintained within 10% below the lower limit of the natural range of variation within the RMWB. The primary strategy to achieve this is the application of a "Triad land management approach" that involves the identification of three land use zones: Intensive, Extensive and Protected. Access management is also recommended as a strategy for mitigating impacts on several indicators.

Opportunities for integrating the TEMF and Richardson Backcountry as a Co-management zone possibly include:

- Richardson Backcountry as either a TEMF “Protected Zone” or, as an “Extensive Zone” that contains “Protected Zones”
- Adoption of the TEMF approach to managing cumulative effects in Richardson Backcountry

POSSIBLE SCHEMATIC MODEL FOR REGIONAL PLANNING

As the structure of the regional planning process has not yet been defined in the Draft Land-use Framework, ACFN will refer to a conceptual model submitted by Treaty 8 First Nations of Alberta to the Planning and Decision-Making Working Group for the Land-use Framework (Praxis 2007:109) as the basis for illustrating how co-management of the Richardson Backcountry could fit into a possible regional planning process (Figure 2). Please note that the use of this example does not necessarily endorse the Treaty 8 model.

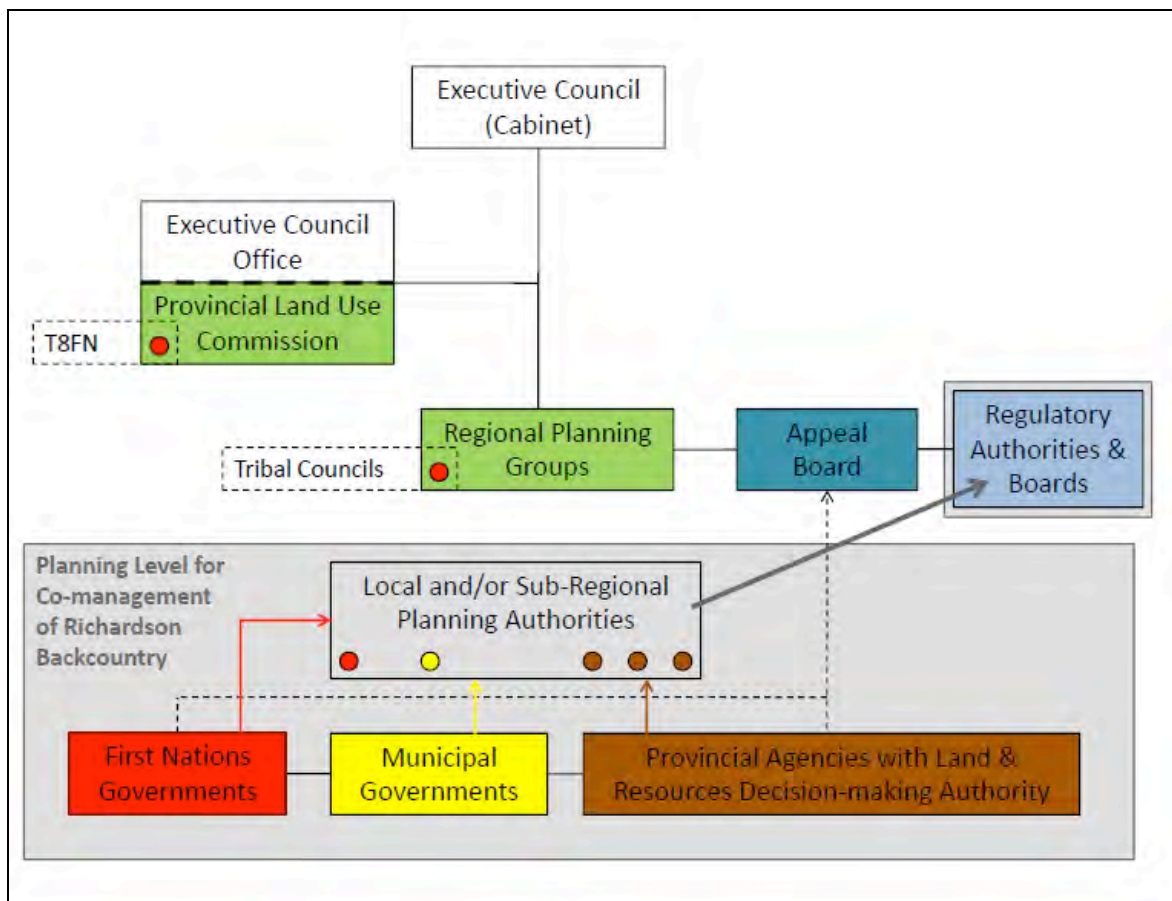


Figure 2 Where Co-Management of Richardson Backcountry Would Fit into Treaty 8 First Nations (T8FN) Conceptual Model for First Nations Government-to-Government Interface at the Various Planning Scales

The items in grey have been added to the T8FN Conceptual Model for the purposes of depicting the levels of most relevance for co-management of Richardson Backcountry. Co-management of the Richardson Backcountry could be considered a “local and/or sub-regional” scale of planning authority. **The key element, however, is that, unlike the T8FN model, the board would have the actual legal authority for land-use planning for co-management of the Richardson Backcountry.**

It is also possible that the powers of the Board could extend beyond land-use planning.

CHALLENGES

What is required now is room for the proposal to take root and flourish. As articulated by Chief Adam and Council in public statements, **there is a need for a moratorium on the granting of mineral tenures** in order to slow the growth of development and allow for local and provincial governments to “catch up” and establish mechanisms, such as regional plans based on thresholds and protective zoning, that will enable us to ensure that the ecological and landscape values that are integral to social, economic and cultural sustainability can be maintained in the future. Planning process are time intensive; ACFN fears that by the time the planning process is complete, cumulative effects will have progressed to a place where it is impossible to implement the management objectives agreed upon in the regional and sub-regional plans.

If this process is not an empty promise, then there should be a moratorium on the granting of mineral tenures, minimally within, and immediately adjacent to, the RBCZ and preferably within the traditional lands of ACFN as a whole.

NEXT STEPS

We are proposing the creation of a co-management zone with a co-management agreement that is linked into the regional planning process to be initiated upon implementation of the Land-use Framework. As we are proposing that this agreement be given a legal basis in the provincial legislation that will implement the Land-use Framework, **we see the next step to be the appointment, by the Crown on behalf of the province of Alberta, a representative to begin negotiations towards the negotiation of the co-management agreement with ACFN.**

REFERENCES

- Alberta Natural Heritage Centre Heritage Protection and Recreation Management Branch [ANHIC]. 2003. Maybelle River Wildlife Provincial Park and Athabasca Dunes Ecological Reserve: A Synthesis of Biophysical Information. Prepared by Alberta Natural Heritage Information Centre Heritage Protection and Recreation Management Branch, L. Allen, D. Hunter, W. Nordstrom, D. Vujnovic. Prepared for Parks and Protected Areas Division Alberta Community Development. [online] URL: http://www.tprc.alberta.ca/parks/heritageinfocentre/docs/Maybelle_River_WP_Synthesis.pdf
- Alberta Sustainable Resource Development [ASRD]. No date. Richardson Backcountry Access Management Plan Terms of Reference. [on-line] URL: http://www.srd.gov.ab.ca/lands/usingpublicland/integratedlandmanagement/pdf/Richardson_Backcountry_Access_Management_Plan_Terms_of_Reference.pdf
- Alberta. 2008. *Draft Land-use Framework*.
- Colfer, C.J.P. 1995. *Who Counts Most in Sustainable Forest Management?* Center for International Forest Research, Working Paper No 7.
- Dickerson, M.O. and M. Ross. 2000. Sustaining Aboriginal boreal forest communities: Exploring alternatives. Sustainable Forest Management Network Project Report 2000-35 (Interim Project Report). [on-line] URL:
- FMA Heritage Resources Consultants Inc. [FMA]. 2005. Wildlife Movement Traditional Environmental Knowledge Workshops. Prepared for Cumulative Environmental Management Association Sustainable Ecosystems Working Group Wildlife Movement Task Group. [on-line] URL: <http://www.cemaonline.ca/content/view/21/63/>
- Kennett, S.A. and M.M. Wenig. 2005. Alberta's Oil and Gas Boom Fuels Land-use Conflicts – But Should the EUB be Taking the Heat? *Resources 91 (Summer 2005)*. [on-line] URL:
- Kennett, S.A., S. Alexander, D. Duke et al. 2006. Managing Alberta's Energy Futures at the Landscape Scale. Paper No. 18 of the Alberta Energy Futures Project. Institute for Sustainable Energy, Environment and Economy. [on-line] URL: <http://www.iseee.ca/files/iseee/ABEnergyFutures-18.pdf>
- Lynam, T., W. de Jong, D. Sheil, T. Kusumanto, and K. Evans. 2007. A Review of Tools for Incorporating Community Knowledge, Preferences, and Values into Decision Making in Natural Resources Management. *Ecology and Society 12(1):5* [on-line] URL: <http://www.ecologyandsociety.org/vol12/iss1/art5/>

Millenium Ecosystem Assessment. [on-line] URL:

<http://www.millenniumassessment.org/en/Index.aspx>

Sustainable Ecosystems Working Group [SEWG]. 2008. Terrestrial Ecosystem Management Framework for the Regional Municipality of Wood Buffalo. Prepared by Sustainable Ecosystem Working Group of the Cumulative Environmental Management Association. [on-line] URL: <http://www.cemaonline.ca/content/view/75/182/>

Tanner, J., A. Rigney, and J. Kuschminder. 2003. Athabasca Chipewyan First Nation Traditional Land Use Study. Fort Chipewyan, Alberta: Athabasca Chipewyan First Nation.

Whenham, B. 2006. Submission to Oil Sands Multi-stakeholder Committee Panel For Phase 1, Public Consultation Open House Fort Chipewyan, Alberta October 04, 2006, by Blair Whenham, Executive Director, Athabasca Chipewyan First Nation Industry Relations Corporation. [on-line] URL: http://www.oilsandsconsultations.gov.ab.ca/Submissions/2006-10-04_Fort_Chipewyan_Presentations/Athabasca_Chipewyan_First_Nation_Industry_Relations_Corp_Blair_Whenham_Fort_Chipewyan.pdf

APPENDIX A

PRECEDENTS WITHIN ALBERTA

(1) Little Red River Cree Nation – Tall Cree First Nation Co-Management Agreement

In 1995, the Little Red River Cree Nation (LRRCN) and the Tallcree First Nation (TCFN) signed a Cooperative Management Agreement (CMA) with High Level Forest Products, a private company, and the provincial and federal governments. The CMA focuses on developing and implementing an ecosystem based approach for sustainable development of a 30 000 km² area of boreal forest in Northern Alberta (known as a Special Management Area, SMA). Within the SMA, LRRCN and TCFN have lands designated as a Forest Management Area (FMA) which allows them tenure over coniferous timber and control of deciduous stands, thus enabling them to control the pace of forest development to protect ecological and cultural values (Fraser 1996).

Co-management was established under a Memorandum of Understanding (Treseder and Krogman 2002). The co-management institution, the ‘Cooperative Management Planning Board’, established for the SMA has fourteen voting members: seven from the LRRCN and TCFN, four from provincial and municipal governments, two from the forest industry and one from the oil and gas industry. The Board’s mandate includes providing advice to Alberta’s Minister of Environment on the management of renewable natural resources in the SMA. In order to counterbalance a second review by government, when the Board’s recommendations are reviewed by the Alberta Minister of Environment, one of the provisions of the Memorandum of Understanding was to allow First Nations representatives on the Board a ‘double vote’. This means that any action taken by the Board must be approved by both a majority of board members and a majority of First Nation members (Treseder and Krogman 2002).

A criticism of this arrangement is that the government of Alberta retains all management authority and the other participants in co-management have no legal authority with regard to forest management (Treseder and Krogman 2002). However, board members from all parties felt that the First Nations were the most powerful party on the Board. One of the main advantages of the co-management institution is that by giving a high priority to cultural sustainability criteria, First Nation participants in the co-management process challenge the forest industry and government to re-think the pace of development, the rates of return required to be profitable, and measures to improve First Nation employment within the industry (Treseder and Krogman 2002).

(2) Hay-Zama Committee

The Hay-Zama Committee is a multi-party collaborative approach to the development of industrial guidelines in sensitive areas (Hay-Zama Committee 2007). The Hay-Zama Committee was established in the 1980s to address issues related to oil and gas activities in the Hay-Zama Complex, an internationally important wetland under the RAMSAR Convention (AWA 2003). Four hundred eighty-six square kilometers of the Hay-Zama Complex were designated a Wildlife Park under the Provincial Parks Act in 1999. Three Dene Thá Indian Reserves (I.R.) share part of its boundary of the Hay-Zama Wildland Park, which is part of Dene Thá's traditional lands.

The Dene Thá First Nations joined the Hay-Zama Committee in 1995. Other members include oil and gas industry, non-governmental organizations, federal government, provincial government and municipal government. In 2001, the Hay-Zama Committee worked with Alberta Parks and Protected Areas to create a Management Plan for the Hay-Zama Wildland Park. This plan recognizes that the Dene Thá will enter into negotiations with the Province of Alberta to implement a system of "collaborative management" for the Hay-Zama Wildlife Park. By October, the Hay-Zama Committee agreed to create a third co-chair for the Committee: Dene Thá First Nation.

(3) Métis Settlement Co-Management

The Métis Settlements Act proposed a statutory framework that addressed the desire for legal recognition of their settlement land base and their corresponding desire for self government and control over that land base. The MSA along with the funding commitments that accompanied its enactment "represented a stable solution to some of the historical claims and disputes with Métis peoples" (Bomhoff 2006). The MSA enables Métis to exercise some control over development of their settlement lands while "allowing Alberta to avoid a formal acknowledgement of any rights to the subsurface mineral interests on those lands" (Bomhoff 2006). The MSA plays a significant role in shaping how oil and gas activities are managed on settlement land.

The landholding system created by the MSA is unique. Fee simple title to the settlement lands is held by letters patent granted by the Crown to the Metis Settlements General Council, which is composed of councilors from each of the eight settlements. "Métis title" is held by each settlement's elected council and transferrable to individual settlement members. Interests, including oil and gas surface access, in settlement lands are capable of being registered under the Métis Settlements Land Registry.

Each settlement council with legal powers are similar to that of a municipal council. The elected Councils have the jurisdiction to pass bylaws on land use planning and

development. With respect to oil and gas activities on settlement lands, councils, together with the Metis Settlement General Council, are empowered to enter into development agreements with oil and gas producers concerning the exploitation of subsurface resources.

While the title to settlement lands is held by the General Council, the subsurface mineral interests remain with the Provincial Crown. Under the Co-management Agreement (CMA) agreed between the Province and all eight Métis Settlements, the Crown is not free to dispose of those interest without the involvement of the Métis governing bodies. There is a bidding process where the Crown, in consultation with appointed Metis representatives will issue a notice of public offering on terms requiring the bidder accept certain environmental, socio-cultural and economic conditions. The successful bidder and the settlement council are then invited to enter into negotiations on the terms of a Master Development Agreement to govern the exploration and development of the mineral interests granted.

REFERENCES

Alberta Wilderness Association. Hay Zama Lakes Archive. [on-line] URL:

<http://issues.albertawilderness.ca/HZ/hayzama.htm>

Hay-Zama Committee. 2007. Integrating Today for a Better Tomorrow. Presentation made by Pat Cabezas and Chief James Ahnassay, to the ILM Workshop Program, Edmonton, AB, January 22, 23, 24, 2007.

Fraser, N. 1996. Little Red River Cree Nation – Tallcree First Nation Co-Management Agreement: Working Towards Self-Sufficiency. [on-line] URL: http://www.ainc-inac.gc.ca/pr/pub/ep/envir3_e.html

Treseder L. and N.T. Krogman. 2002. Forest co-management in Northern Alberta: does it challenge the industrial model? *International Journal of Environment and Sustainable Development* 1(3):210-223.

Bomhof, K.J. 2006. Doing Business on Metis Settlements in Alberta: The Legal Framework for Oil and Gas Activities on Metis Settlement Lands. [on-line] URL: <http://www.lawsonlundell.com/resources/DoingBusinessonMetisSettlements.pdf>

Appendix 4:

Regional Municipality of Wood Buffalo Cumulative Effects Study

Regional Municipality of Wood Buffalo Cumulative Effects Study

FINAL REPORT



Prepared for the Athabasca Chipewyan First Nation
and Athabasca Tribal Council

by

ALCES Group

September, 2010

Acknowledgements

Lisa King and Nicole Nicholls of the ACFN Industry Relations Corporation provided project direction and review. Their assistance is gratefully appreciated.

Disclaimer

This report was prepared by ALCES Landscape and Land-Use Ltd. (the ALCES Group) for the Athabasca Chipewyan First Nation and Athabasca Tribal Council.

While the ALCES Group has attempted to ensure the accuracy of the data and interpretations, it makes no representations or warranties, expressed or implied, as to the accuracy or completeness of the information reported. The ALCES Group assumes no legal liability or responsibility for any errors or omissions in the information or for any loss or damage resulting from the use of any information contained in this report.

The opinions expressed in this document are those of the authors and are not necessarily those of the Athabasca Chipewyan First Nation or Athabasca Tribal Council, its advisors or its funders. Permission to use or reproduce this report is granted to the Athabasca First Nation and Athabasca Tribal Council without fee and without formal request provided that it is properly cited. Copies may not be made or distributed for profit or commercial advantage.

EXECUTIVE SUMMARY

The oilsand (bitumen) reserves that underlay the Regional Municipality of Wood Buffalo are an important driver of the Alberta and Canadian economy. While bitumen production has created economic wealth for many residents of the region, Albertans and other Canadians, it has also created undesirable effects on water quality, wildlife, fish and forests, and is challenging the cultural and economic viability of aboriginal communities in northeast Alberta (Earley 2003; Nikiforuk 2006 and 2008).

The pace and scale of bitumen development in northeast Alberta has created a radically altered landscape and social fabric that is very different than experienced by those of just a generation ago. Increasing numbers of roads, seismic lines, pipelines and production facilities have fragmented the landscape. Combined, these human features are directly and indirectly affecting large areas of wildlife habitat. Increased motorized vehicle access has resulted in high fish and wildlife harvesting pressures. The large number of required oilsands and support workers has created a rapidly increasing human population, resulting in significant townsite and city growth. The rapid regional population growth has strained health care, emergency and social services. Accommodation shortages and high costs of living are acute.

Athabasca Chipewyan First Nation (ACFN) and Athabasca Tribal Council (ATC) leadership and citizens are concerned that the rapid industrialization of the southern portion of their Traditional Land is reducing water quality, impacting the amount and quality of wildlife and fish habitat, and leading to decreased harvesting opportunities. The long-term sustainability of aboriginal culture, traditional economy, land and water resources, and fish and wildlife populations may be at risk. If development continues at its current pace, what might the future bring? What would happen if future bitumen extraction rates increase, or are reduced? What do these possible futures hold?

This study, commissioned by ACFN and the ATC, explored the following questions under different bitumen production scenarios for the Regional Municipality of Wood Buffalo:

- Will there be enough water to meet the future needs of industry, towns, residents and fish?
- Will ACFN children and grandchildren have healthy populations of caribou, moose, fur bearers and fish for traditional uses?
- Will future forests, water and wildlife support the spiritual, cultural and physical requirements of future generations?
- What level of non-traditional, wage-based employment could be expected for local aboriginal communities? Is it possible for aboriginal workers to comprise a significant portion of the oilsands workforce?

Key Findings

This project simulated different bitumen development scenarios in the Regional Municipality of Wood Buffalo by altering the amount and pace of production. The ALCES[®] landscape cumulative effects simulation model was used to better understand the relative benefits and risks associated with each scenario. The current production rate of 1.3 million barrels per day and a doubling of this rate, 2.6 million barrels per day, were examined over different time periods, and with different reclamation rates. The 7.5 Bm³ scenarios assume that half of the currently estimated recoverable bitumen reserves will be extracted, while the 15 Bm³ scenarios assume that all of the reserves will be extracted. All production scenarios explored have both pros and cons—no ‘best scenario’ emerged.

Industrial activity (primarily the energy, forestry and transportation sectors), and residential development, are the main human activities that will have future effects on land, water, and fish and wildlife populations. Increasing industrial activity and population growth will further reduce the amount of forest lands and natural areas in the region. The numbers of linear features will increase, resulting in a more fragmented landscape than today. If future industrial activity unfolds as assumed, remaining undisturbed areas will be restricted to protected areas or in locations not underlain by recoverable bitumen reserves, such as around Lake Athabasca.

Under all scenarios, woodland caribou are likely to be lost from the region within the coming decades unless sufficiently large areas of undisturbed forest are set aside and wolf populations are aggressively reduced. The continued decline of native fish populations would also be expected under all scenarios, potentially to very low levels in the southern portion of the region. However, access management and focused restoration of stream continuity through aggressive culvert maintenance or increased use of bridge crossings may maintain fish populations closer to today’s levels.

Extracting 7.5 Bm³ of oil versus 15 Bm³ generally results in less environmental impacts but produces lower economic benefits for the provincial and national economies. The 7.5 Bm³ scenario may also result in a much lower regional human population. Fast extraction scenarios (2.6 million barrels per day) rapidly increase human-caused footprints, forest fragmentation and water demand compared to slower extraction (1.3 million barrels per day).

The scale of current and projected oilsands development requires a very large workforce for ongoing construction and operations. A doubling of the current bitumen production rate, to approximately 2.6 million barrels per day, would result in a peak workforce of 35,000. Under various employment scenarios and assumptions, the ACFN/ATC workforce may fill 15 to 35 percent (5,000 to 10,000) of the total oilsands workforce positions at the end of 100 years. Factors such as the aboriginal population growth rate and workforce employment rate may alter this scenario, but not substantially. Given the current and future population and workforce characteristics, it is unlikely that ACFN/ATC workers will be able to fill a substantial proportion of total oilsands workforce positions unless bitumen production decreases significantly.

The long-term status of many indicators in the Municipality of Wood Buffalo is highly dependent on the course of events ‘after bitumen production ends’. Would population growth also stop, as modelled in this project, or would it continue to grow at similar rates? Will new technologies increase the amount of recoverable bitumen, thereby extending the duration of bitumen activities? Will new industries or resources emerge to replace bitumen production? If population and transportation growth continues after bitumen production ceases, many of the potential benefits of faster extraction would not be realized. In this situation, many areas and features would not be reclaimed and footprint growth would continue, the combined effect being steadily increasing human footprint and continued declines of intact habitat.

Industry best management practices and access control, while relatively easy to model, may be very challenging to implement in the real world. Reclamation rates for many industrial footprints are estimated and not proven. Accurate reclamation rates are critical to realistically model future trends. Actual reclamation times may be longer than assumed for this project. Additionally, new technologies may be developed which allow greater volumes of bitumen to be extracted than originally considered, possibly leading to further increases in the amount of footprint and/or footprint lifespan. Given these considerations, it is probable that many of the trends reported in this study underestimate the potential magnitude of future changes in land-use and fish and wildlife conditions.

TABLE OF CONTENTS

Executive Summary	i
Table of Contents	iv
List of Tables	v
List of Figures	v
1. Introduction	1
1.1 Objectives	1
2. Methods	2
2.1 Scenarios	2
2.1.1 Energy Sector	2
2.1.2 ACFN/ATC Employment	4
3. Study Area	5
4. Natural Change	7
4.1 Water and Fish	7
4.2 Natural Disturbances and Wildlife	10
5. Recent Change	10
6. Future Change	13
6.1 Economic	13
6.1.1 Bitumen Production	13
6.1.2 Employment	15
6.2 Land	19
6.2.1 Disturbed Area	20
6.2.2 Linear Features	25
6.2.3 Forest Core Area	28
6.3 Water	31
6.3.1 Water Demand	31
6.3.2 Relative Water Quality	33
6.4 Fish and Wildlife	35
6.4.1 Fish	35
6.4.2 Caribou	37
6.4.3 Moose	41
6.4.4 Black Bear	43
6.4.5 Fisher	45
7. Summary and Conclusions	48
7.1 Economic	49
7.2 Land	50
7.3 Water	50
7.4 Fish and Wildlife	51
7.5 Reducing Undesirable Effects	52
7.5.1 Industry Practices	52
7.5.2 Water Quality	53
7.5.3 Protected Areas	53
7.6 Future Research	53
8. References	55

LIST OF TABLES

Table 1.	Energy sector scenarios explored in this cumulative effects study.....	4
Table 2.	ACFN/ATC oilsands employment scenarios explored in this study.	5

LIST OF FIGURES

Figure 1.	Regional Municipality of Wood Buffalo study area.	6
Figure 2.	The Upper, Middle and Lower reaches of the Athabasca River basin.....	8
Figure 3.	Natural year-to-year variability in average nutrient loading in the lower Athabasca River basin.....	9
Figure 4.	Some of the important fish species found in the rivers and lakes of the lower Athabasca basin.	9
Figure 5.	a) Oilsands deposits in Alberta, and b) Al-Pac FMA.	11
Figure 6.	Tailings ponds adjacent to Athabasca River. Seismic line linear features have fragmented the boreal forest.....	12
Figure 7.	Simulated bitumen production resulting from the 7.5 Bm3 production scenario over 50 and 100 year periods; and 15 Bm3 production scenarios over 100 and 200 year periods	14
Figure 8.	Simulated annual direct employment resulting from the 7.5 Bm3 production scenario over 50 and 100 year periods; and 15 Bm3 production scenario over 100 and 200 year periods.	16
Figure 9.	Potential number of ACFN/ATC workers employed in oilsands workforce at one percent and two percent population growth rates under the 15 Bm3 production scenario for the 100-year and 200-year periods.....	18
Figure 10.	Potential percentage of total oilsands workforce comprised by ACFN/ATC workers at one percent and two percent local aboriginal population growth rates under the 15 Bm3 production scenario for the 100-year and 200-year periods.....	19
Figure 11.	Simulated levels of disturbed area (anthropogenic footprint) resulting from the 7.5 Bm3 production scenario over 50 and 100 year periods; and 15 Bm3 production scenario over 100 and 200 year periods	21
Figure 12.	Potential location of future disturbed and undisturbed lands for years 2009, 2049 and 2089 based on 15 Bm3 bitumen scenario.	23
Figure 13.	Historical and potential future growth of Fort McMurray townsite.	24
Figure 14.	Potential levels of anthropogenic footprint resulting from the 15 Bm3 production scenario over 100 years, under base, moderate (2x slower) and slow (3x slower) reclamation rates.	25
Figure 15.	Potential average regional linear density (km/km ²) resulting from the 7.5 Bm3 production scenario over 100 and 50 year periods; and 15 Bm3 production scenario over 100 and 200 year periods	27

Figure 16. Potential linear density (km/km²) resulting from the 15 Bm³ production scenario over 100 years, under base, moderate (2x slower) and slow (3x slower) reclamation rates. 28

Figure 17. Potential percent of forest core area remaining, resulting from the 7.5 Bm³ production scenario over 100 and 50 year periods and 15 Bm³ production scenario over 100 and 200 year periods..... 30

Figure 18. Potential percent of forest core area remaining, resulting from the 15 Bm³ 100 year production scenario under base, moderate (2x slower) and slow (3x slower) reclamation rates..... 31

Figure 19. Simulated levels of total land-use water demand resulting from the 7.5 Bm³ production scenario over 100 and 50 year periods; and 15 Bm³ production scenario over 100 and 200 year periods..... 32

Figure 20. Percent of Athabasca River annual water flow required for all projected land-uses, annually and by season, for the 15 Bm³ – 100 year bitumen scenario..... 33

Figure 21. Simulated average water quality index resulting from the 7.5 Bm³ production scenario over 50 and 100 year periods; and 15 Bm³ production scenario over 100 and 200 year periods. 34

Figure 22. Potential INFI values resulting from the 7.5 Bm³ production scenario over 50 and 100 year periods; and 15 Bm³ production scenario over 100 and 200 year periods. 36

Figure 23. Potential Index of Native Fish Integrity (INFI) values resulting from the 15 Bm³ production scenario over 100 years, under base, moderate (2x slower) and slow (3x slower) reclamation rates, and with access management. 37

Figure 24. Potential caribou finite rate of population increase values resulting from the 7.5 Bm³ production scenario over 50 and 100 year periods; and 15 Bm³ production scenario over 100 and 200 year periods. 39

Figure 25. Potential caribou finite rate of population increase values resulting from the 15 Bm³ production scenario over 100 years, under base, moderate (2x slower) and slow (3x slower) reclamation rates. 40

Figure 26. Float planes and off-road motorized vehicles allow hunters to access previously remote or inaccessible areas..... 41

Figure 27. Potential moose habitat effectiveness resulting from the 7.5 Bm³ production scenario over 50 and 100 year periods; and 15 Bm³ production scenario over 100 and 200 year periods. 42

Figure 28. Potential moose habitat effectiveness resulting from the 15 Bm³ production scenario over 100 years, under base, moderate (2x slower) and slow (3x slower) reclamation rates, and with access management. 43

Figure 29. Potential black bear habitat effectiveness values resulting from the 7.5 Bm³ production scenario over 50 and 100 year periods; and 15 Bm³ production scenario over 100 and 200 year periods..... 44

Figure 30. Potential fisher habitat effectiveness values resulting from the 7.5 Bm³ production scenario over 50 and 100 year periods; and 15 Bm³ production scenario over 100 and 200 year periods..... 46

Figure 31. Potential fisher habitat effectiveness resulting from the 15 Bm3 production scenario over 100 years, under base, moderate (2x slower) and slow (3x slower) reclamation rates, and with access management. 47

1. INTRODUCTION

First Nation peoples have occupied the Athabasca region of northeast Alberta for thousands of years. This landscape of boreal forests, wetlands and waterways has supported the physical, spiritual and cultural requirements of First Nation peoples for generations. The Athabasca Chipewyan First Nation (ACFN) is a Denesuline signatory to Treaty 8. Its Traditional Lands encompass the Peace-Athabasca River Delta in northeast Alberta, and the adjacent Lake Athabasca region of Alberta and Saskatchewan, and southern Northwest Territories.

Over the last two centuries ACFN traditional economy and culture has undergone significant changes in response to the signing of Treaty 8, creation of Wood Buffalo National Park and permanent settlements, wage-based employment, the establishment of registered traplines, and changes in the land and fish and wildlife populations. However, the long-term social, economic and cultural well-being of ACFN remains linked to the health, condition and accessibility of its Traditional Lands.

ACFN Traditional Lands cover a large portion of the Municipality of Wood Buffalo (Figure 1), a region that is experiencing unprecedented levels of industrial land-use activity. The globally-significant oilsands (bitumen) reserves that underlay much of the area have fuelled rapidly increasing levels of industrial activity and non-aboriginal population growth.

ACFN leadership and citizens are concerned that the rapid industrialization of the southern portion of their traditional land is reducing water quality, impacting the amount and quality of wildlife and fish habitat, and leading to decreased harvesting opportunities. Further, they are concerned that these impacts are occurring without an equitable distribution of economic benefits flowing to local communities. The long-term sustainability of ACFN culture, traditional economy, land and water resources, and fish and wildlife populations may be at risk. If development continues at its current pace, what might the future bring? What would happen if future bitumen extraction rates increase, or are reduced? What do these possible futures hold?

1.1 OBJECTIVES

This study, commissioned by ACFN and the Athabasca Tribal Council (ATC), explores the following questions for the Regional Municipality of Wood Buffalo:

- Will there be enough water to meet the future needs of industry, towns, residents and fish?
- Will ACFN children and grandchildren have healthy populations of caribou, moose, fur bearers and fish for traditional uses?
- Will future forests, water and wildlife support the spiritual, cultural and physical requirements of future generations?

- What level of non-traditional, wage-based employment could be expected for local aboriginal communities? Is it possible for aboriginal workers to comprise a significant portion of the oilsands workforce?

The report concludes with possible management actions that will assist in protecting essential land, water, fish and wildlife resources within the Municipality of Wood Buffalo. Recommendations for future research are also made.

2. METHODS

The ALCES[®] landscape cumulative effects simulation model (www.alces.ca) was used to simulate the possible effect of different bitumen extraction scenarios on selected economic, social and ecological indicators. Information compiled by the Cumulative Effects Management Association (CEMA) Sustainable Ecosystems Working Group (SEWG) was used to populate the initial model (CEMA 2008). The area of landscape and footprint types, natural disturbance rates, footprint reclamation rates, and water, wildlife and fish models were based on CEMA SEWG studies. At the time of the project, CEMA SEWG information was considered to be the best readily available data source. ACFN input into, and review of, reclamation assumptions, wildlife models and other parameters was not possible given the time and funding constraints of the project, but should occur in the future. All findings presented in this report are from ALCES[®] model simulations conducted for this project, except where noted.

The ALCES[®] model was first used to understand the estimated ‘natural’ pre-European settlement conditions, or the range of natural variability, for water, wildlife, and landscape characteristics in the Municipality of Wood Buffalo. These results form a baseline against which projected scenarios can be compared. The simulation model was then used to explore how potential changes over the next two hundred years compared to the estimated pre-European settlement 'natural' conditions.

2.1 SCENARIOS

2.1.1 Energy Sector

Seven possible energy sector futures (scenarios) were explored with ALCES[®] (Table 1). Four scenarios varied the amount of bitumen produced and the period of time required to extract the resource. The current production rate of 1.3 million barrels per day and a doubling of this rate, 2.6 million barrels per day, were simulated over different time periods. The 7.5 Bm³ scenarios assume that half of the currently estimated recoverable bitumen reserves will be extracted, while the 15 Bm³ scenarios assume that all of the reserves will be extracted. These scenarios provide an understanding of how varying the level and pace of energy production, and the associated effects on human population and transportation growth over time, may affect land, forests, wildlife, fish and employment. Two scenarios were run to assess the potential impact of differing reclamation rates,

which are discussed further below. A final scenario explored the effect of ‘access management’, or closing some areas of the region to motorized vehicle access.

An important assumption for all energy sector scenarios is that once bitumen production stops, transportation (road building) and population growth also ceases, but that forest harvesting continues. Different forest harvesting rates were not explored. Results for the projected level of disturbed area (Section 6.2.1) are described in detail, as they are central to understanding the potential response of ecological indicators.

While certain human land-use features such as cities and major highways can be considered relatively permanent, many access roads, well pads, pipelines and surface mines may be reclaimed in the future, returning to an undisturbed or generally natural condition. The length of time it takes to reclaim a feature is called the reclamation rate. Fast reclamation rates are generally desirable. Base reclamation rates used in this project were developed by CEMA-SEWG (CEMA 2008). However, these reclamation rates may be optimistic, representing the best possible situation. If reclamation rates are slower, there may be longer term, and larger effects on forests, water and wildlife. To assess the potential influence of slower reclamation two additional scenarios were examined: one where reclamation was two times slower than the base case and one that was three times slower.

Table 1. Energy sector scenarios explored in this cumulative effects study.

Scenario	Reclamation Rate	Description
7.5 Bm³ – 50 years	Base rate	Half of total estimated recoverable bitumen reserves are produced over 50 years (7.5 Bm ³ at average rate of 2.6 million barrels per day), then production stops.
7.5 Bm³ – 100 years	Base rate	Half of total estimated recoverable bitumen reserves are produced over 100 years (7.5 Bm ³ at average rate of 1.3 million barrels per day), then production stops.
15 Bm³ – 100 years	Base rate	All of total estimated recoverable bitumen reserves are produced over 100 years (15 Bm ³ at average rate of 2.6 million barrels per day), then production stops.
15 Bm³ – 200 years	Base rate	All of total estimated recoverable bitumen reserves are produced over 200 years (15 Bm ³ at average rate of 1.3 million barrels per day), then production stops.
15 Bm³ – 100 years – Reclamation Moderate	Moderate rate	All of total estimated recoverable bitumen reserves are produced over 100 years (15 Bm ³ at average rate of 2.6 million barrels per day), then production stops. Reclamation is two times slower than base rate.
15 Bm³ – 100 years – Reclamation Slow	Slow rate	All of total estimated recoverable bitumen reserves are produced over 100 years (15 Bm ³ at average rate of 2.6 million barrels per day), then production stops. Reclamation is three times slower than base rate.
15 Bm³ – 100 years – Access Management	Base rate	All of total estimated recoverable bitumen reserves are produced over 100 years (15 Bm ³ at average rate of 2.6 million barrels per day), then production stops. Access management is applied to linear features during entire production and reclamation period.

2.1.2 ACFN/ATC Employment

The ACFN/ATC employment scenario investigated possible outcomes of two different aboriginal population growth and varying employment rates on potential ATC oilsands employment resulting from the 15 Bm³ – 100 year bitumen production scenario (Table 2). The initial ATC resident population was estimated at 6,400, with an initial

employable workforce of 1,280 (20 percent of initial population). The current ATC workforce was estimated to be 50 percent of all employable workers, or 640 people. The total initial oilsands full time workforce was set to 25,000.

Table 2. ACFN/ATC oilsands employment scenarios explored in this study.

Scenario	ATC Population Growth Rate	ATC Oilsands Sector Employment Rate
1	1%	50% (current)
2	1%	60%
3	1%	70%
4	2%	50% (current)
5	2%	60%
6	2%	70%

3. STUDY AREA

The 68,454 km² study area is the Regional Municipality of Wood Buffalo in northeast Alberta (Figure 1). ACFN traditional lands include the northern portion of the Municipality, and parts of northwest Saskatchewan and southern Northwest Territories. The study area is entirely within the Boreal Forest natural region, with the Central Mixedwood subregion accounting for most of the area. Portions of the Northern Mixedwood, and Lower and Upper Boreal subregions are also in the study area, as well as the only Canadian Shield natural region in Alberta, the Kazan Uplands.

As of 2007, the regional population was approximately 88,000, which represents a doubling in size since 1999. At 57,000 people, Fort McMurray is the largest community and the major business and service center of the region. Other major communities include Fort Chipewyan, Fort MacKay, Fort Fitzgerald, Anzac, Janvier, Conklin, Draper and Sapræe Creek.

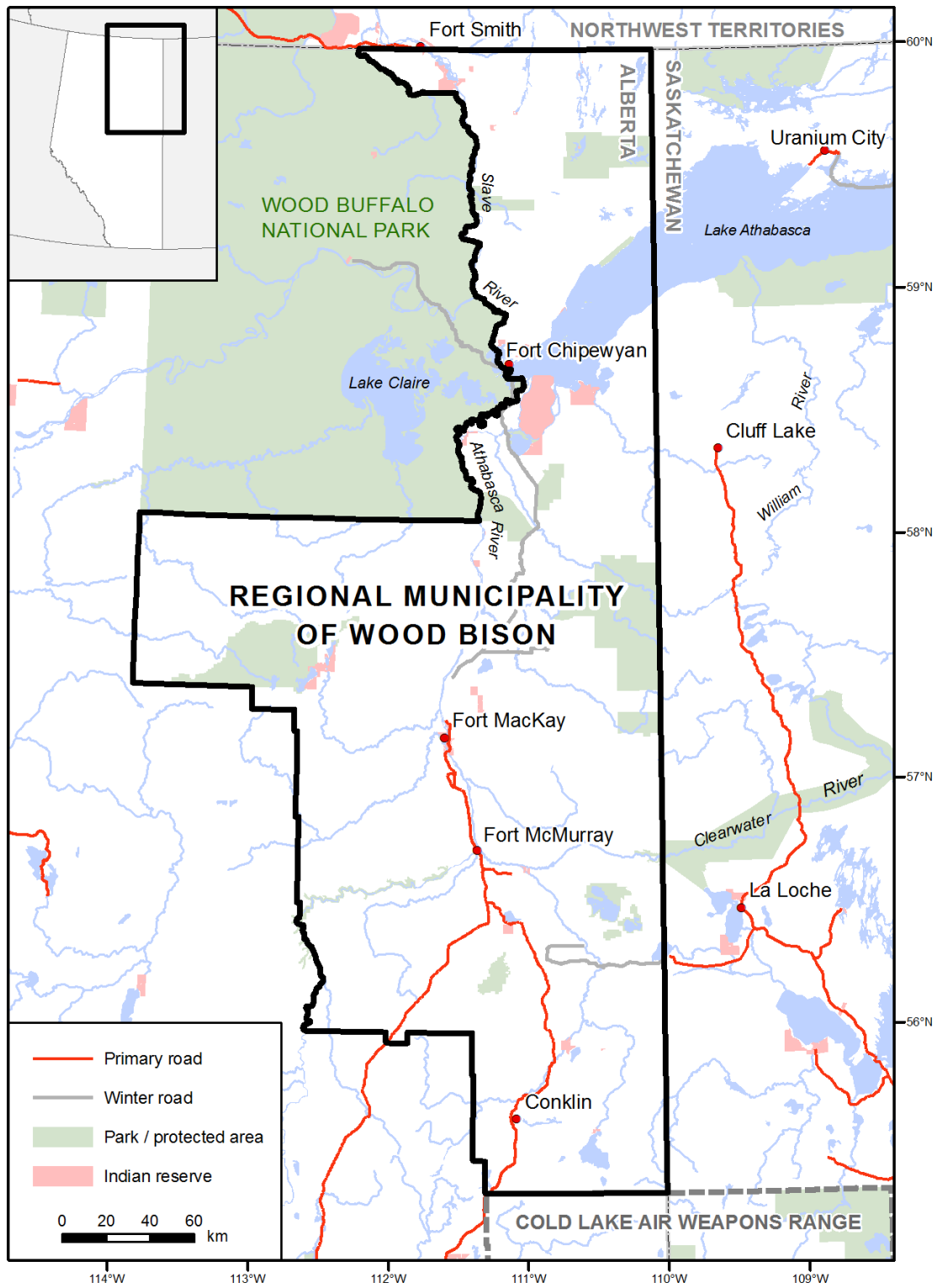


Figure 1. Regional Municipality of Wood Buffalo study area.

4. NATURAL CHANGE

The modern ecological changes created by industrial land-use activity are best understood relative to natural changes, prior to European settlement. Since the end of the last ice age, approximately 10,000 years ago, the boreal forest has been shaped and altered by disturbances such as weather, fire, forest insects, flooding and erosion, and wildlife. This natural system produced relatively clean river, lake, and groundwater, a mixture of forest types and ages, and diverse and abundant wildlife and fish communities.

4.1 WATER AND FISH

Much of the water in the Athabasca River system comes from the west, starting at the Athabasca Glacier in the Rocky Mountains near Jasper. The river flows northeast for 1,300 km before reaching Lake Athabasca. In the middle reaches there are three major tributaries—the McLeod, Pembina and Lesser Slave rivers. Within the Municipality of Wood Buffalo, the Clearwater, Steepbank, Muskeg, Firebag, Mackay and Ells rivers contribute flow to the lower reaches of the Athabasca, between Fort McMurray and Fort Chipewyan

Figure 2). Some of these flows originate from the east, in Saskatchewan.

Seasonal and year-to-year changes in precipitation (drought and flood) and temperature alter the amount of water that flows through the river. As a result, natural flows in the Athabasca River follow a seasonal pattern of winter lows and summer highs. During the winter months water flows can be nearly ten times less than the early summer highs. Variation in water flows between years can also be significant depending on annual precipitation and temperature. For example, at the Fort McMurray hydrometric monitoring station, a minimum recorded daily flow of 75 m³/s occurred in early December, 2001, with a maximum peak flow of 4,700 m³/s occurring in mid-July, 1971 (Schindler et al. 2007).

Natural water quality in the Athabasca River, as represented by nutrient and sediment loading, is also variable (Figure 3). In Figure 3 the green band represents the range of natural conditions, or the range of natural variation (RNV), that can be expected in natural water quality. The RNV was simulated with multiple, random model runs, one of which is shown as an example. The RNV used for this study captures 90 percent of the expected maximum and minimum values. Potential modern or future changes in water quality (or other environmental parameters), can be compared to the RNV, to better understand the relative importance of projected future change.



Figure 2. The Upper, Middle and Lower reaches of the Athabasca River basin.
Source: Hatfield Consultants.

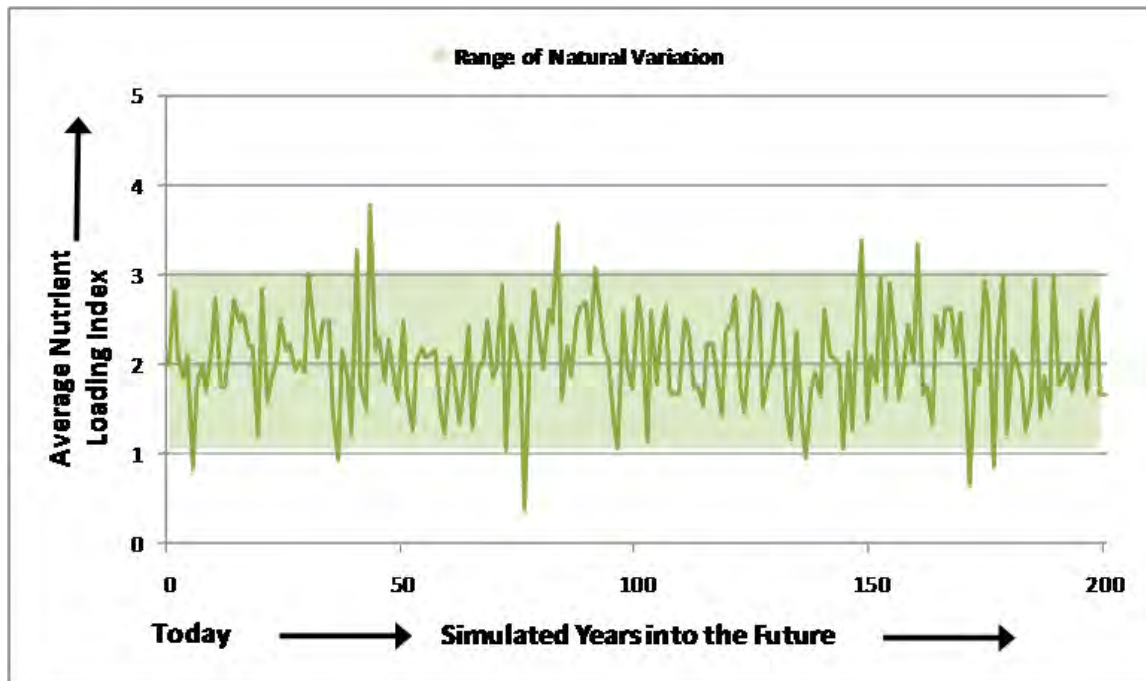


Figure 3. Natural year-to-year variability in average nutrient loading in the lower Athabasca River basin.

The native fish community of the lower Athabasca River basin, which includes walleye, pike, whitefish and Arctic grayling (Figure 4), have adapted to the natural cool water, moderate nutrient, and variable flow conditions by moving seasonally between river sections and tributaries. Frequently, adults winter in lakes and deeper sections of the Athabasca River and move into smaller tributaries or upstream sections to spawn where conditions are most favourable for eggs and young fish.



Figure 4. Some of the important fish species found in the rivers and lakes of the lower Athabasca basin (left: Arctic grayling; right: walleye).

Unlike river flow, groundwater in the Athabasca River basin is an unseen and poorly understood resource. Vast areas of permeable soils and rocks act like giant sponges drawing water into the ground where it flows towards major rivers at depths just below the surface to many kilometres deep. Some groundwater rises to, or close to, the surface creating flowing springs. During low flow periods and droughts, groundwater contributions to rivers and streams are proportionally larger and are a key source of clean flowing water for fish, wildlife, and people.

4.2 NATURAL DISTURBANCES AND WILDLIFE

Forests and wildlife are influenced by fire, drought, flood and other natural disturbances. On average, forests in the region burn about once every 80 to 100 years. Burns change old forest to young forest or grassland, benefiting wildlife such as bears, moose and deer that feed on new growth. Over time, these areas can return back to old forest creating suitable conditions for caribou, old forest birds and other forest wildlife. When Europeans fur traders first entered the Athabasca River basin, they found a dynamic land of young and old boreal forest, and lakes, streams and rivers rich in fish, fur and game.

5. RECENT CHANGE

In the 1940's, people began to explore the possibility of extracting oil from the oilsand (bitumen) reserves underlying much of the Athabasca region (

Figure 5). Strong world demand, high oil prices and rapid technological advances caused a rapid increase in the development of this resource with approximately 1.31 million barrels per day of bitumen produced in 2008. In addition to energy activities, Alberta-Pacific Forest Industries (Al-Pac) began operations in 1993 under a new Forest Management Agreement (FMA), granted by the provincial government in 1991 (

Figure 5).

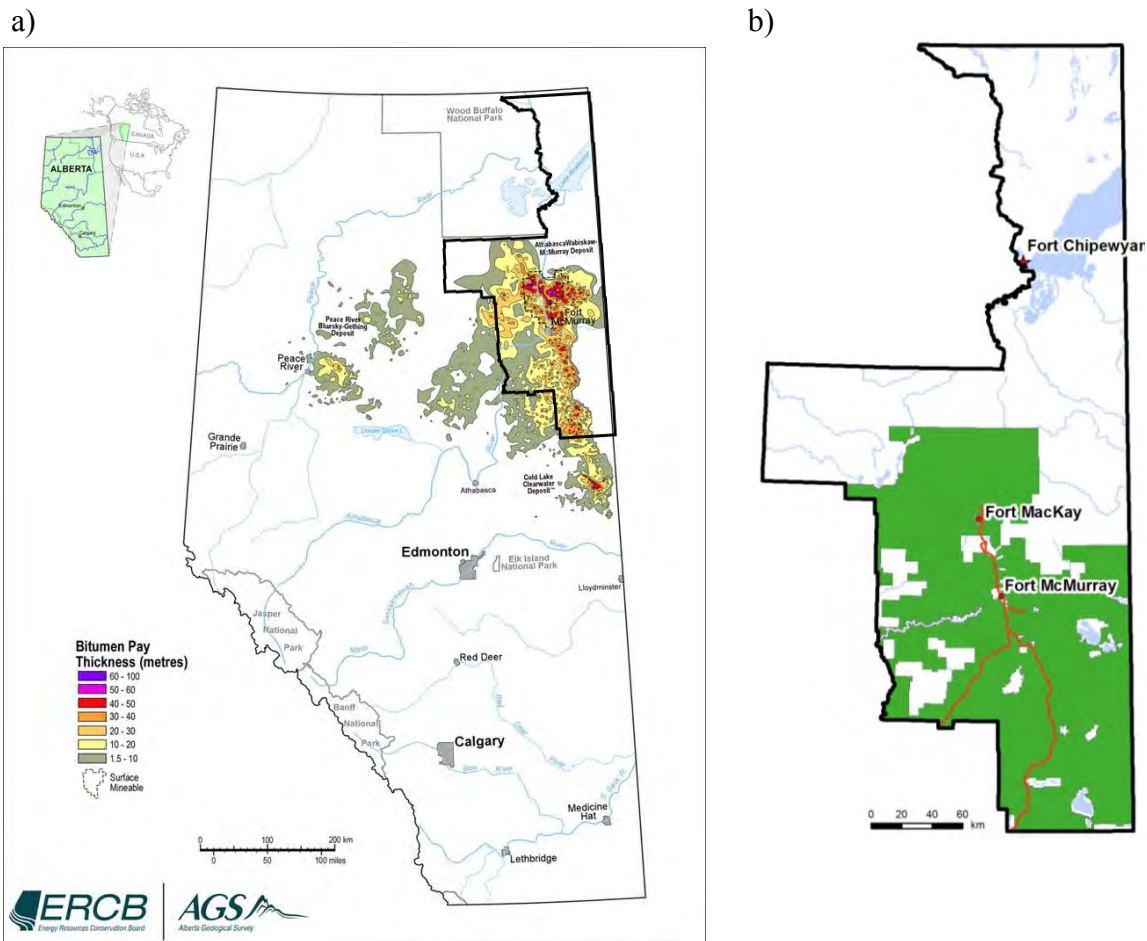


Figure 5. a) Oilsands deposits in Alberta (Source: Alberta Geological Survey/Energy Resources Conservation Board 2009), and b) AI-Pac FMA (Source: AltaLIS 2009).

In step with energy development and recent forestry activity, the number of people in the Lower Athabasca River basin has grown by nearly one hundred fold, from approximately 1,000 to almost 100,000 people over the last century. Much of this growth has occurred in the past 20 years. The population growth rate for the Municipality of Wood Buffalo from 2000 to 2006 was 8.7 percent per year, with the majority of people residing in and around Fort McMurray.

Demand for oil and forest products, goods, and services has altered the lower Athabasca River basin through logging, bitumen mining, in-situ bitumen extraction, townsite and work camp growth, and an increasing network of roads, railways and industrial facilities. Such land-uses have both direct and indirect effects on water, forests and fish and wildlife. Examples of land-use features and activities that cause direct effects include tailings ponds (Figure 6), water removal for industry, logging cutblocks, residential

developments, golf courses, parks, roads and release of waste water and industrial effluent into the Athabasca River.

One of the major direct effects of development in the region is the change in the amount of natural areas (forests, wetlands, lakes and rivers) which sustain native fish and wildlife and are essential for traditional use of these resources. The total area affected by industrial, forestry and townsite and residential growth has increased to approximately 270,000 ha (four percent of Regional Municipality of Wood Buffalo), with most disturbances concentrated in areas underlain by bitumen reserves).



Figure 6. Tailings ponds adjacent to Athabasca River (left photo; source: Pembina Institute). Seismic line linear features have fragmented the boreal forest (right photo).

Linear features, such as pipelines, roads, seismic lines and trails have fragmented the boreal forest as seen in Figure 6. The amount of linear features created by industrial activity can affect many environmental and physical indicators. These features become access corridors not only for industrial use but also for motorized access for fisherman, hunters, trappers, recreationalists and even for wide ranging predators such as wolves. Linear features constructed for both energy and forestry operations tend to create younger forests, increase sediment runoff, and reduce the area of intact forest.

Surface and groundwater in the Athabasca River and its tributaries are essential to current bitumen extraction processes; large amounts of surface and groundwater are used in the extraction of bitumen. Open pit mining uses approximately 2.5 barrels of water per barrel of bitumen produced while in-situ extraction uses about 8.5 barrels of fresh water per barrel produced (CEMA 2008). In-situ bitumen extraction obtains required water volumes primarily from groundwater sources.

In the Athabasca River, both total yearly and seasonal water flow has been reduced by natural reductions due to changes in glacial mass loss at the headwaters and water withdrawals both within and upstream of the Municipality. Decreased flows have created challenges for summer navigation on the Athabasca River for aboriginal land users during the spring, summer and fall wildlife harvesting periods. Decreased flows have also increased the severity of low flow winter conditions, increasing the potential for impacts on native fish populations.

Culturally important fish and wildlife such as caribou, moose, black bear, fisher, walleye and grayling have generally been negatively impacted by the rapid increase in human population, industrial development and residential growth. Research shows that caribou are highly sensitive to the effects of industrial activity with significant population declines documented in the Athabasca region over the last 30 years (Athabasca Landscape Team 2009). Challenging management actions will be required to maintain healthy wildlife and fish populations in the face of growing human activities.

6. FUTURE CHANGE

6.1 ECONOMIC

Bitumen extraction in the Regional Municipality of Wood Buffalo is currently the largest contributor to per capita income and is a significant driver of both the provincial and national economy. Increasing extraction rates would deplete the currently identified recoverable bitumen deposits sooner, resulting in an abrupt decline in the economic contribution of the industry to the provincial and national economy at some point in the future. Maintaining lower production rates over a longer time frame would extend the resource and the associated economic benefits further into the future.

6.1.1 Bitumen Production

Figure 7 shows projected annual bitumen production (millions of m³ per year) for the 7.5 Bm³ and 15 Bm³ scenarios. For the 7.5 Bm³ scenario, the current rate of bitumen extraction (1.3 million barrels per day) would be maintained for 100 years, while the 50 year scenario requires a doubling in the current rate of production so that the same total production can occur in half the time. Both time frames result in approximately half of the total estimated recoverable bitumen reserves being produced over their respective time period.

Similarly, the 15 Bm³ - 200 year scenario maintains the current level of production for a period of 200 years, while the 100 year scenario requires a doubling of the production rate to extract the same volume of bitumen. Both 15 Bm³ scenarios results in all estimated recoverable bitumen reserves being produced, but over different time frames.

For both the 7.5 Bm³ and 15 Bm³ scenarios, a doubling of the production rate generally results in twice the level of required workforce, infrastructure and human footprint. Each is further discussed in the following sections.

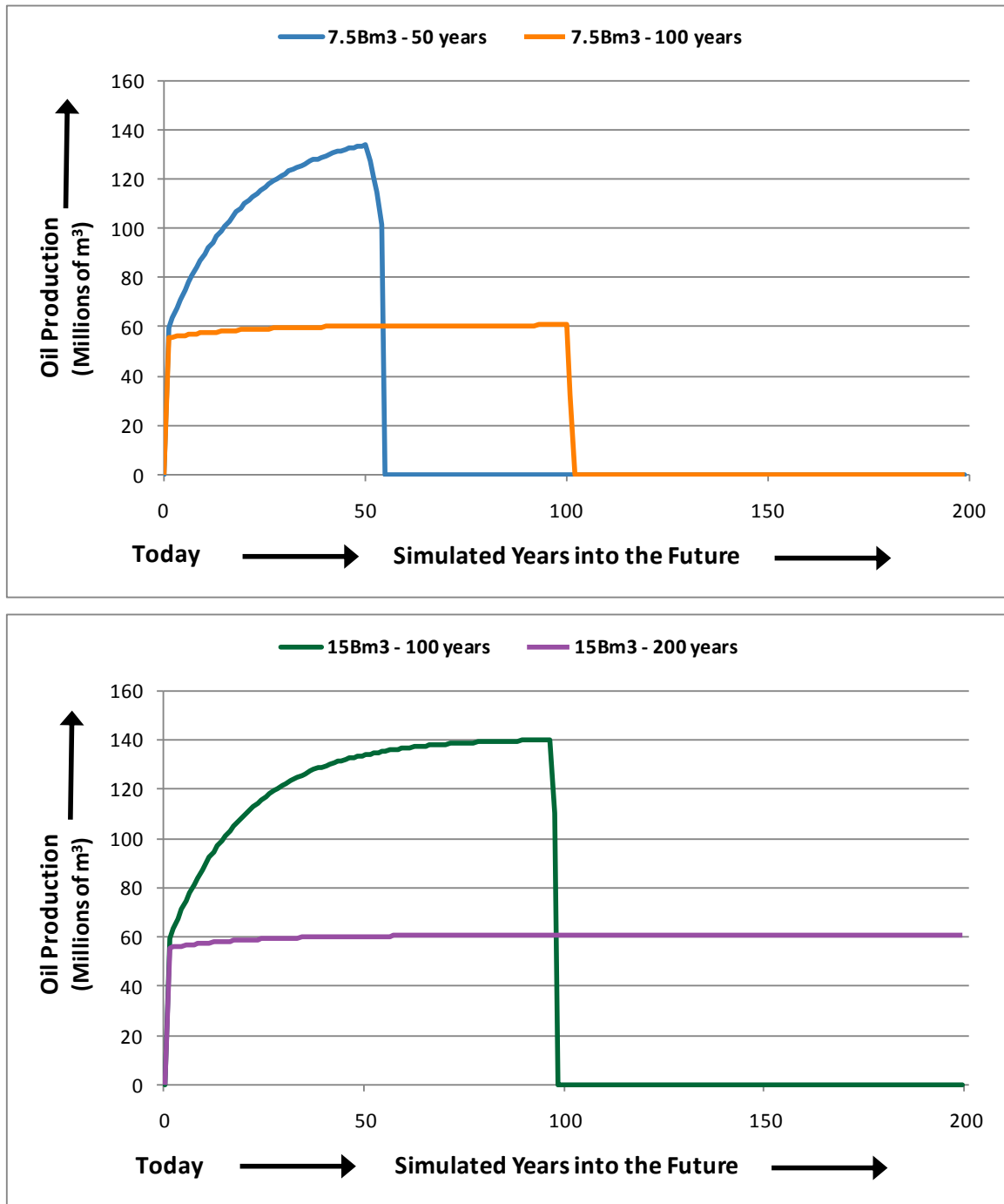


Figure 7. Simulated bitumen production resulting from the 7.5 Bm³ production scenario over 50 and 100 year periods (top graph); and 15 Bm³ production scenarios over 100 and 200 year periods (bottom graph).

6.1.2 Employment

The oilsands industry in the Regional Municipality of Wood Buffalo currently provides 23,000 to 25,000 direct full time equivalent jobs annually (Figure 8). Under the 7.5 Bm³ – 100 year scenario, the level of direct annual employment would decline to about 12,000 at the end of 100 years (50 percent decrease from current). In contrast, the 7.5 Bm³ – 50 year scenario results in a rapid increase in direct annual employment, reaching about 33,000, but then abruptly declining to near zero at the end of the 50-year production period. The 7.5 Bm³ – 100 year scenario results in 12,000 to 14,000 direct jobs annually for an extra 50 years.

Future projected changes in employment resulting from the 15 Bm³ scenario are anticipated to be of similar magnitude as described for the 7.5 Bm³ scenarios. Under the 15 Bm³ – 200 year scenario, the level of direct annual employment would decline to about 8,000 at the end of 200 years (65 percent decline from current). In contrast, the 15 Bm³ – 100 year scenario results in a rapid increase in direct annual employment, reaching about 33,000, slowly declining to around current levels, and then abruptly declining to near zero at the end of the 100 year production period. The 15 Bm³ – 200 year scenario results in 8,000 to 12,000 direct jobs annually for an extra 100 years.

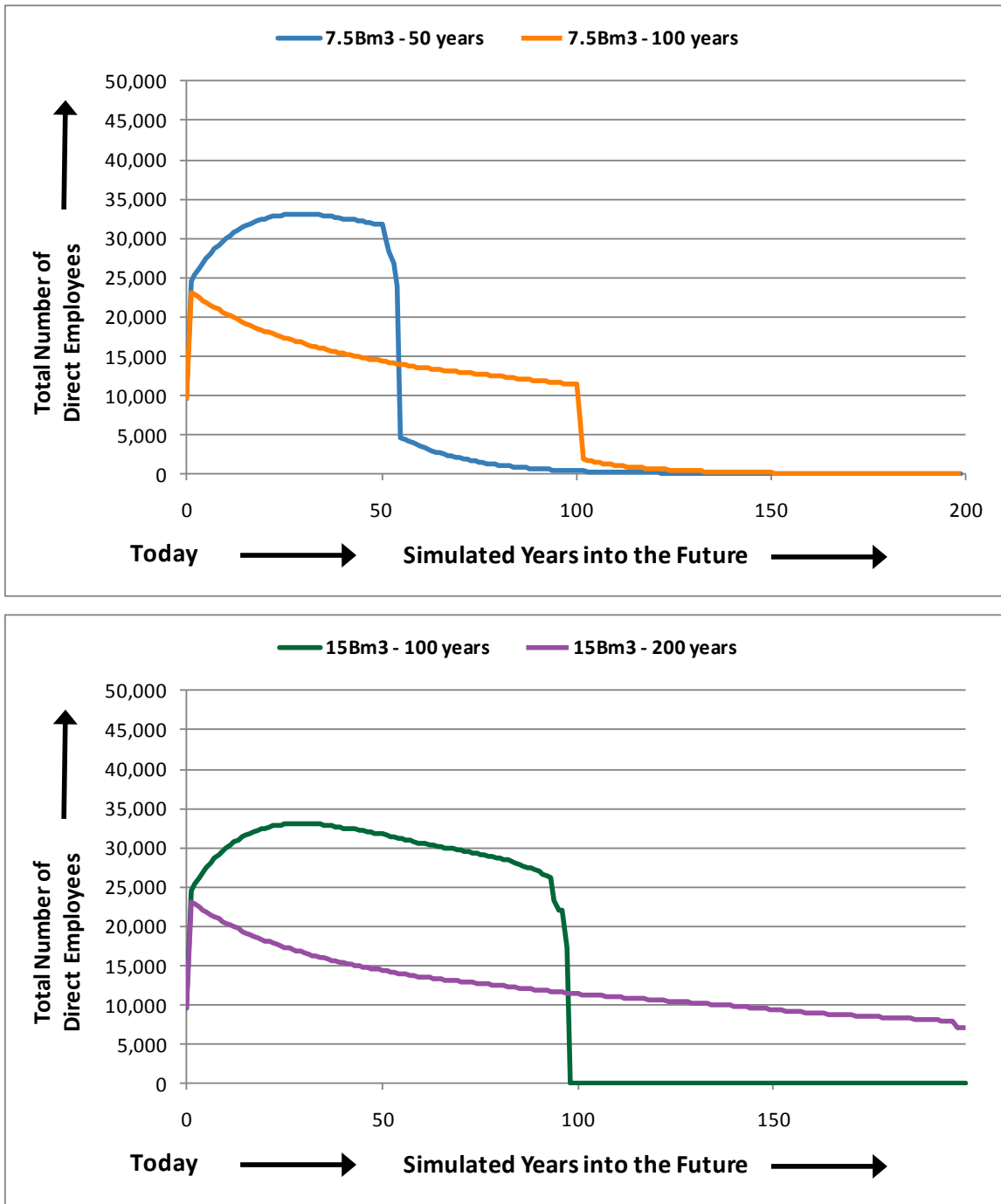


Figure 8. Simulated annual direct employment resulting from the 7.5 Bm³ production scenario over 50 and 100 year periods (top graph); and 15 Bm³ production scenario over 100 and 200 year periods (bottom graph).

Results for the ACFN/ATC oilsands workforce employment scenarios are shown in Figure 9 and Figure 10. Currently ACFN/ATC employees comprise about three percent of the total oilsands workforce. Figure 9 illustrates the difference that exists between ATC/ACFN workers and the total current and projected future required oilsands workforce. Under the one percent aboriginal population growth scenario, ACFN/ATC members would account for less than 15 percent of the total oilsands positions in 100 years, assuming a maximum employment rate in oilsands positions of 70 percent is maintained (Figure 10). The two percent aboriginal population growth scenario results in a larger proportion (35 percent) of the total oilsands workforce positions being filled by ACFN/ATC members at 100 years (Figure 10). Over the long-term, the slower-growth 200 year extraction scenario results in a higher proportion of positions potentially being filled by ACFN/ATC citizens, as the total workforce requirements are lower (Figure 9).

In this analysis, results are only reported for the 15 Bm³ bitumen extraction scenario; the same trends are observed under the 7.5 Bm³ scenario. Varying other employment parameters such as the total employable ACFN/ATC workforce, which in these simulations was modeled at 20 percent, has similar incremental effects on the proportion of potential oilsands positions that could be filled by ACFN/ATC employees. Given the current and future population and workforce characteristics, it is unlikely that ACFN/ATC workers will fill a substantial proportion of total oilsands workforce positions unless bitumen production decreases significantly.

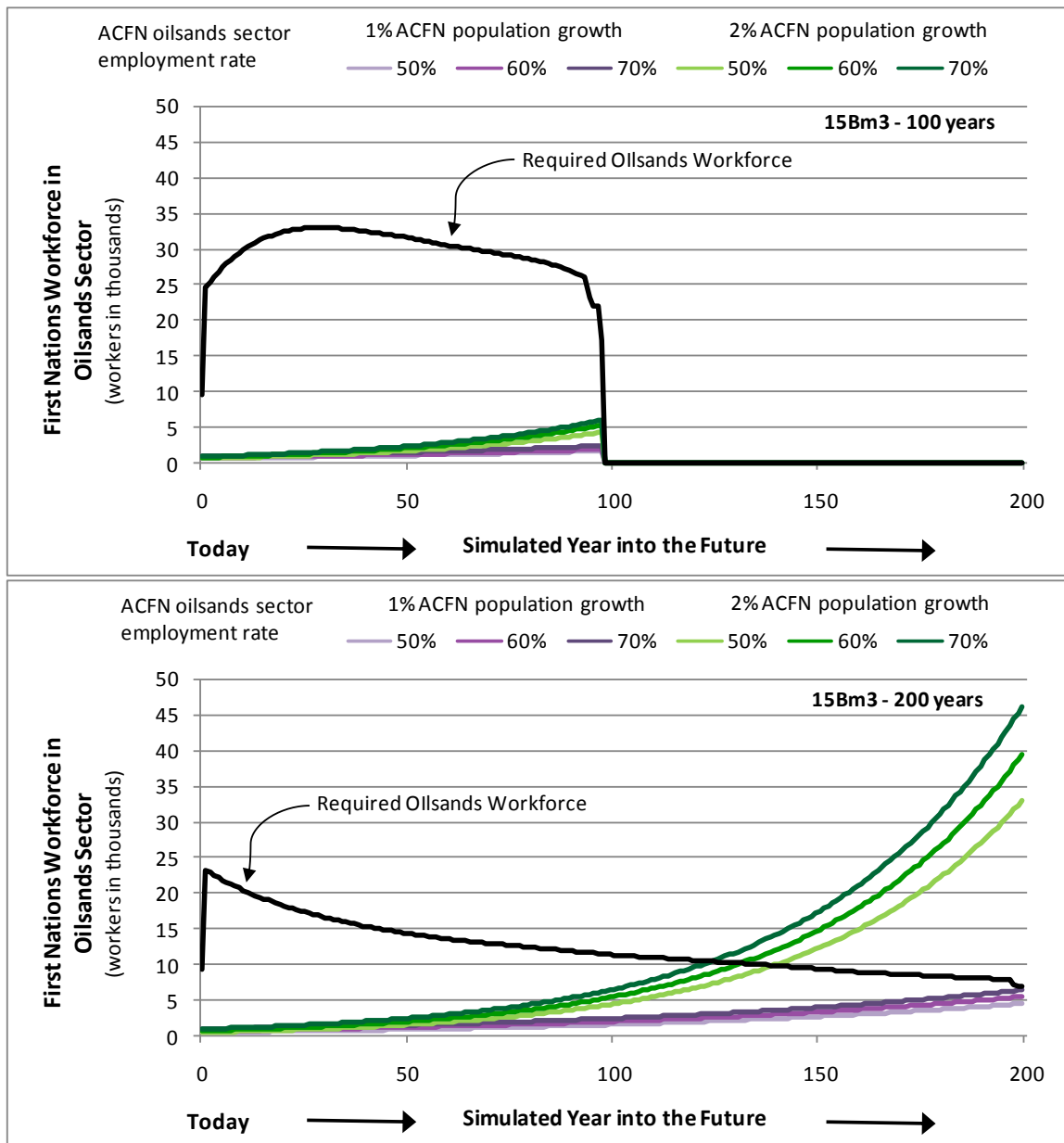


Figure 9. Potential number of ACFN/ATC workers employed in oilsands workforce at one percent and two percent population growth rates under the 15 Bm³ production scenario for the 100-year (top graph) and 200-year periods (bottom graph).

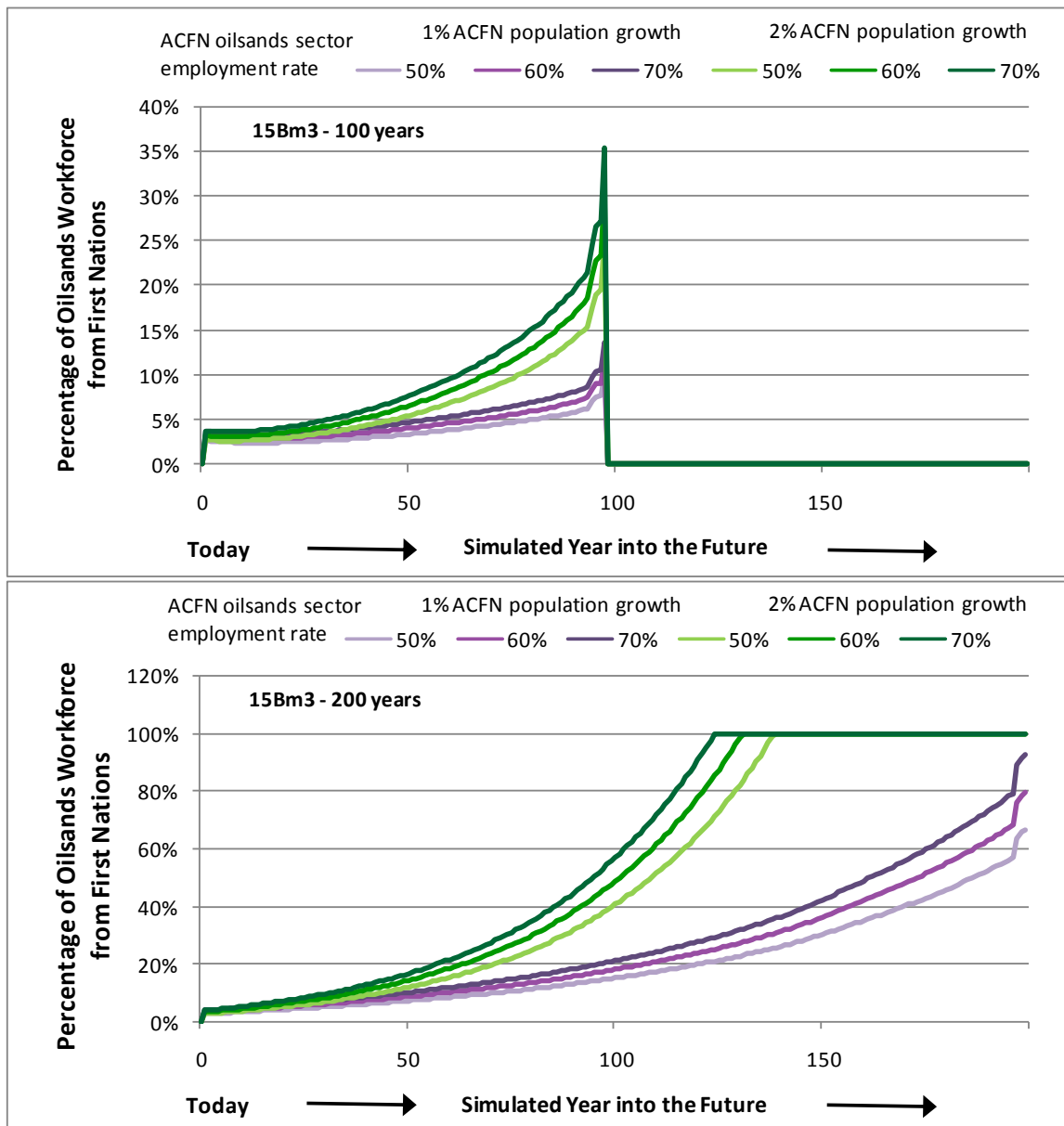


Figure 10. Potential percentage of total oilsands workforce comprised by ACFN/ATC workers at one percent and two percent local aboriginal population growth rates under the 15 Bm³ production scenario for the 100-year (top graph) and 200-year periods (bottom graph).

6.2 LAND

Many changes to the land are anticipated to result from ongoing or new industrial land-use activities, increasing human populations and expanding transportation networks. Potential changes in disturbed area, linear features (fragmentation) and forest patches are discussed below. Disturbed area is discussed in greater detail, as the pattern of

disturbance is important to understanding the potential response of indicators to cumulative land-use activity.

6.2.1 Disturbed Area

Figure 11 shows the projected area disturbed from the 7.5 Bm³ and 15 Bm³ bitumen scenarios. The current level of human-caused disturbed area is estimated to be approximately 225,000 ha.¹

6.2.1.1 7.5 Bm³ Scenarios

For the first 40 years of the simulation period, total disturbed area for the 7.5 Bm³ scenarios ranges between 180,000 to 225,000 ha, with the 50 year scenario generally creating 15 percent more disturbed area in any given year. At year 45, there is a large drop in disturbed area, caused by surface mine closures and subsequent reclamation. Around year 45, most surface minable bitumen resources are expected to be depleted, and the surface mines and associated facilities account for a significant proportion of the total disturbed area.

Around year 60 of the simulation period, disturbed area associated with the 100 year scenario becomes larger than that created by the 50 year scenario. This situation results from the longer bitumen production of the 100 year scenario, and its associated population and transportation growth, continuing past year 50. In the 50 year scenario, bitumen production, and associated population and transportation growth, is assumed to cease at year 50, resulting in declining footprint for the duration of the simulation period. It is important to recognize that this assumption may not be correct, and that the regional population and transportation features may continue to increase after bitumen production ends.

Both the 50 and 100 year 7.5 Bm³ scenarios result in approximately 150,000 ha of direct footprint for the final 100 years of the simulation period. Most of the remaining area disturbed at year 200 would be townsites and transportation features. Compared with the 15 Bm³ scenarios (described below), the lower extraction volume of 7.5 Bm³ results in less footprint and a smaller regional human population, approximately 300,000 people versus 1.3 million.

¹ Note: On Figure 11 (7.5 Bm³ scenario), the immediate decline in disturbed area from 275,000 to 225,000 ha at time 0 is caused by the model adjusting for the estimated proportion of features reclaimed at time 0, versus the total amount of features built. The same decline is observed on the 15 Bm³ scenarios.

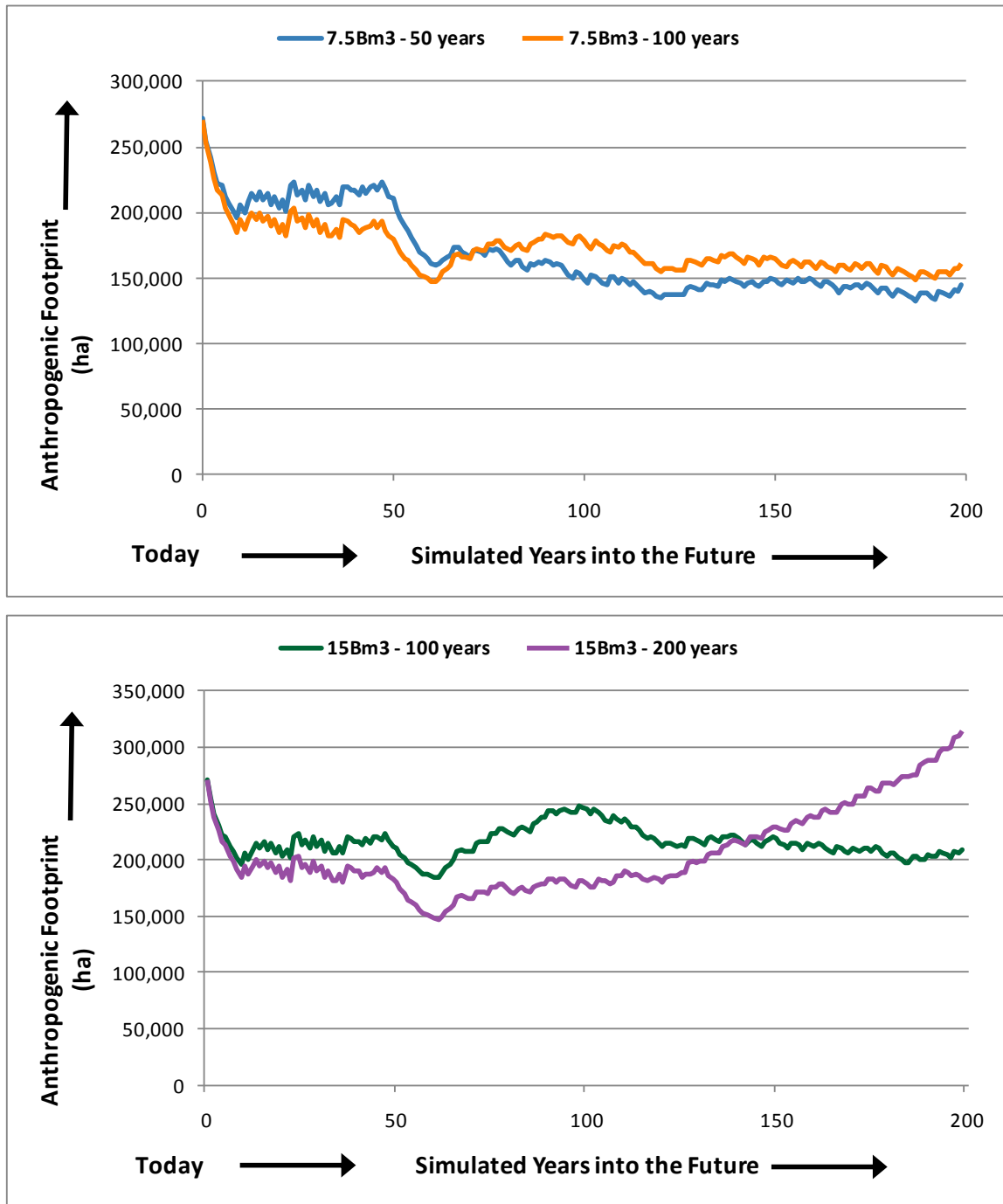


Figure 11. Simulated levels of disturbed area (anthropogenic footprint) resulting from the 7.5 Bm³ production scenario over 50 and 100 year periods (top graph); and 15 Bm³ production scenario over 100 and 200 year periods (bottom graph).

6.2.1.2 15 Bm³ Scenarios

The Regional Municipality of Wood Buffalo will experience significant growth in land-use footprints under the 15 Bm³ bitumen extraction scenario. The initial 50 years of the 15 Bm³ scenario simulations result in similar levels and pattern of footprint growth and reclamation as the 7.5 Bm³ scenarios (Figure 11). However, after year 60 of the simulation period, the 15 Bm³ – 100 year scenario results in a rapid increase in disturbed area as a result of in-situ activity, reaching 250,000 ha at year 100.

In the 15 Bm³ - 100 year scenario, bitumen production ceases at year 100, and additional population or transportation-related footprint growth is assumed to not occur after this time. Given this assumption, the rate of reclamation overtakes the pace of human footprint development. If this assumption is correct, after 200 years the disturbed area would be approximately equal to today's existing disturbed area, and would be composed primarily of townsites and transportation features.

In contrast, the 15 Bm³ - 200 year scenario continues to build human footprint for an additional 100 years, outpacing the rate of reclamation. For this reason, the 15 Bm³ - 200 year run results in substantially more disturbed area in 200 years than today. This situation results from the scenario assumption that population and transportation growth is wholly dependent on bitumen production—an assumption that may not be correct, particularly if increased reserves are found, or if some other major economic activity arrives in the region. As discussed in the 7.5 Bm³ – 100 year scenario, most of the additional footprint results from population and transportation-related features.

Under the 15 Bm³ volume scenarios, continuing growth of residences, towns and cities, the energy and forestry industry, and other land-uses will reduce the number and size of natural areas in the Regional Municipality of Wood Buffalo. Most remaining natural areas will be in protected areas, where industrial activity is not allowed, or in areas not underlain by bitumen reserves or part of forestry management areas. Parks also have existing land-uses and continued growth of human activity and park facility footprints are likely in these areas also.

Figure 12, generated by ALCES[®] Mapper[™], displays potential areas of future disturbed and undisturbed land for the 15 Bm³ - 100 year development scenario. The total area disturbed is expected to increase substantially under this doubling of current production scenario, and would be concentrated within areas underlain by recoverable bitumen deposits.

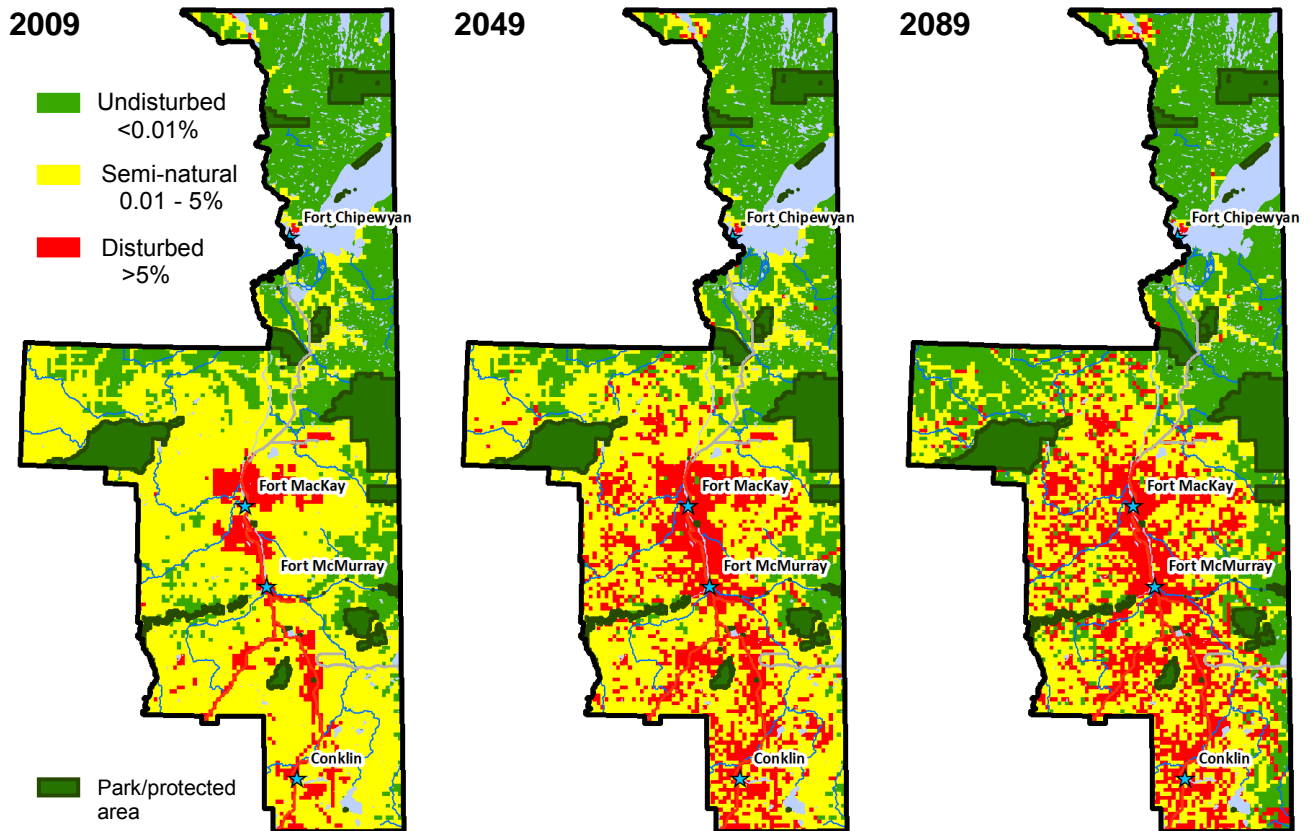


Figure 12. Potential location of future disturbed and undisturbed lands for years 2009, 2049 and 2089 based on 15 Bm³ bitumen scenario.

6.2.1.3 Urban and Population Growth

The projected bitumen production growth rates and disturbed area mean that industrial features and urban centers such as Fort McMurray will continue to expand during the period of bitumen production. Workers and their children, grandchildren and neighbours, and service providers require residences to live and the water, land, and resources to support this growth. Based on historical trends², the regional population may reach approximately 1.3 million people under the 15 Bm³ scenarios in 100 to 200 years. The lower extraction 7.5 Bm³ scenarios results in less footprint and a smaller regional human population of approximately 300,000 in 100 to 200 years.

² Knowing that the population has grown in the last 100 years from approximately 1,000 to 100,000 people, with most growth in the past two decades, these trends suggest a potential increase from the existing 100,000 to 1.3 million people over the next 100 to 200 years.

Figure 13, generated by the ALCES Urban Growth Simulator[®], demonstrates the possible growth of urban footprint in Fort McMurray 50 years into the future based on historical growth rates.



Figure 13. Historical and potential future growth of Fort McMurray townsite. The area outlined in black is the urban footprint in 1951, the light area is urban footprint in 2007 and the red zone is projected footprint in 2057.
Source: ALCES Urban Growth Simulator[®].

6.2.1.4 Reclamation Rate

Reclamation rates achieved by industry will have a large effect on the amount of human footprint on the landscape. Figure 14 illustrates the potential effect of different reclamation rates on total disturbed area for the 15 Bm³ – 100 year scenario. If

reclamation rates are slower than anticipated, bitumen extraction may result in notably more disturbed area (25 percent) than under the base reclamation rate.

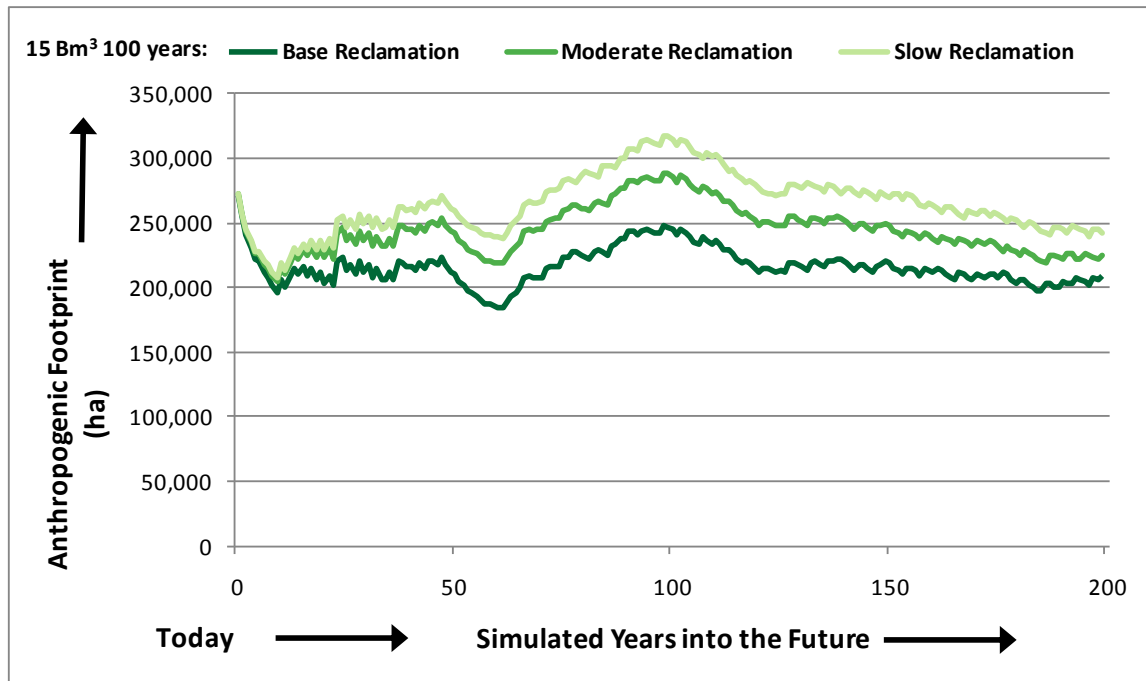


Figure 14. Potential levels of anthropogenic footprint resulting from the 15 Bm³ production scenario over 100 years, under base, moderate (2x slower) and slow (3x slower) reclamation rates.

6.2.2 Linear Features

Roads, seismic lines, cut lines, pipelines and other corridors are considered to be ‘linear features’. Linear features are important land-use features because they have substantial effects on water sedimentation loading, forest fragmentation, and fish and wildlife populations.

All scenarios will see the existing transportation network expand. Access to communities, acreages, forestry cutblocks, gravel pits, and bitumen-related industrial facilities will increase. For those living in the region, increasing linear features will mean that within the active bitumen and forestry harvest areas they are rarely out of sight of a road or corridor. Heavy vehicle or recreational use of these corridors also means that they take longer to reclaim back to natural vegetation, if ever.

As linear feature density increases (the total length of features per unit area) most wildlife and fish will also live closer to roads, meaning they are more likely to be killed by vehicles or human activities such as hunting and trapping. Some species, such as woodland caribou or lynx, avoid corridors or experience higher rates of predation close to

linear features. Other animals such as Canada geese, coyotes, and white-tailed deer adapt well to roads and disturbed areas, and they can displace or replace native species that avoid activity or noise. Roads and corridors also encourage the spread of weeds and invasive exotic plants into forests and grasslands where control is difficult. Unfortunately, once an access corridor has been created, it is very difficult to deny that access in future, and management of these undesirable changes becomes increasingly difficult.

Figure 15 shows the projected density of linear features for the 7.5 Bm³ and 15 Bm³ scenarios. The current average density of linear features in the region is approximately 0.85 km/km². The 7.5 Bm³ – 50 year scenario results in a 50 percent increase in linear feature density by year 50. Similarly, the 15 Bm³ – 100 year scenario results in a 100 percent increase in linear feature density at year 100. Given the scenario assumptions used in this project, at 200 years the 7.5 Bm³ scenarios would result in similar levels of linear features as today. In contrast, at 200 years the 15 Bm³ scenarios would result in 20 percent higher levels versus today.

It is important to realize that these linear density values represent averages across the entire region. Most future linear features would likely be concentrated within areas underlain by bitumen resources. Many of these areas would be expected to have linear densities greater than 5 km/km². These highly fragmented areas would generally correspond to the disturbed areas shown in Figure 12.

Increases in linear density after years 50 or 100 are not as pronounced as increases in disturbed area (Figure 11), as the largest contribution of disturbed area results from townsite and city expansion—both are non-linear features with large surface areas.

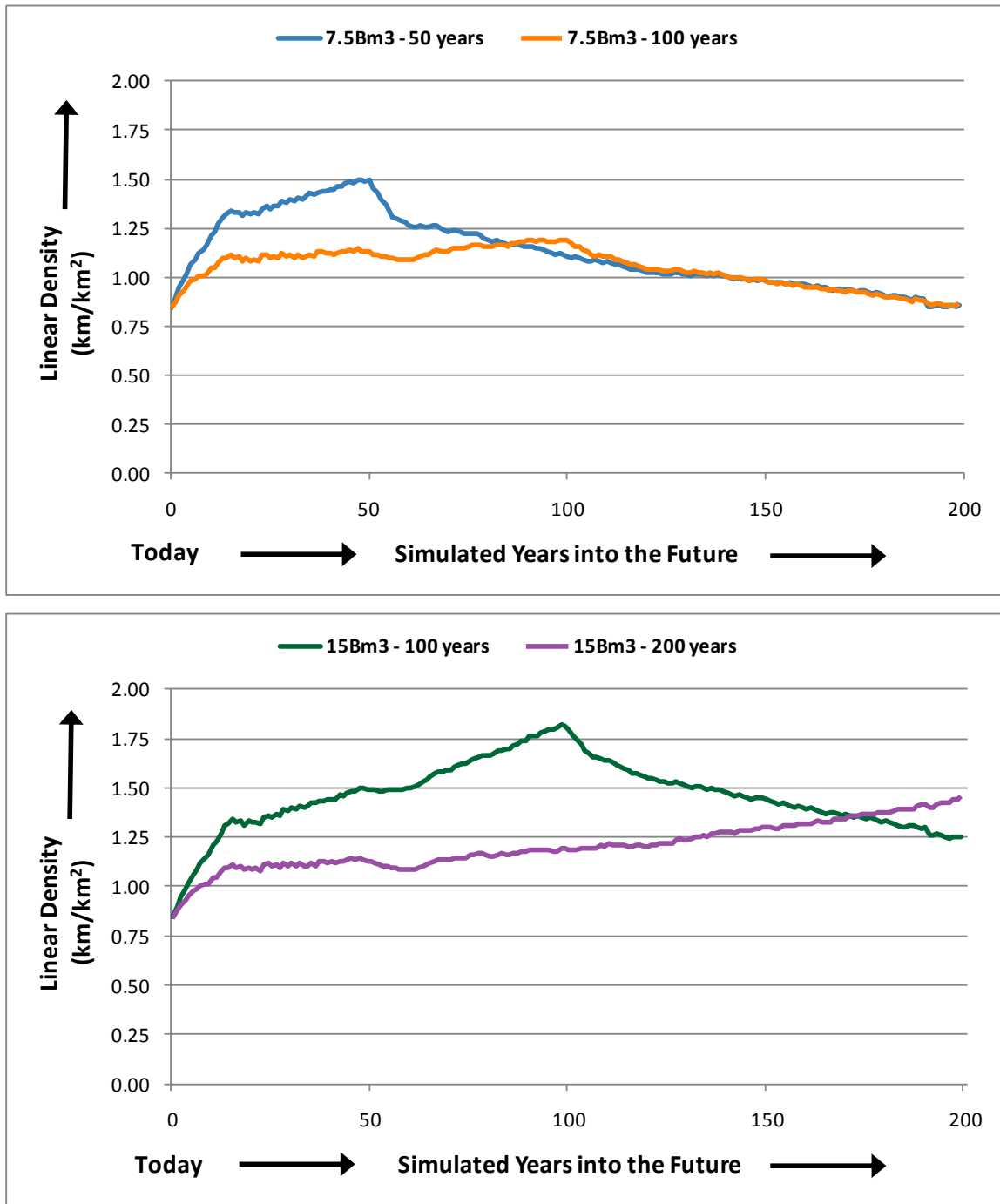


Figure 15. Potential average regional linear density (km/km²) resulting from the 7.5 Bm³ production scenario over 100 and 50 year periods (top graph); and 15 Bm³ production scenario over 100 and 200 year periods (bottom graph).

6.2.2.1 Reclamation Rate

Reclamation rates achieved by industry will have a significant effect on the amount of linear features, and the density of those features, on the landscape. Figure 16 shows the potential effect of different reclamation rates on average regional linear density for the 15 Bm³ – 100 year scenario. If reclamation rates are slower than anticipated, bitumen extraction may result in significantly more linear features (25 percent) than under the base reclamation rate, resulting in a much more fragmented and accessible landscape.

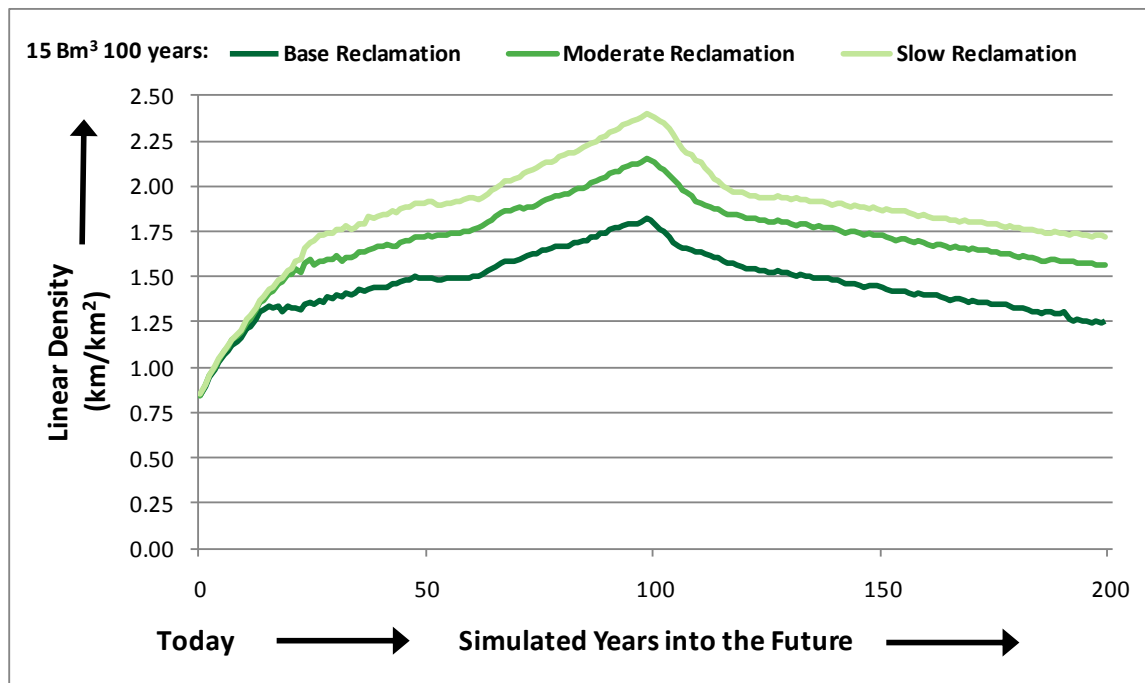


Figure 16. Potential linear density (km/km²) resulting from the 15 Bm³ production scenario over 100 years, under base, moderate (2x slower) and slow (3x slower) reclamation rates.

6.2.3 Forest Core Area

Forest core area is a measure of forest fragmentation, and is related to linear density. Intact forested landscapes have large patches of intact forests, with high core area. Highly fragmented landscapes have low core area, resulting from large numbers of linear features. Figure 17 shows projected forest core area resulting from the 7.5 Bm³ and 15 Bm³ scenarios. Approximately 30 percent of the region can currently be considered intact, or core, forest area. Most of this area is in existing protected areas and in the northern part of the study area, around Lake Athabasca (see Figure 12, year 2009). Elsewhere, forest core area will continue to decrease, and forests will generally become

younger due to forestry operations and the removal of trees for energy development, roads and residences.

In the initial 50 years of the simulation period, the amount of remaining forest core area is similar between the 7.5 Bm³ and 15 Bm³ scenarios. However, over the long-term, the 7.5 Bm³ extraction scenarios result in significantly less forest fragmentation than under the 15 Bm³ rate. Under both 15 Bm³ scenarios, forests will be more fragmented at 100 years and beyond.

Increasing levels of linear features means that over the next several generations it will become increasingly difficult to be in an area not crossed by some type of road, seismic line or pipeline, especially in the energy and forestry development zones.

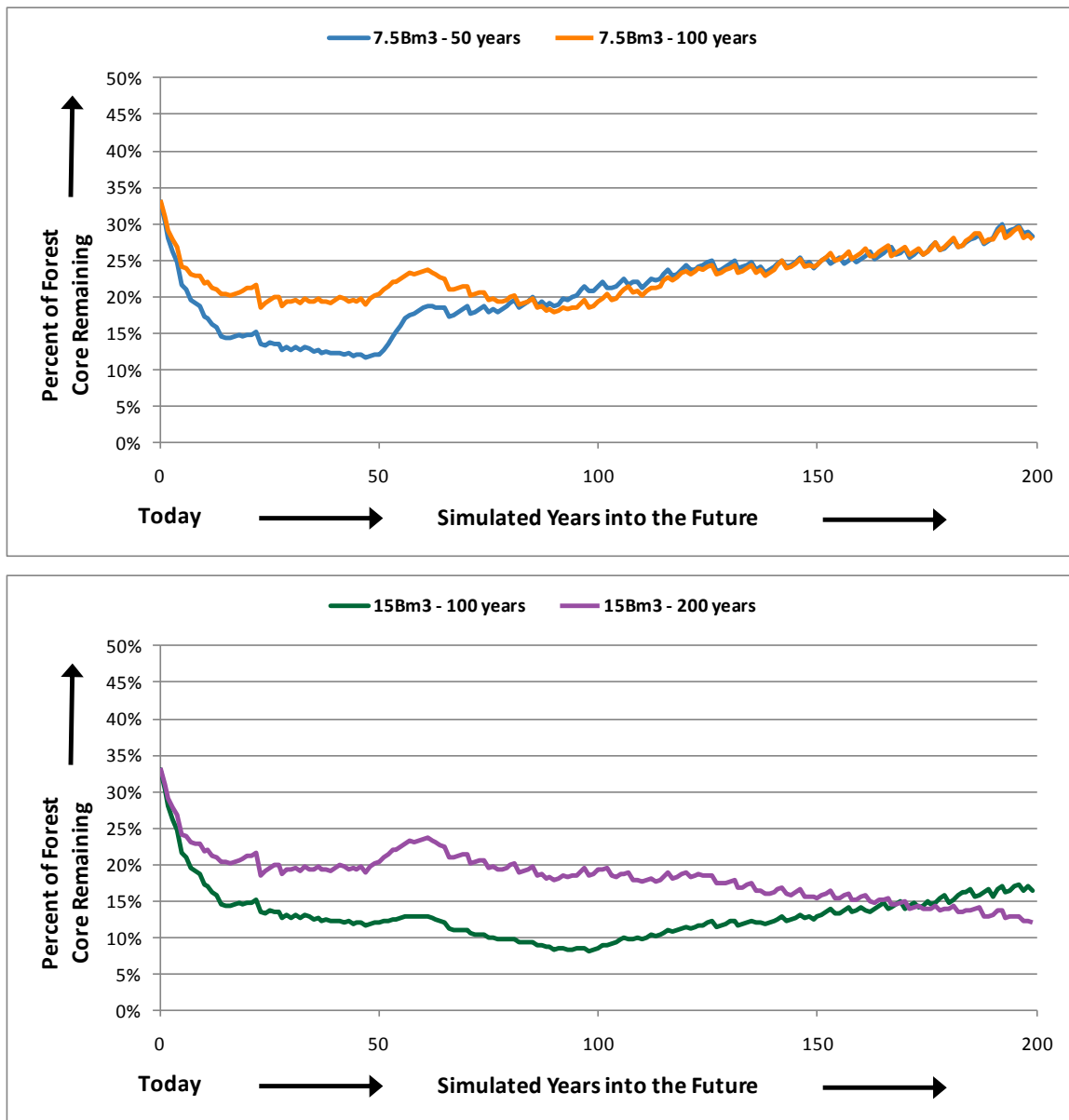


Figure 17. Potential percent of forest core area remaining, resulting from the 7.5 Bm³ production scenario over 100 and 50 year periods (top graph); and 15 Bm³ production scenario over 100 and 200 year periods (bottom graph).

6.2.3.1 Reclamation Rate

Figure 18 shows the potential effect of different reclamation rates on linear density for the 15 Bm³ – 100 year scenario. If reclamation rates are slower than anticipated, bitumen extraction may result in a substantially more fragmented forest landscape than under the base reclamation rate, posing a high level of risk to some native wildlife species such as caribou and fisher. This is further discussed in Section 6.4 (wildlife) of the report.

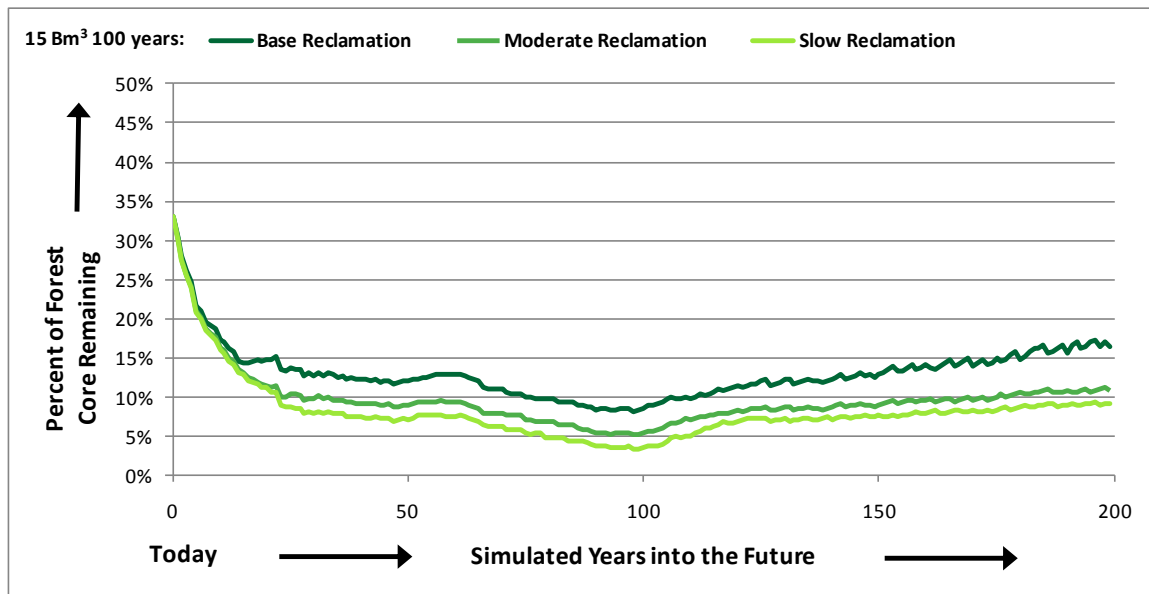


Figure 18. Potential percent of forest core area remaining, resulting from the 15 Bm³ 100 year production scenario under base, moderate (2x slower) and slow (3x slower) reclamation rates.

6.3 WATER

6.3.1 Water Demand

Current water demand within the Municipality is approximately 250 million m³ per year, with the majority being used for bitumen production. Future water demand for industrial and residential uses is projected to be similar to the current demand for the 7.5 Bm³ - 50 year and 15 Bm³ - 100 year scenarios, but then drop markedly after bitumen production ends (Figure 19). Under these two rapid extraction scenarios, challenges to water supply and water requirements for fish would be slightly higher than today, especially during river winter low flow periods.

In contrast, the longer extraction rate scenarios, (i.e., 7.5 Bm³ - 100 years and 15 Bm³ - 200 years) would both result in decreased water demand from today's rates. This would reduce concerns regarding water volume during the low flow winter season. Decreased water use per unit of oilsands and in-situ bitumen production may also contribute to reduced industrial regional water demand.

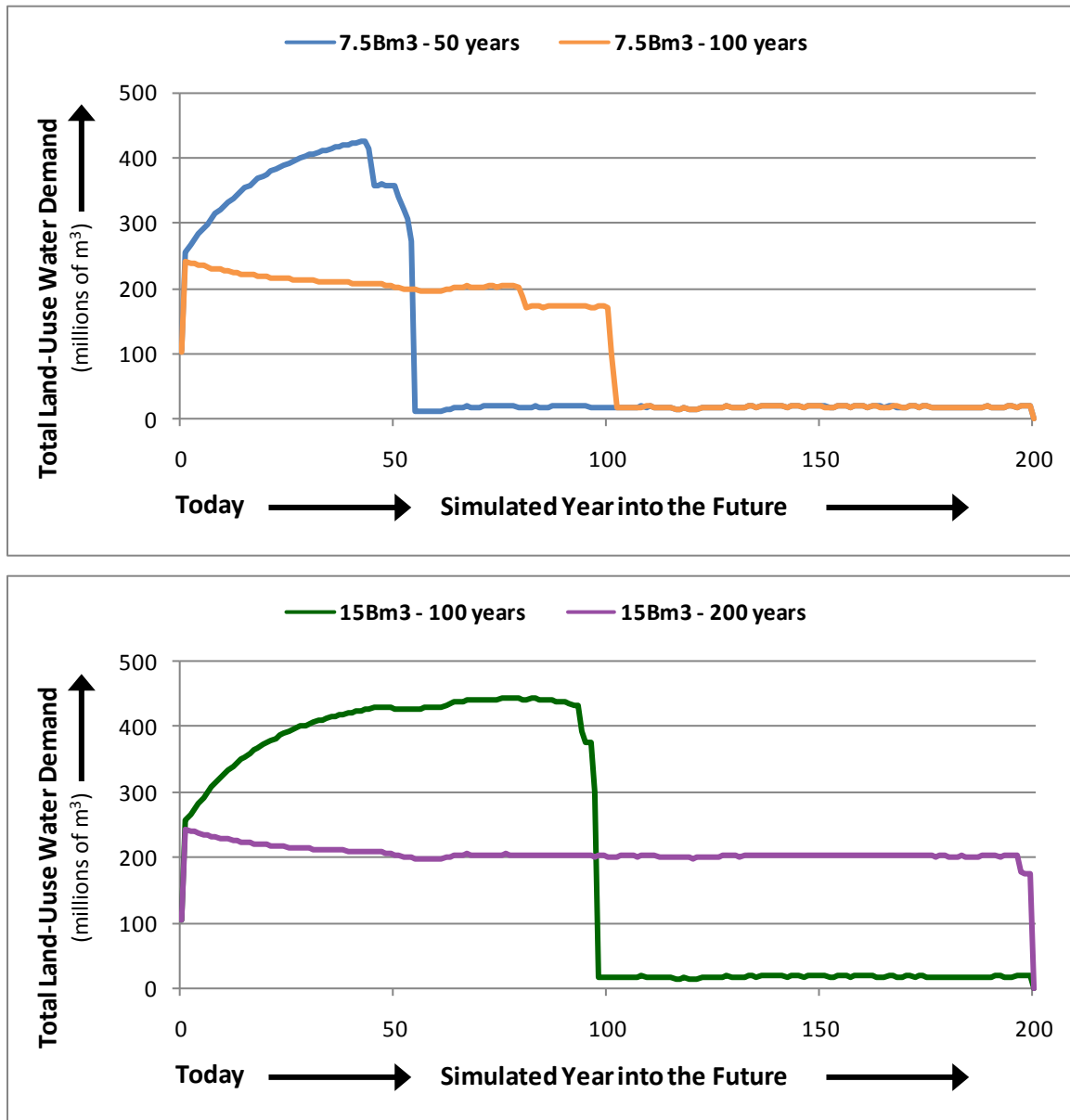


Figure 19. Simulated levels of total land-use water demand resulting from the 7.5 Bm³ production scenario over 100 and 50 year periods (top graph); and 15 Bm³ production scenario over 100 and 200 year periods (bottom graph).

ALCES[®] simulations demonstrate there are likely to be continued challenges with surface water flow for the more aggressive 15 Bm³ - 100 year and 7.5 Bm³ - 50 year bitumen extraction rates during low flow winter months. Currently all existing and proposed oilsands projects are anticipated to withdraw less than three per cent of the average annual flow of the Athabasca River (Alberta Environment 2007). During low flow

periods Alberta Environment plans to limit water consumption to five percent of annual average flow (Alberta Environment and Fisheries and Oceans 2007). Based on ALCES[®] modelling results, the amount of river water used by all land-uses is projected to be approximately seven percent during low flow in the February period (Figure 20).

Maintaining adequate low flow volumes for healthy fish populations while increasing bitumen production will remain a challenge for managers. During seasonal low flow periods, such as in February, fish are naturally in a higher level of stress due to low flow and low oxygen. Future increases in land-use water withdrawals may further stress fish and managers must manage for weekly/monthly flow conditions, not long-term annual flow averages. Future potential climate change-related effects on Athabasca River flow may result in naturally occurring declines in water availability, further exacerbating the challenging winter low flow conditions.

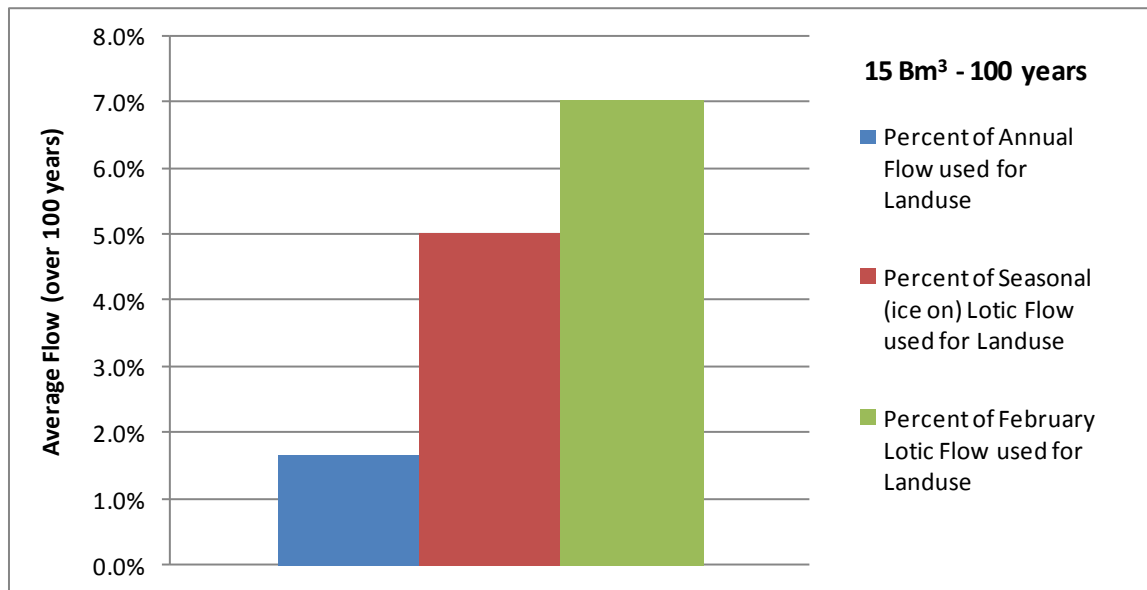


Figure 20. Percent of Athabasca River annual water flow required for all projected land-uses, annually and by season, for the 15 Bm³ – 100 year bitumen scenario.

6.3.2 Relative Water Quality

Nutrient, sediment and industrial releases into the lower Athabasca River basin will continue to increase over the next 100 years under the 15 Bm³ scenarios. More runoff will come from communities, roads, and other 'hard' surfaces, and sewage effluent will continue to be discharged from communities. Sediment loads will also increase from increasingly deforested areas and other industrial activities.

Modelling results suggest average relative water quality would remain close to today's levels for the 7.5 Bm³ extraction scenarios but would decline under the 15 Bm³ scenarios

(Figure 21). In this figure, the grey band represents the RNV—today’s relative water quality index is currently at or below the lower range of expected natural conditions.

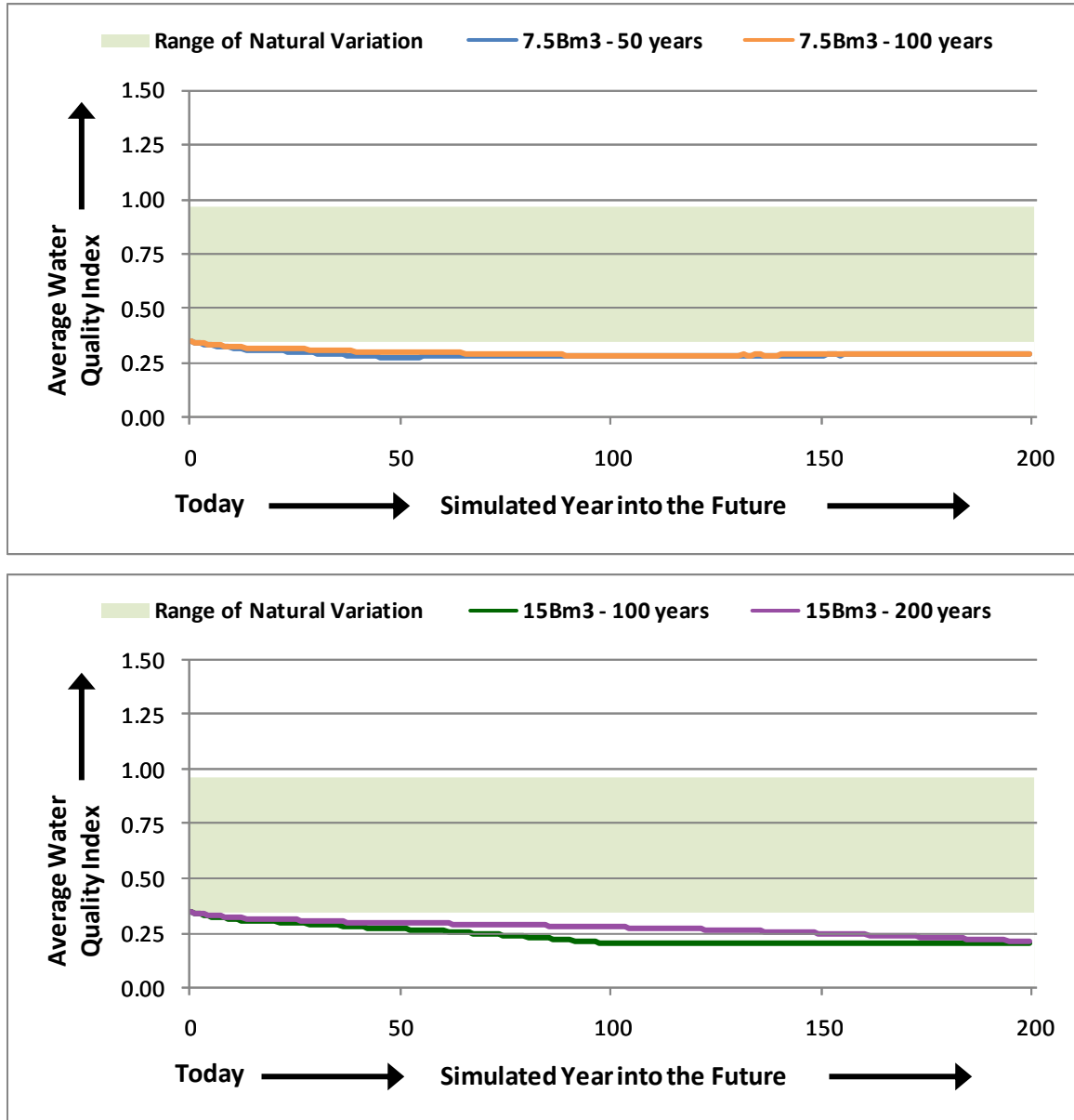


Figure 21. Simulated average water quality index resulting from the 7.5 Bm³ production scenario over 50 and 100 year periods (top graph); and 15 Bm³ production scenario over 100 and 200 year periods (bottom graph).

6.4 FISH AND WILDLIFE

Increasing disturbed area and fragmentation caused by land-use activities presents risks to native fish and wildlife populations. The potential effect of projected land-use activities on fish, caribou, moose, black bear, and fisher are described below.

6.4.1 Fish

Increased access to rivers, lakes and creeks by a growing human population using power boats, vehicles and float planes, has caused general declines in fish populations and habitat quality, especially in the southern area of the study region (Figure 22). The current Index of Native Fish Integrity (INFI) is approximately 0.45, representing more than a 50 percent departure from an optimal situation, represented by the grey bar at a value of 1.0. Under both the 7.5 Bm³ and 15 Bm³ production scenarios, INFI is projected to decline much further, with the 15 Bm³ – 100 year scenario declining to 0.05 around year 75. The 7.5 Bm³ scenario maintains a higher INFI, but still results in a 50 percent reduction compared with current conditions.

Fragmentation of watercourses by road crossings has reduced effective habitat for many species, further reducing the viability of native fish populations. Stream fragmentation may block fish passage between spawning, rearing and over-wintering areas, sometimes with severe consequences. Increasing nutrients, sedimentation and industrial wastes in river courses may further stress the health of fish populations, increasing their susceptibility to disease and possibly lowering reproductive capacity.

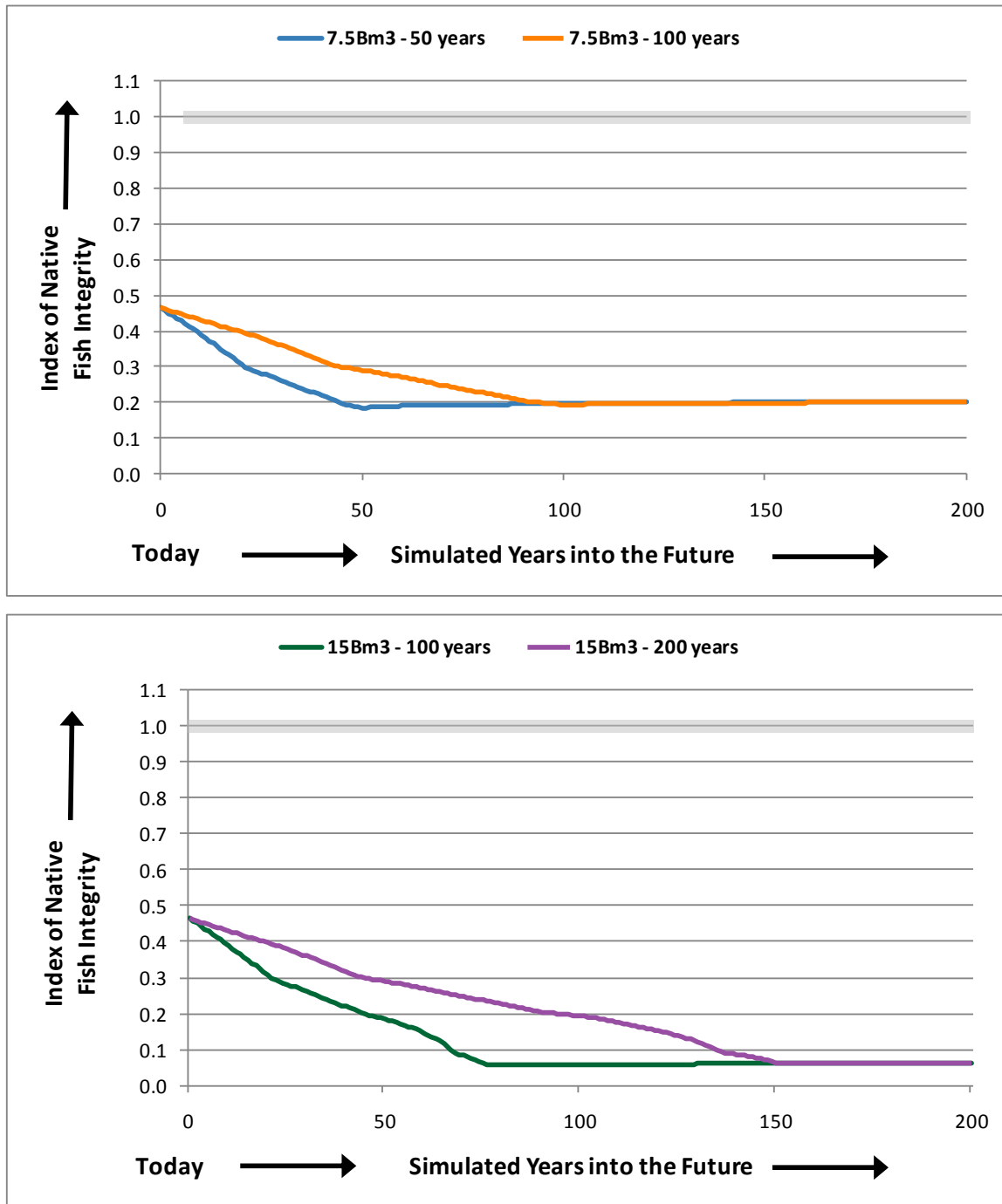


Figure 22. Potential INFI values resulting from the 7.5 Bm³ production scenario over 50 and 100 year periods (top graph); and 15 Bm³ production scenario over 100 and 200 year periods (bottom graph). The grey bar represents an INFI value of 1.0, representing an intact native fish population and high level of watershed integrity.

6.4.1.1 Reclamation Rate and Access Management

As shown in Figure 23, reclamation rate has only a minor effect on the INFI value (green lines). However, replacing hanging culverts which cause stream fragmentation and applying access management significantly reduces the downward trend of the INFI (pink line in Figure 23). Significant declines in INFI would still be projected under all scenarios, however, leading to future reduction in fish populations. Increasing government regulation, and potential closure of sport fisheries, would likely result, particularly in the southern watersheds of the Regional Municipality of Wood Buffalo.

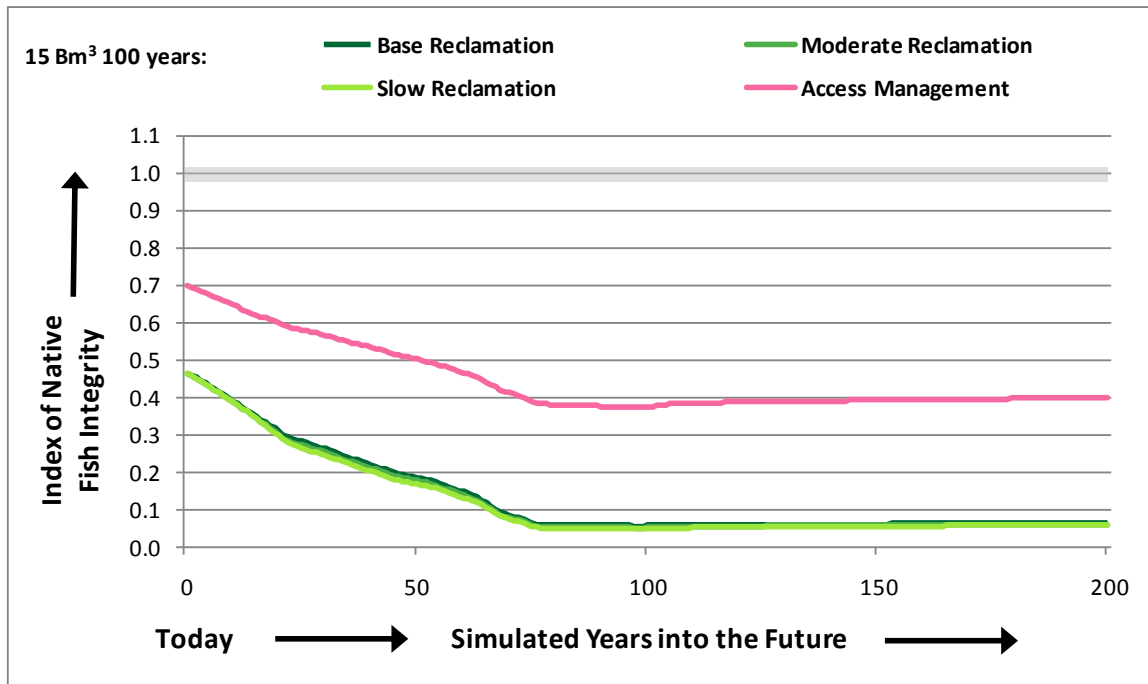


Figure 23. Potential Index of Native Fish Integrity (INFI) values resulting from the 15 Bm³ production scenario over 100 years, under base, moderate (2x slower) and slow (3x slower) reclamation rates, and with access management.

6.4.2 Caribou

Woodland caribou are recognised as a species sensitive to industrial development and landscape change. Given the large amount of industrial land-use activity within the region, caribou populations throughout the Municipality have been in decline. The cumulative effects of industrialization and forestry activity, and naturally occurring fire, have resulted in the loss of older forest habitat for caribou. The availability of younger forests which favours the geographic population



expansion of wolves, moose and deer then leads to a complex negative effect on caribou populations through increased predation by wolves.

Figure 24 shows the potential response of caribou to the 7.5 Bm3 and 15 Bm3 bitumen scenarios. Under all scenarios, it is projected that regional caribou populations will continue to decline with possible extirpation in the coming decades. Figure 24 shows the finite rate of population increase, where values below 1.00, identified by the grey horizontal bar, represent declining populations. Any trend which stays below 1.00 for a significant period of time means that not enough caribou are surviving to sustain the population.

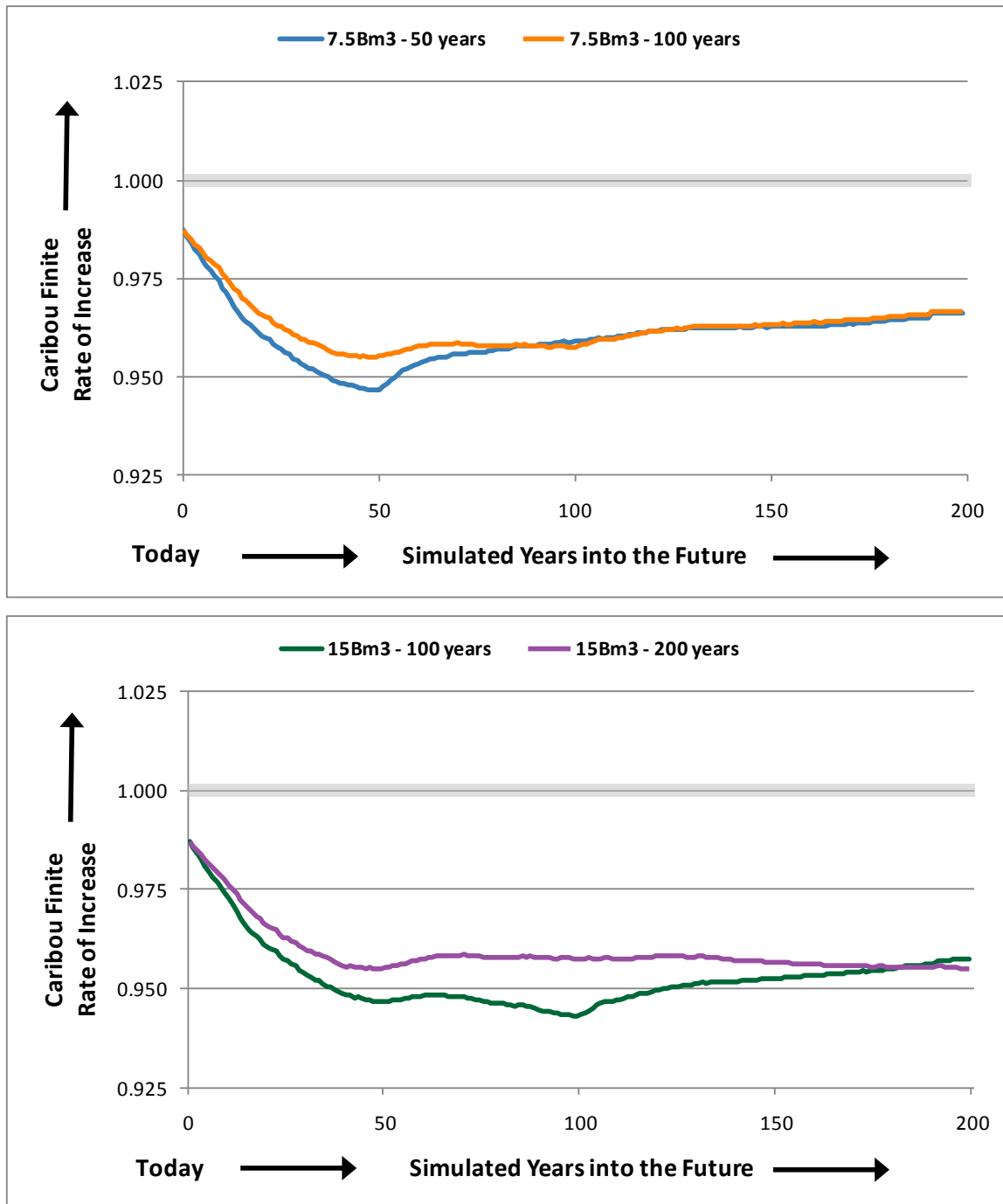


Figure 24. Potential caribou finite rate of population increase values resulting from the 7.5 Bm³ production scenario over 50 and 100 year periods (top graph); and 15 Bm³ production scenario over 100 and 200 year periods (bottom graph). The grey bar represents a stable population (habitat lambda of 1.0).

6.4.2.1 Reclamation Rate and Best Management Practices

Best management practises by the resource sectors include a variety of strategies to reduce industrial footprint such as roads, seismic lines and well pads, and reclaim footprints more quickly. Restricting public use of travel corridors, or access management, is another best management strategy. However, none of the best management practices investigated in this project appears to be able to sustain caribou population levels for any of the energy production scenarios; all scenarios result in finite rate of population increase values well below 1.0 (Figure 25).

If we hope to have caribou in northeast Alberta in the future, large areas of undeveloped intact habitat will likely have to be identified and conserved, and wolf populations aggressively reduced (Athabasca Landscape Team 2009). Areas of intact habitat could serve as source populations for possible future reintroduction into areas that have lost caribou populations after major industrial operations cease.

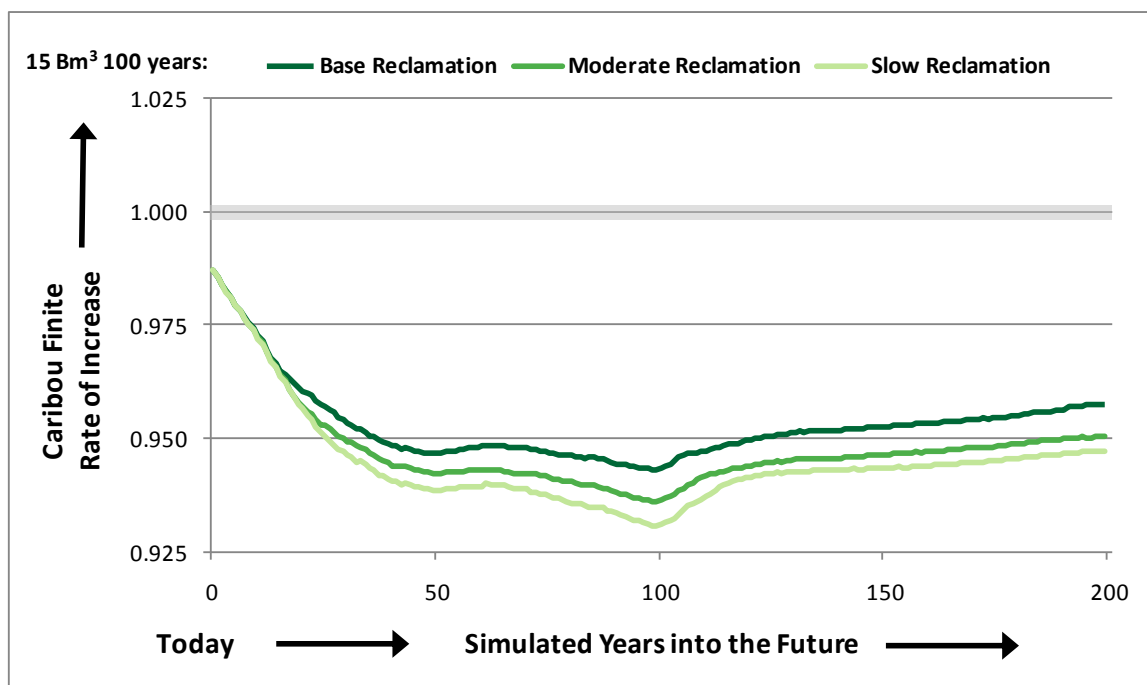


Figure 25. Potential caribou finite rate of population increase values resulting from the 15 Bm³ production scenario over 100 years, under base, moderate (2x slower) and slow (3x slower) reclamation rates. The grey bar represents a stable population (habitat lambda of 1.0).

6.4.3 Moose

The seismic lines, pipelines, cutblocks and roadways created by energy sector and forestry activities have created younger forests favoured by moose. With this change in habitat conditions it might be expected that moose numbers would increase. However, harvest rates have increased due to increasing numbers of humans hunting along roads, seismic lines and pipelines. Off-road vehicles and float planes allow access into previously inaccessible areas, and greatly increase the odds of a successful hunt

Figure 26). In addition to increasing harvest rates, moose habitat availability may also be declining, as habitat along many linear features may not be used as frequently by moose due to the high hunting pressures.



Figure 26. Float planes and off-road motorized vehicles allow hunters to access previously remote or inaccessible areas.

Figure 27 shows potential moose habitat effectiveness under the 7.5 Bm³ and 15 Bm³ bitumen scenarios. The current value is approximately 0.31, below the simulated RNV. As human populations and access increase, moose populations are projected to stay below RNV due to increased harvest levels. Generally, the 7.5 Bm³ scenarios would increase habitat effectiveness for moose from today's levels. The 15 Bm³ scenarios result in similar or slightly lower habitat effectiveness as current.

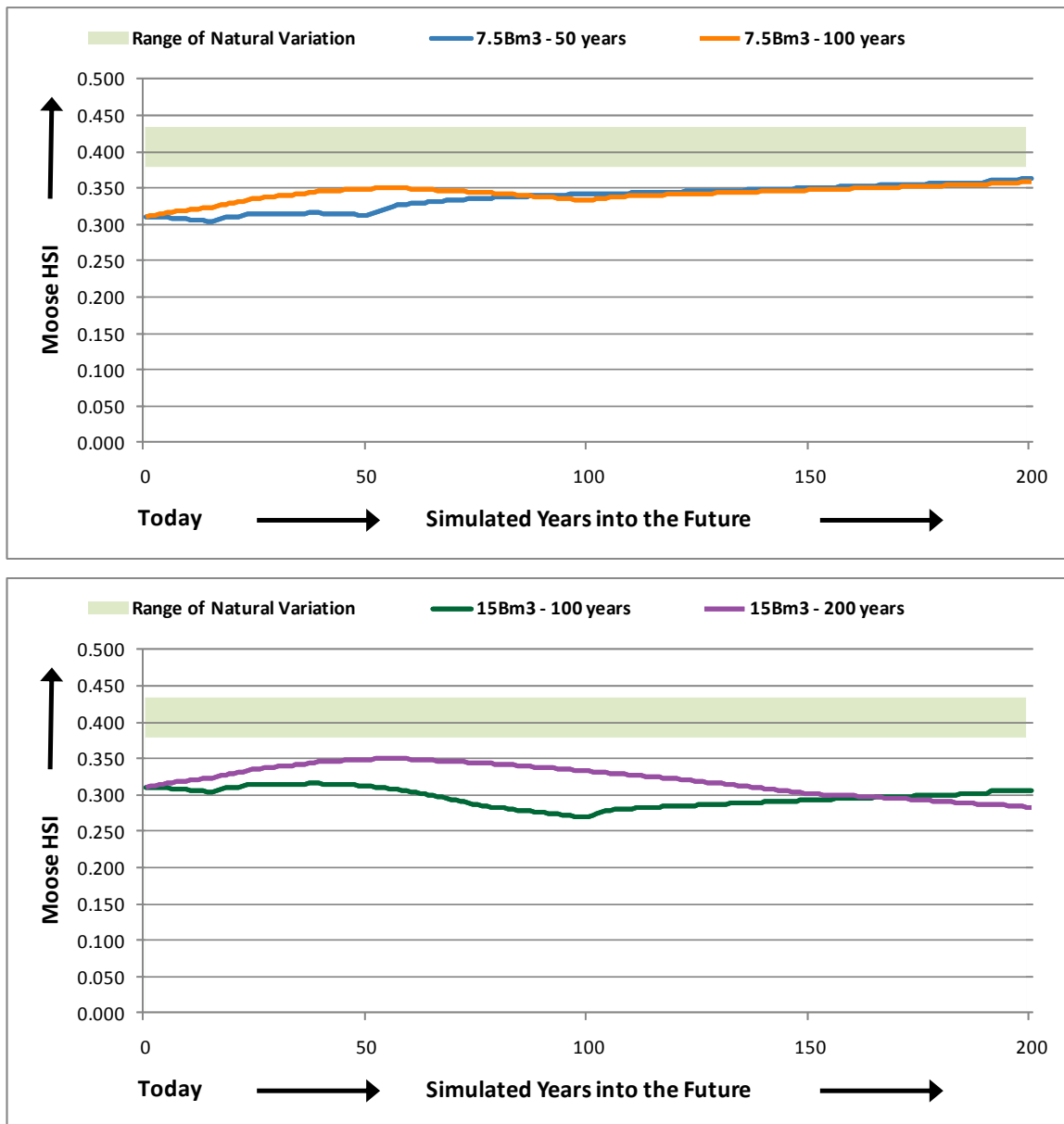


Figure 27. Potential moose habitat effectiveness resulting from the 7.5 Bm³ production scenario over 50 and 100 year periods (top graph); and 15 Bm³ production scenario over 100 and 200 year periods (bottom graph). The green band represents the simulated range of natural variation in moose habitat quality.

6.4.3.1 Reclamation Rate and Best Management Practices

The implementation of best management practises and access control would likely improve moose habitat effectiveness above today’s levels, for all scenarios (Figure 28). Access management, due to its influence on moose harvesting rates, has the greatest effect of the best management practices explored.

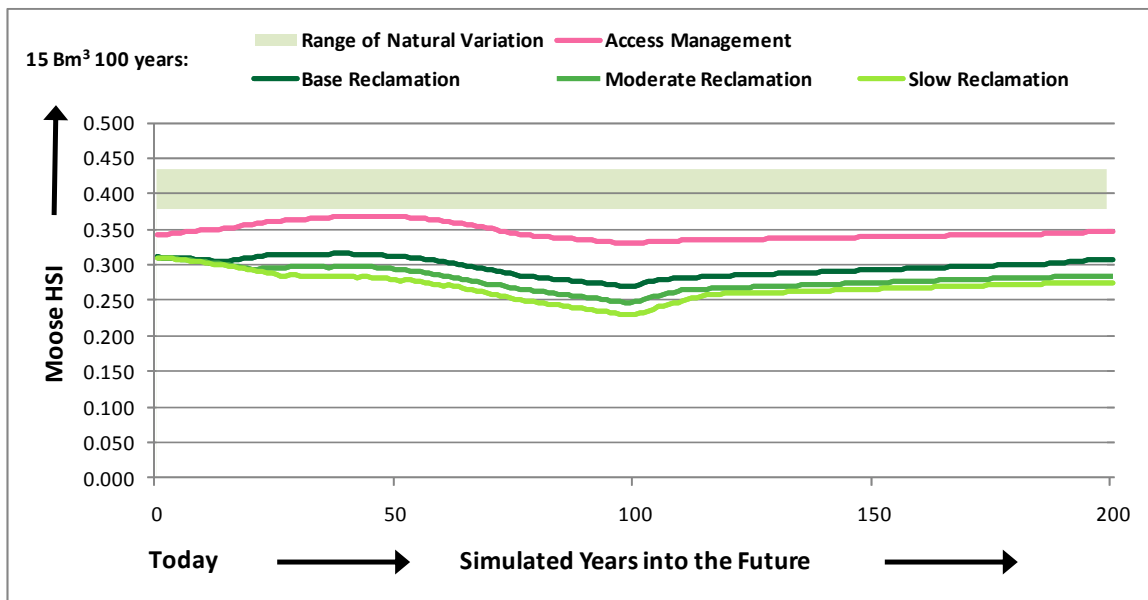


Figure 28. Potential moose habitat effectiveness resulting from the 15 Bm³ production scenario over 100 years, under base, moderate (2x slower) and slow (3x slower) reclamation rates, and with access management.

6.4.4 Black Bear

Black bear is a generalist species that utilizes a range of habitats, with young forests typically being important. Human activities are creating younger forest which should provide better habitat for black bear. However, black bear numbers have declined in the past and future habitat effectiveness is projected to continue to decline under all extraction scenarios (Figure 29). The current black bear habitat effectiveness value is 0.14, below the simulated RNV. Future habitat effectiveness declines by 50 percent under the 15 Bm³ scenarios, but only marginally under the 7.5 Bm³ scenario. Similar to moose, the main reason for this decline is increasing harvest rates.

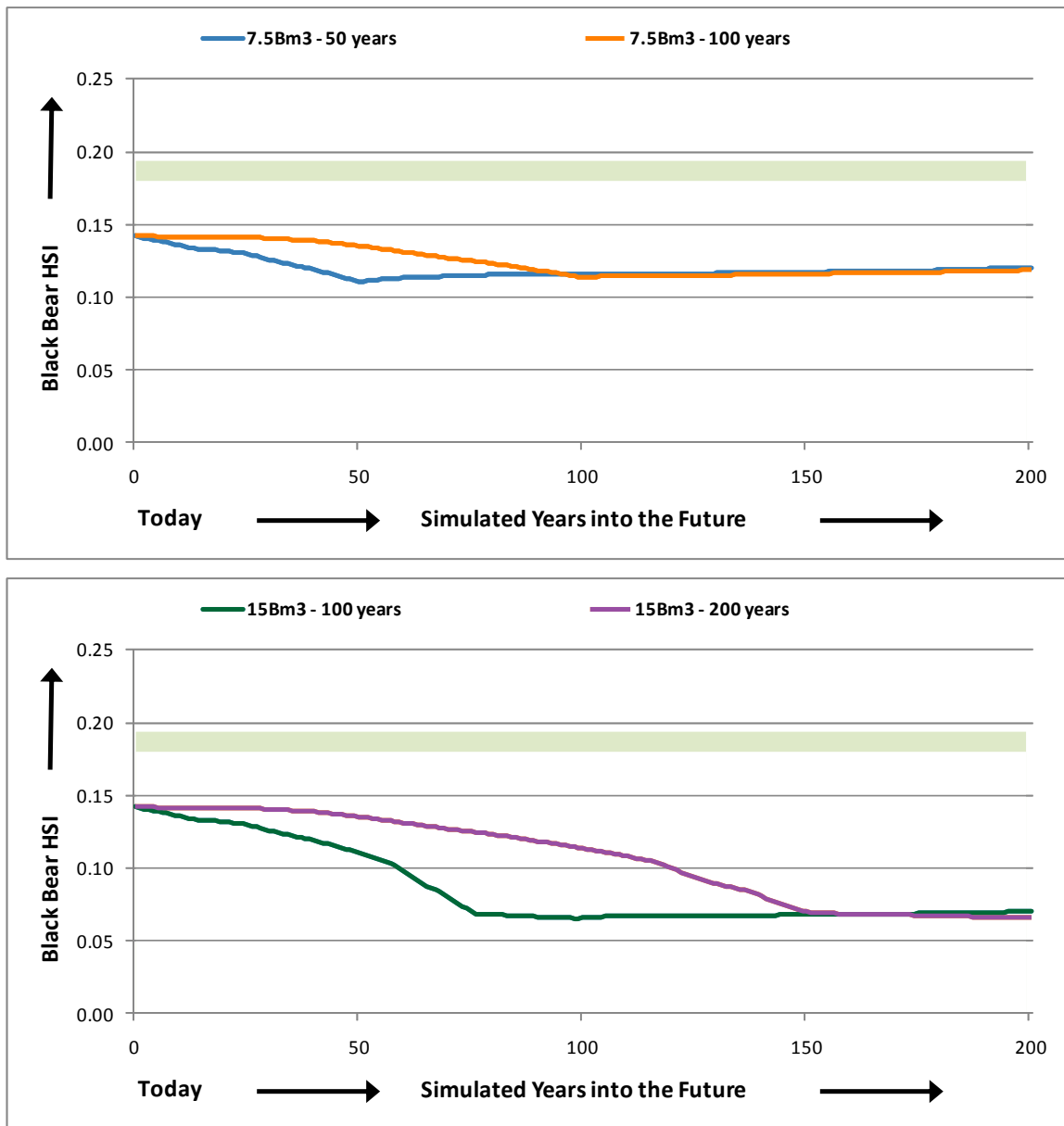


Figure 29. Potential black bear habitat effectiveness values resulting from the 7.5 Bm³ production scenario over 50 and 100 year periods (top graph); and 15 Bm³ production scenario over 100 and 200 year periods (bottom graph).

6.4.4.1 Reclamation Rate and Best Management Practices

Applying access management showed a small positive increase in habitat effectiveness for black bear. However, response was not dramatic due to the sheer number of linear features on the landscape under the 15 Bm³ scenarios.

6.4.5 Fisher

Fisher were widespread and relatively abundant throughout the lower Athabasca River basin prior to European settlement. Their distribution and abundance has been reduced because of trapping and habitat change. Increased mobility provided by modern vehicles and new access routes created by the energy and forestry industries have increased the potential extent and success of trapping. Fisher are not as well suited to the younger forest complex and increasing levels of industrial features as natural landscapes.



Figure 30 shows projected fisher habitat effectiveness for the 7.5 Bm³ and 15 Bm³ scenarios. The current habitat effectiveness index is 0.125, which is the lower margin of simulated RNV. All future scenarios result in declining habitat effectiveness for fisher, with the 15 Bm³ scenario showing the largest declines.

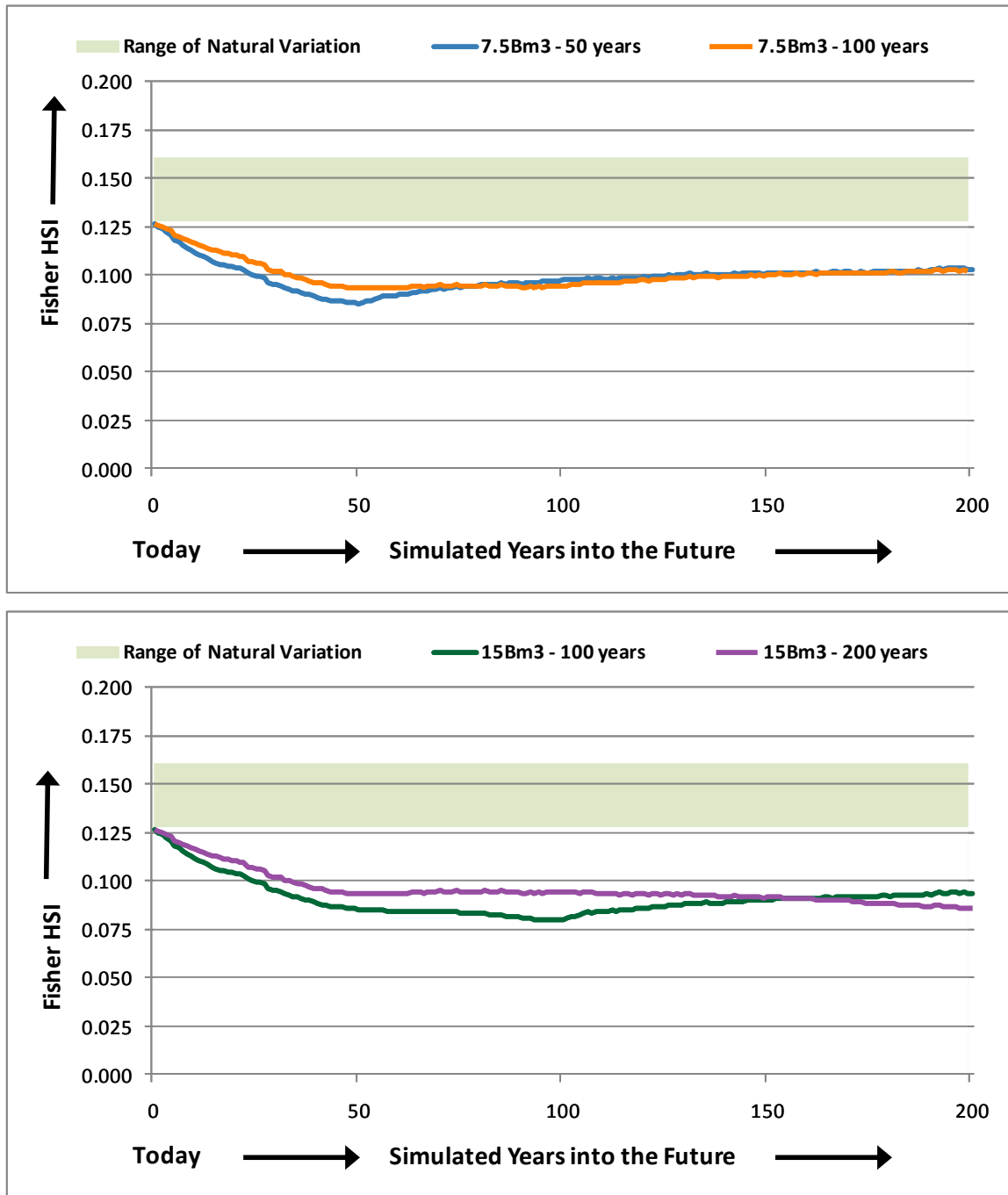


Figure 30. Potential fisher habitat effectiveness values resulting from the 7.5 Bm³ production scenario over 50 and 100 year periods (top graph); and 15 Bm³ production scenario over 100 and 200 year periods (bottom graph).

6.4.5.1 Reclamation Rate and Best Management Practices

As with moose, declines in fisher habitat effectiveness may be moderated by faster reclamation rates and access management (Figure 31). However, all best management practices investigated still result in declining habitat effectiveness values that remain below current conditions.

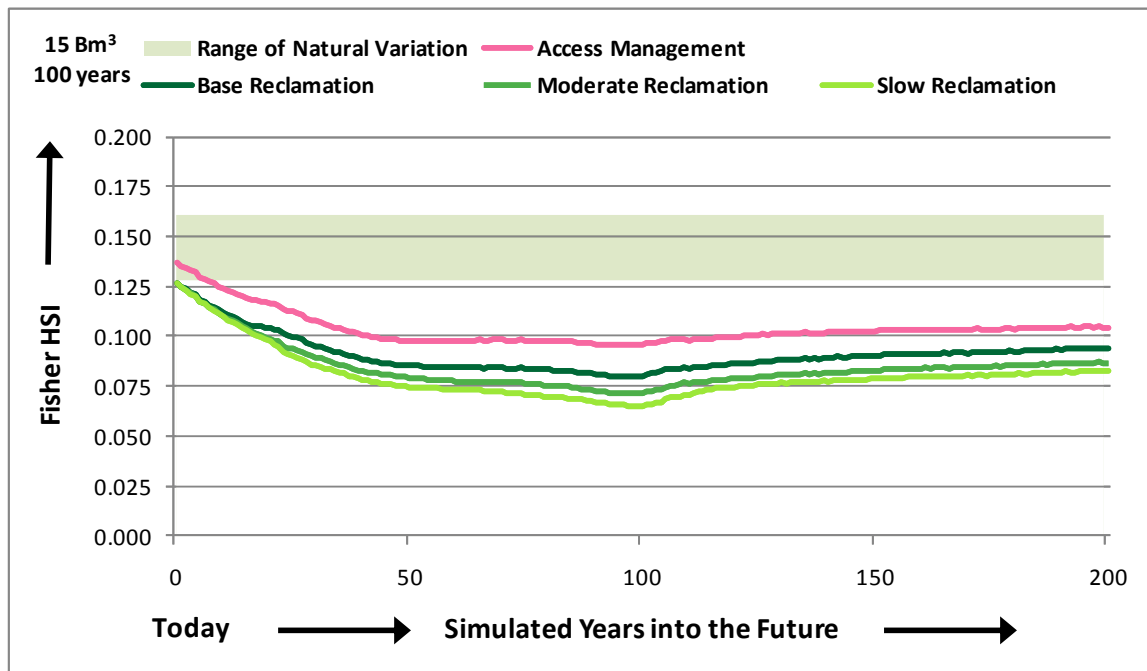


Figure 31. Potential fisher habitat effectiveness resulting from the 15 Bm³ production scenario over 100 years, under base, moderate (2x slower) and slow (3x slower) reclamation rates, and with access management.

7. SUMMARY AND CONCLUSIONS

The extensive bitumen reserves of the Regional Municipality of Wood Buffalo are an important driver of the Alberta and Canadian economy, providing major economic benefits to provincial and federal governments, corporations and workers and their families. However, these economic benefits have also come at a cost. The adverse social and ecological effects resulting from the rapid pace of development have directly affected local aboriginal communities. Development of the bitumen resource has adversely affected valued indicators, and these effects will continue, and possibly increase, in the future. Increasing land-use activity and human population growth will continue to present significant management challenges if maintenance of today's conditions is desired.

Industrial activity (primarily the energy, forestry and transportation sectors), and residential development, are the main human activities that will have future effects on land, water, and fish and wildlife populations. Increasing industrial activity and population growth will further reduce the amount of forest lands and natural areas in the region. The numbers of linear features will increase, resulting in a more fragmented landscape than today. If future industrial activity unfolds as assumed, remaining undisturbed areas will be restricted to protected areas or in locations not underlain by recoverable bitumen reserves, such as around Lake Athabasca.

The development and reclamation scenarios explored with the ALCES[®] model in this study were designed to better understand the relative benefits and risks associated with altering the pace and scale of bitumen production in the Regional Municipality of Wood Buffalo. All production scenarios have both pros and cons—no ‘best scenario’ emerged.

Extracting 7.5 Bm³ of oil versus 15 Bm³ generally results in less environmental impacts but produces lower economic benefits for the aboriginal, provincial and national economy. The 7.5 Bm³ scenario may also result in a much lower regional human population. Fast extraction scenarios (2.6 million barrels per day) rapidly increase human-caused footprints, forest fragmentation and water demand compared to slower extraction (1.3 million barrels per day).

The scale of current and projected oilsands development requires a very large workforce for ongoing construction and operations. A doubling of the current production rate, to approximately 2.6 million barrels per day, would result in a peak workforce of 35,000. Under various employment scenarios and assumptions, the ACFN/ATC workforce may fill 15 to 35 percent (5,000 to 10,000) of the total oilsands workforce positions at the end of 100 years. Factors such as population growth rate and workforce employment rate may alter this scenario, but not substantially. Given the current and future population and workforce characteristics, it is unlikely that ACFN/ATC workers will be able to fill a substantial proportion of total oilsands workforce positions unless bitumen production decreases significantly.

The long-term status of many indicators in the Municipality of Wood Buffalo is highly dependent on the course of events ‘after bitumen production ends’. Would population growth also stop, as modelled in this project, or would it continue to grow at similar rates? Will new technologies increase the amount of recoverable bitumen, thereby extending the duration of bitumen activities? Will new industries or resources emerge to replace bitumen production? If population and transportation growth continues after bitumen production ceases, many of the potential benefits of faster extraction would not be realized. Under this scenario, many areas and features would not be reclaimed and footprint growth would continue, the combined effect being steadily increasing human footprint and continued declines of intact habitat.

Industry best management practices and access control, while relatively easy to model, may be very challenging to implement in the real world. Reclamation rates for many industrial footprints are estimated and not proven. Accurate reclamation rates are critical to realistically model future trends. Actual reclamation times may be longer than assumed for this project. Additionally, new technologies may be developed which allow greater volumes of bitumen to be extracted than originally considered, further increasing the amount of footprint and/or footprint lifespan. Given these considerations, it is probable that many of the trends reported in this study underestimate the potential magnitude of future changes in land-use and fish and wildlife conditions.

Each theme examined is further summarized below.

7.1 ECONOMIC

The employment and financial contributions generated by current or increasing levels of oilsands activity will continue to be the key driver of the local industrial economy, and a major contributor to the Alberta and Canadian economy.



The magnitude and timing of those economic benefits is directly related to the pace and scale of bitumen production—there is a certain volume of bitumen in the ground, but the rate and period of extraction can vary. Currently, global commodity prices and energy demand are the drivers for production rates. Faster production generates large increases in employment but of shorter duration, leading to the classic ‘boom and bust’ economic cycle. Lower production rates over longer time frames generate correspondingly lower levels of employment and revenue, but in a more stable manner over longer time frames.

Currently, local First Nation citizens comprise less than five percent of the total oilsands workforce. Considering the local First Nation population and current workforce participation rates in the industry, it is projected that a relatively small proportion of total

oilsands workforce positions will be held by local First Nation citizens in the coming decades. Based on various assumptions, this number may increase to 10 or 20 percent of the required oilsands workforce within 50 to 75 years. Increasing levels of oilsands workforce employment rates would provide greater economic benefits to local First Nation communities.

7.2 LAND

Will lands and forests of the Lower Athabasca be able to support the traditional spiritual, cultural and physical requirements of future generations?

Future scenarios forecast an increasingly industrialized landscape, with decreasing levels of old forests and natural areas, and increasing levels of linear features over the next 50 to 100 years.

Forests will continue to be fragmented by energy and forestry activities. Growing populations will result in increasing town and city footprints. Highly mobile recreationalists will stress natural resources and wildlife populations outside development areas.



Development within the Regional Municipality of Wood Buffalo has and will continue to adversely affect lands, forests, water, and fish and wildlife. For ACFN to continue to use these resources, challenges lie ahead, especially in southern areas where most of the bitumen deposits are located. Best practices, access control and maintenance of sufficient protected natural areas would help to reduce undesirable future effects, but not eliminate them.

7.3 WATER

Will the children and grandchildren of future generations be able to rely on the Athabasca River and its tributaries for clean water?

Modelling results suggest that water quality will decline moderately, compared with current conditions. Communities and residents will need to set aside increasing tax or operating dollars for surface water management and treatment. Future generations will also be more likely to face local water quality problems.



Will there be enough water to meet the future needs of industry, residents, and fish?

ALCES® simulations suggest future challenges to maintain adequate water quantity for human use and fish during winter low flow periods on the lower Athabasca River. Water managers will need to continue to restrict withdrawals during low flow periods to ensure that water withdrawals and healthy fish can be sustained for future generations. Climate change may produce additional water quantity challenges that will need to be carefully examined and managed.



7.4 FISH AND WILDLIFE

Will future generations have healthy populations of caribou, moose, fur bearers and fish for traditional uses?

ALCES® simulations suggest that caribou will be lost from much of the lower Athabasca region within a generation, even with the adoption of industry best management practises. Innovative management, dedicated predator control and large areas of undeveloped forest will likely be required to ensure the future survival of caribou in the Regional Municipality of Wood Buffalo. Examination of innovative approaches for caribou management and scientifically assessing the extent of undeveloped lands required to sustain herds should be rigorously and quickly explored.



Implementation of industry best management practises such as access control would help ensure that moose and black bear remain on the landscape in healthy numbers. Furbearers which depend on old growth forests will likely continue to decline in numbers and trapping restrictions may have to be implemented to maintain populations.

The continued decline of native fish populations would also be expected under all scenarios, potentially to very low levels in the southern portion of the region. However, access management and the aggressive restoration of stream continuity through culvert or bridge replacement may maintain fish populations closer to today's levels. Challenges will remain to ensure that adequate river water is available in low flow winter months for fish. Nutrient, sediment and industrial effluent will also need to be managed effectively to ensure the long-term health of fish populations.

7.5 REDUCING UNDESIRABLE EFFECTS

A variety of mitigation strategies can be used to moderate the adverse effects of industrial land-use in the Regional Municipality of Wood Buffalo. Key strategies include the following:

- minimize the area disturbed by humans;
- ensure the fastest reclamation possible of industrial and linear features;
- implement effective control of motorized human access; and
- set aside sufficient areas of undisturbed landscapes to help sustain environmental indicators.

7.5.1 Industry Practices

Examples of existing or proposed industry best management practices that would reduce adverse effects on land, water and fish and wildlife populations are listed below.

Forestry

- Pursue a harvest strategy which preserves a greater proportion of old forests.
- Reclaim in-block roads at a faster pace.
- Move to larger cutblocks with greater stand structure.

Energy Sector

- Reduce seismic line width.
- Increase directional drilling of SAGD pads to reduce the number of pads and linear corridors needed.
- Aggressively reclaim seismic lines.
- Place pipelines and roads within the same corridors.
- Reduce in-situ and mining water requirements.
- Reclaim wellsites and wellsite roads more quickly.
- Reclaim surface mines more quickly.

Transportation

- Restrict public access on industrial roads, pipelines and seismic lines.
- Replace damaged or washed out culverts.
- Improve retention and treatment of road water run-off.

7.5.2 Water Quality

Maintaining surface and groundwater quality can be assisted by the following practices:

- improve sewage treatment at acreages, towns, and recreational and industrial facilities to prevent contamination of shallow groundwater and nearby lakes and streams;
- discourage residential and industrial features from being built directly along streams and rivers;
- Improve retention and treatment of rural and resource road run-off;
- reduce the footprint of cities, towns, and acreages by growing 'up' instead of 'out'; and
- charge resource fees for ground and surface water withdrawals to promote efficient use and recycling of water.

7.5.3 Protected Areas

Protected or non-development areas can assist in mitigating the adverse effects of heavily disturbed areas. Protected areas of sufficient size can also serve as 'ecological benchmarks' to gauge the status of adjacent lands. From the perspective of mitigation strategies, consideration should be given to the following:

- expand protected or non-development areas to sufficient size to help maintain caribou in the region; and
- identify protected or non-development areas required for First Nation traditional uses.

7.6 FUTURE RESEARCH

Due to time and funding constraints, the ALCES[®] cumulative effects simulation model utilized previously generated information, provided by CEMA (2008). While many of the biophysical parameters described by this exercise represent the best available information, some model parameters would benefit from a First Nations perspective, in particular reclamation rates and trajectories, wildlife habitat models and other impact-related discussions.

While some best practices were examined as part of this project (e.g. access management), a suite of best practice scenarios were not investigated. In the future, examining a suite of best practice, protected area and zoning scenarios would be beneficial for ACFN/ATC to better understand the potential outcome of a wide range of local and regional land-use strategies. Some of these scenarios may be examined during development of the Alberta Land-Use Framework Lower Athabasca Regional Plan.

While planning for its own lands, and preparing input for the Lower Athabasca Regional Plan, ACFN/ATC should focus on developing its own limits of acceptable change for valued indicators, and then examining the potential outcome of various land-use

scenarios on those indicators. The scenario analysis should occur on both a regional and sub-regional basis, to better understand potential place-specific impacts and mitigation strategies.

The potential effects of climate change on biophysical processes, most importantly seasonal water flow in the Athabasca River, should be included in future scenario analyses, as decreasing flow rates may have large adverse effects on navigation and aquatic health.

8. REFERENCES

Alberta Environment. 2007. Athabasca River Water Management Framework. ISBN No. 0-7785-5071-0 Pub No. I/016.

Alberta Environment and Fisheries and Oceans Canada. 2007. Water management framework: Instream flow needs and water management system for the lower Athabasca River. February 2007.

Athabasca Landscape Team. 2009. Athabasca Caribou Landscape Management Options Report. Unpublished report submitted to the Alberta Caribou Committee Governance Board. May 2009. Online [URL]: <http://www.albertacariboucommittee.ca/PDF/Athabasca-Caribou.pdf>

CEMA (Cumulative Effects Management Association). 2008. Terrestrial Ecosystem Management Framework for the Regional Municipality of Wood Buffalo. Online [URL]: <http://www.cemaonline.ca/content/view/75/148/>

Earley, R.J. 2003. Disconnect. Assessing and managing the social effects of development in the Athabasca Oilsands. Masters of Environmental Studies in Planning. University of Waterloo, Ontario, Canada.

Nikiforuk, A. 2006. "The downside of boom: Alberta's manpower shortage", Canadian Business magazine, 2006-06-04.

Nikiforuk, A. 2008. Tar Sands: Dirty Oil and the Future of a Continent. Greystone/David Suzuki Foundation.

Shindler, D.W., W.F. Donahue, and J.P. Thompson. 2007. Section 1: Future water flows and human withdrawals in the Athabasca River. *In*: Running out of steam? Oilsands development and water use in the Athabasca River watershed: Science and market based solutions. University of Alberta Environmental Research and Studies Centre and University of Toronto Munk Centre for International Studies.

Appendix 5:

As Long as the Rivers Flow: Athabasca River Use, Knowledge and Change ACFN Community Report, August 16, 2010



As Long As The Rivers Flow:

Athabasca River Use, Knowledge and Change

ACFN Community Report
August 16, 2010

Craig Candler, Rachel Olson, Steve DeRoy and the Firelight Group Research Cooperative, with the Athabasca Chipewyan First Nation

As Long As The Rivers Flow:

Athabasca River Knowledge, Use and Change **ACFN Community Report** **August 16, 2010**

Text and figures prepared by:

Dr. Craig Candler (Ph.D.), the Firelight Group Research Cooperative

Rachel Olson (Ph.D. candidate), the Firelight Group Research Cooperative

Maps prepared by:

Steven DeRoy (GIS Specialist), the Firelight Group Research Cooperative

Internal Peer Review by:

Dr. Ginger Gibson (Ph.D.), the Firelight Group Research Cooperative

Submitted to:

Athabasca Chipewyan First Nation

Disclaimer

The information contained in this report is provided for use by the Athabasca Chipewyan First Nation (ACFN) and is based on limited research conducted as part of the Athabasca River Use and Traditional Ecological Knowledge Study. This report is based on the understandings of the authors, and is not a complete depiction of the dynamic and living system of use and knowledge maintained by ACFN elders and members. The information contained herein should not be construed as to define, limit, or otherwise constrain the Treaty and aboriginal rights of Athabasca Chipewyan First Nation or other First Nations or aboriginal peoples.



"... We assured them that the treaty would not lead to any forced interference with their mode of life..."

David Laird, J.H.Ross, J.A.J. McKenna, Report of Commissioners for Treaty No. 8, 22nd September, 1899

"...As long as the sun is rising here, the river flowing, the lake is here and the grass is growing, nothing will change. That's the kind of Treaty they made."

Transcript of interview with ACFN elder, Rene Bruno, February 1, 2010.

Table of Contents

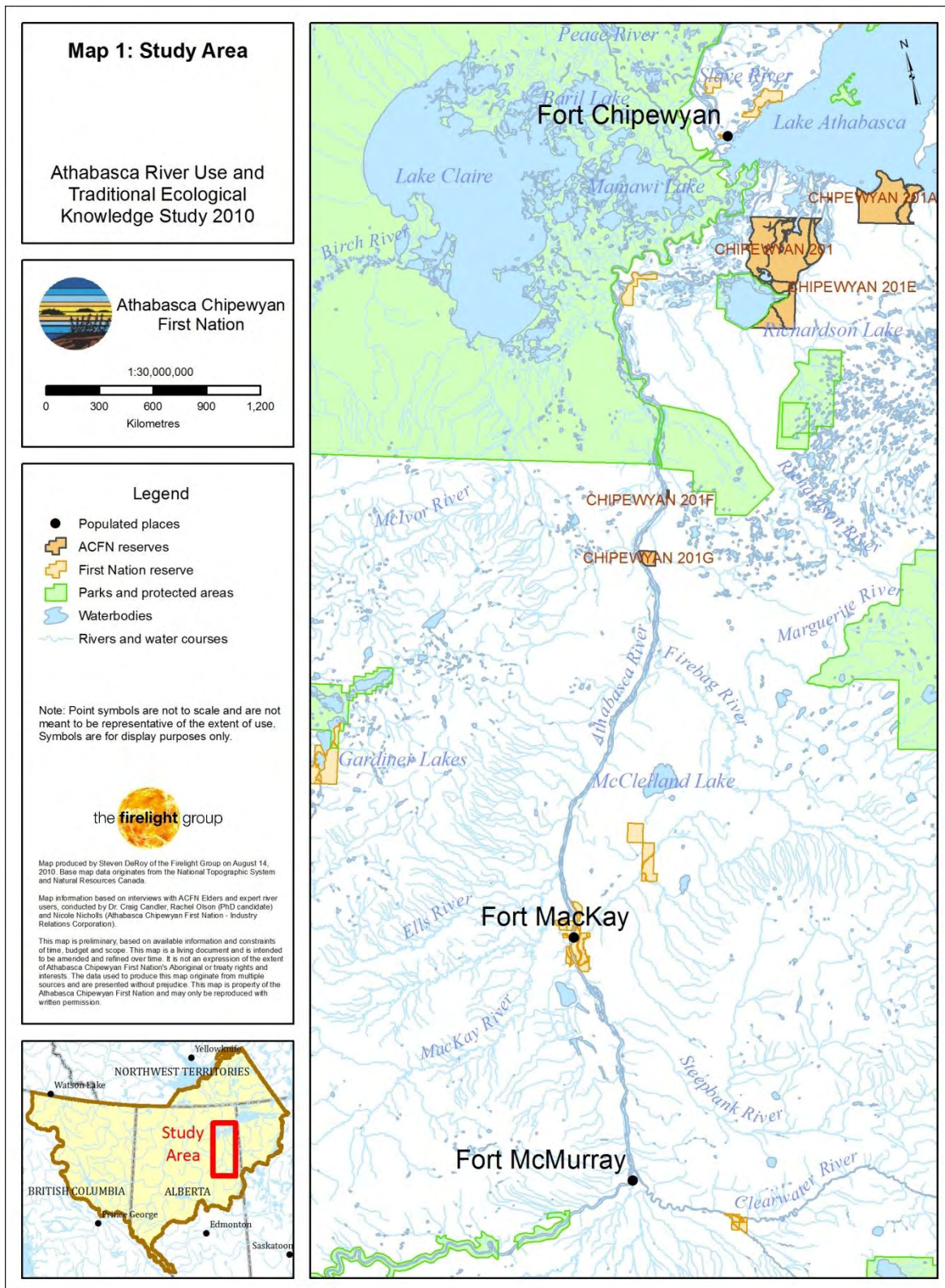
MAP 1: STUDY AREA.....	5
MAP 2: REPORTED NAVIGATIONAL INCIDENTS AND HAZARDS	6
MAP 3: REPORTED INSTANCES OF LOST USE DUE TO WATER LEVEL	7
MAP 4: REPORTED INSTANCES OF LOST USE DUE TO WATER QUALITY	8
MAP 5: WATERSHEDS AND RIVER AREAS WITH NO BOAT ACCESS AT EXTREME LOW WATER LEVELS....	9
MAP 6: AREA OF LOST OR INHIBITED USE AT EXTREME LOW WATER LEVELS	10
1. INTRODUCTION	11
2. BACKGROUND	11
2.1. TREATY NO. 8: A LIVING DOCUMENT	12
2.2. STUDY GOALS AND CONTEXT.....	13
2.3. WATER-BASED ACCESS AND PREFERRED MODE OF PRACTICE	13
3. METHODS	15
3.1. PARTICIPANT PROFILES	15
4. RESULTS	16
4.1. FLOODING AND SEASONAL CYCLES.....	17
4.2. NAVIGATIONAL HAZARDS AND INCIDENTS.....	18
4.3. WATER QUALITY AND INDUSTRIAL POLLUTION	19
4.4. SUBSISTENCE NAVIGATION AND ACCESS.....	21
5. DEFINING ABORIGINAL BASE FLOW (ABF) AND ABORIGINAL EXTREME FLOW (AXF)	23
6. RECOMMENDATIONS	24

Appendix 1: ACFN and MCFN Athabasca River Use and Traditional Ecological Knowledge (TEK)
Project Interview Guide

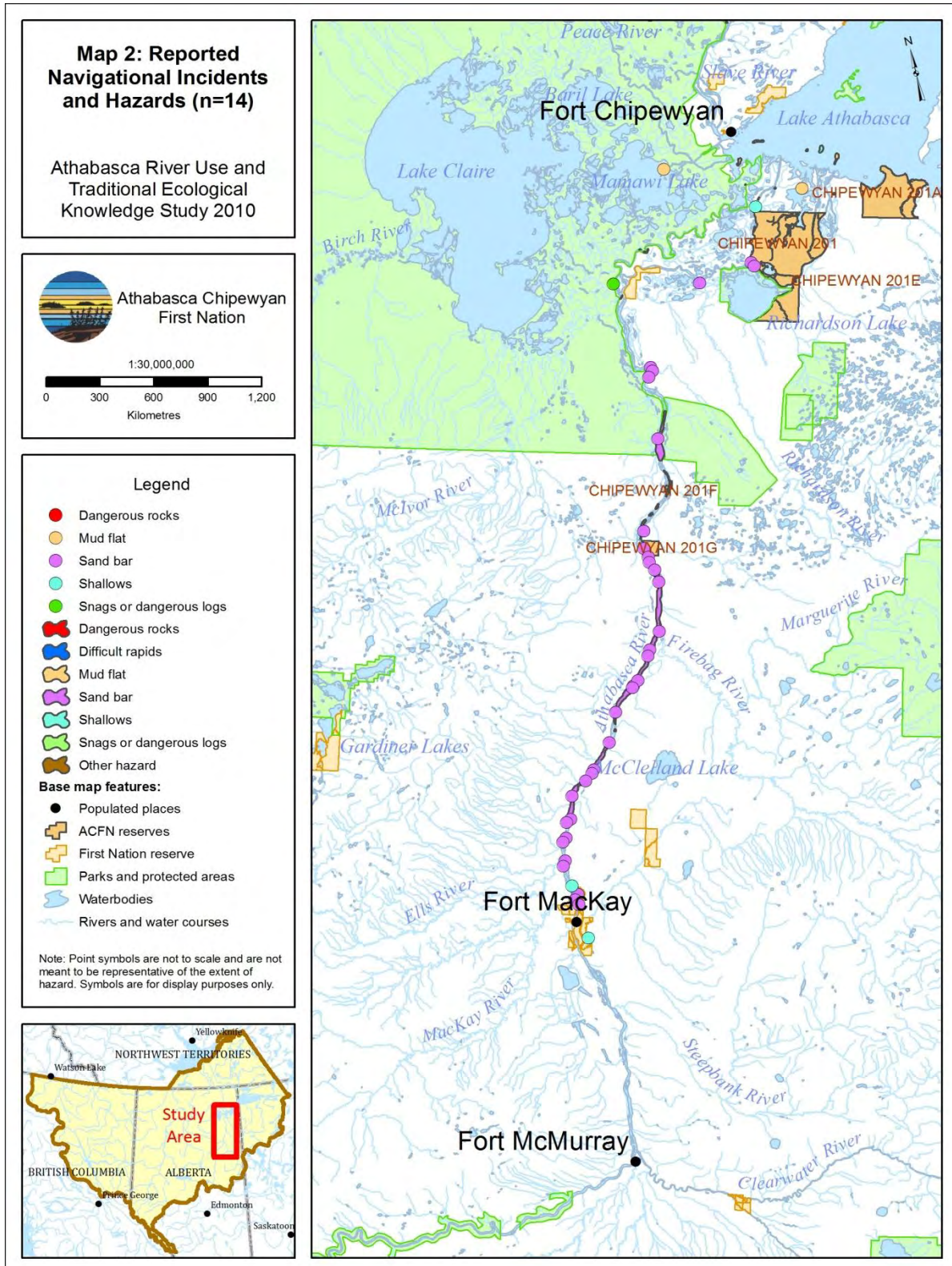
Appendix 2: ACFN and MCFN Athabasca River Use and Traditional Ecological Knowledge (TEK)
Project Interview and Mapping Methods

Appendix 3: ACFN and MCFN Athabasca River Use and Traditional Ecological Knowledge (TEK)
Project Informed Consent Document

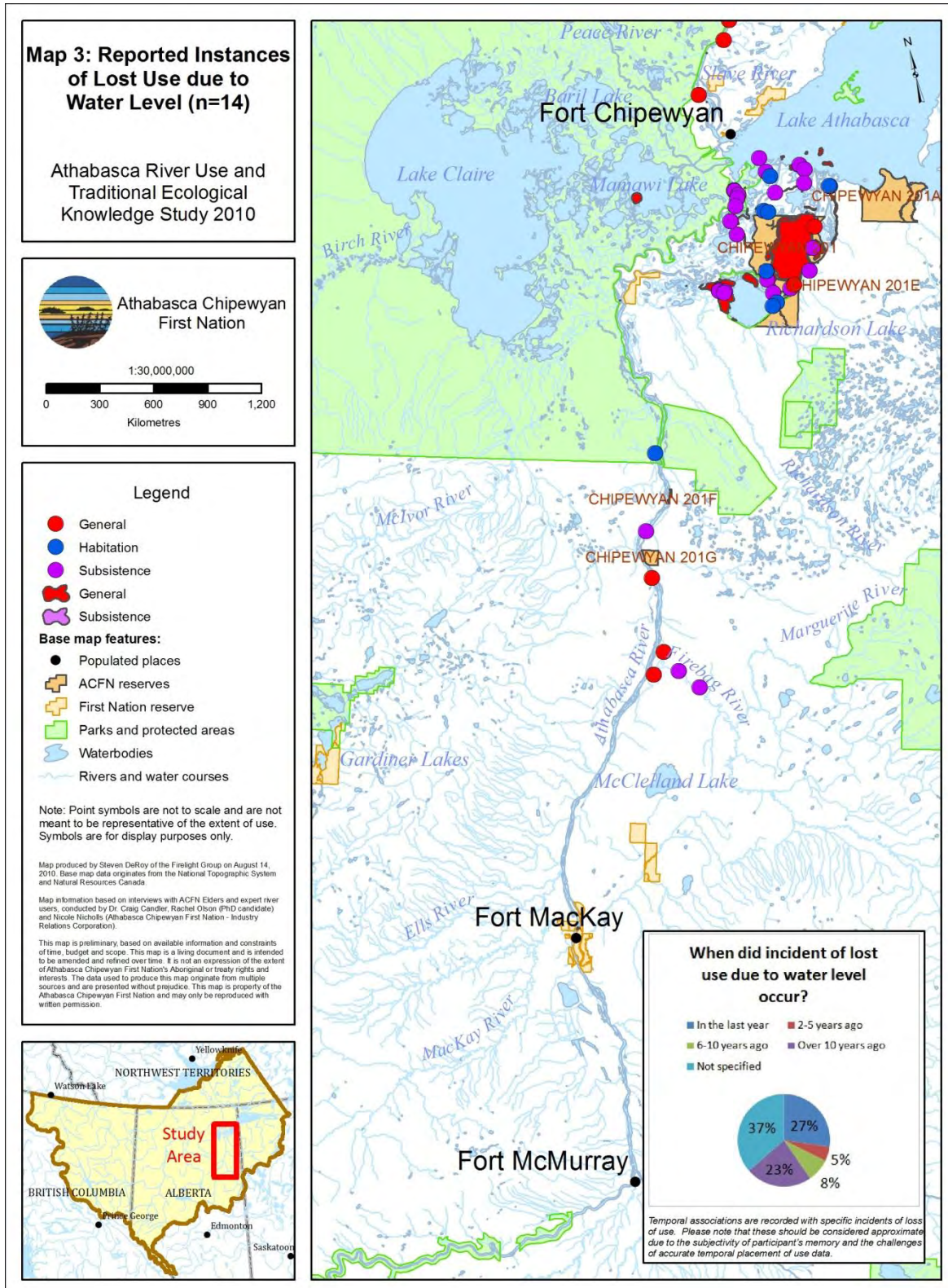
Map 1: Study Area



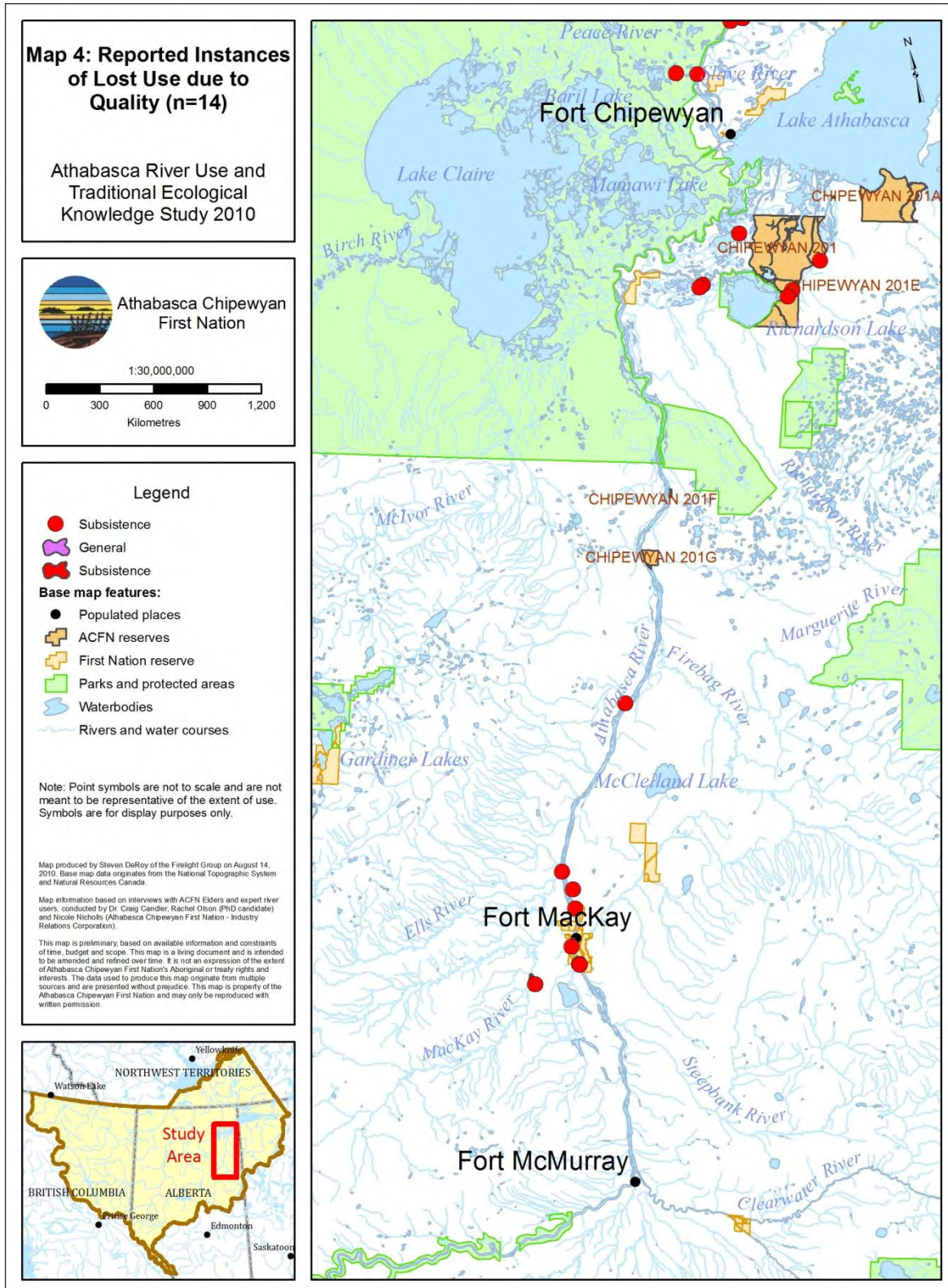
Map 2: Reported Navigational Incidents and Hazards



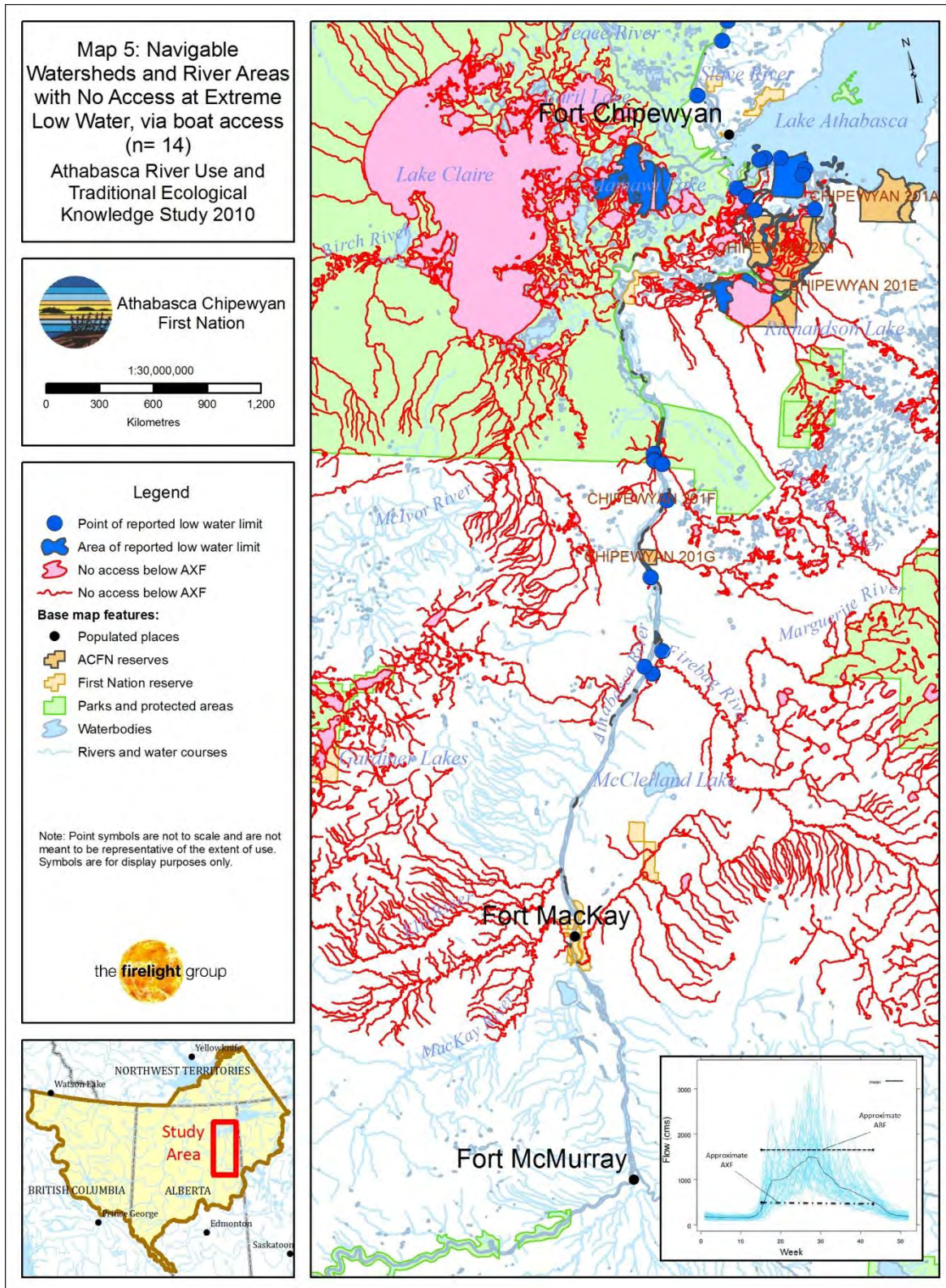
Map 3: Reported Instances of Lost Use due to Water Level



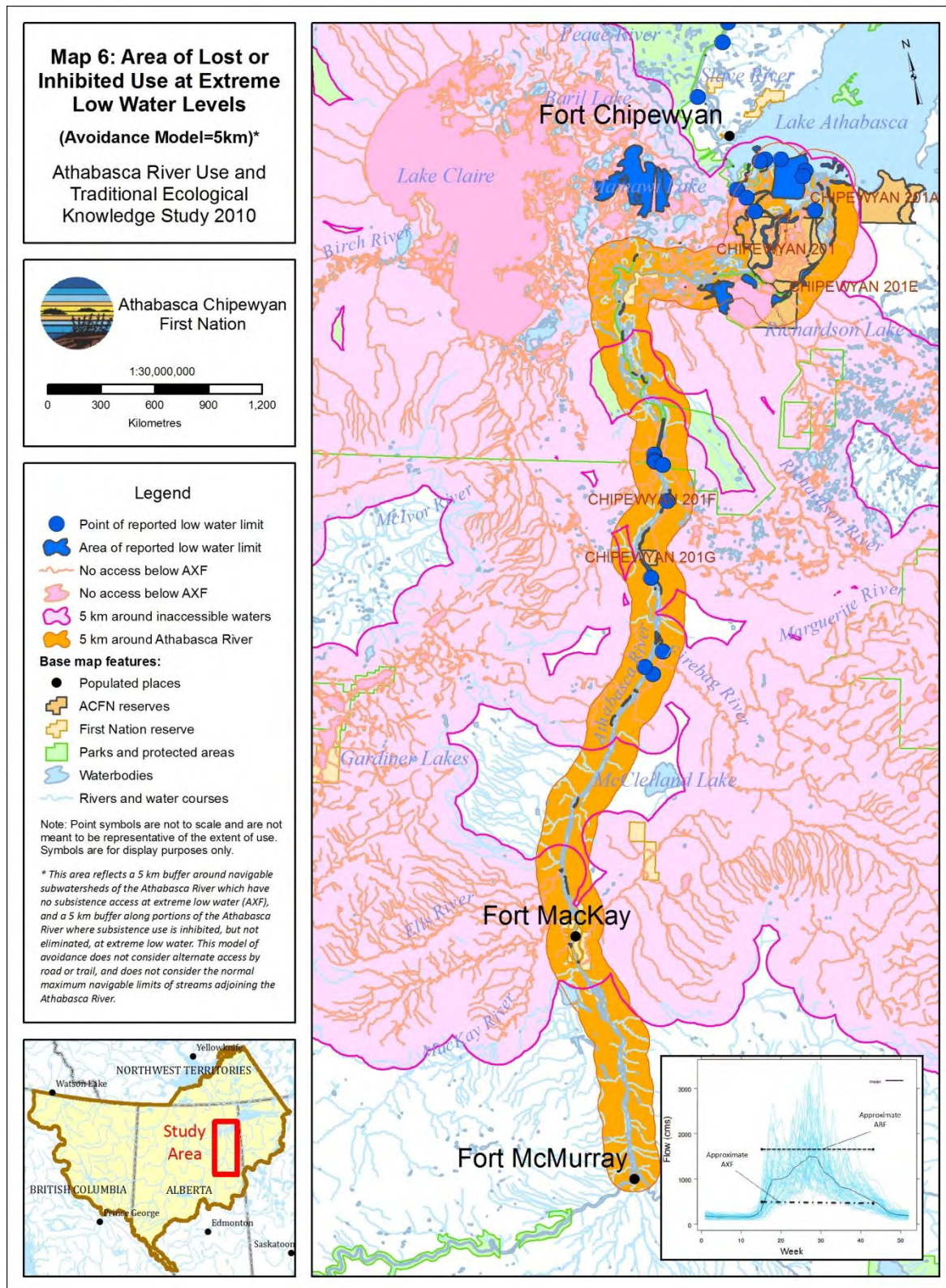
Map 4: Reported Instances of Lost Use due to Water Quality



Map 5: Navigable Watersheds and River Areas with No Access at Extreme Low Water Levels, via Boat Access



Map 6: Area of Lost or Inhibited Use at Extreme Low Water Levels



1. Introduction

This report is based on limited research conducted for the Athabasca Chipewyan First Nation (ACFN) as part of the Athabasca River Use and Traditional Ecological Knowledge Study (the Study). The report focuses on ACFN knowledge of the Athabasca River, how it has changed over past decades, and how ACFN use of the river has changed as a result. Key issues raised by ACFN participants in the study include issues of lower water levels and reduced water quality.

Section 2 of this report provides a background and context regarding the study, and the key questions that inform it. This includes a brief discussion of Treaty No. 8, and the importance of boat transportation for ACFN peoples.

Section 3 provides a summary of methods.

Section 4 provides the results of the study, including a description of maps, and includes perceptions of ecological change on the Athabasca River, discussion of the challenges low water levels in the Athabasca River present for navigation and access to large portions of ACFN territory, and lost use along the Athabasca river because of concerns regarding concerns of contamination related to oil sands operations.

Section 5 proposes two thresholds (an aboriginal base flow, and an aboriginal extreme flow) for use in understanding the effects of water levels and the ability of ACFN members to access their territories, and recommends steps for implementing and refining management.

Section 6 provides recommendations for implementation of thresholds.

This report is based on the understandings of the authors, and is not intended to be a full or complete depiction of the dynamic and living system of use and knowledge maintained by ACFN elders and members.

2. Background

This report is based on ACFN specific information resulting from an Athabasca River Use and Traditional Ecological Knowledge (TEK) study (the Study) conducted in Spring 2010. The study addresses knowledge of the Athabasca River, use of the Athabasca River by ACFN community members, and possible effects of river change on the practice of aboriginal rights. The ACFN and MCFN, acting jointly, engaged The Firelight Group Research Cooperative to assist with the Study. The primary goal was to provide an evidence-based, written submission designed to effectively inform consultation with the Crown regarding plans for managing industrial water withdrawals from the Athabasca River.

The results of the Study suggest that, for both the Cree and Dene peoples of the ACFN and MCFN, the Athabasca River continues to be central to their lives, their ability to access their

territories, and their conception of themselves as aboriginal peoples, despite historical change. The Study has also demonstrated, and mapped, how reductions in the quantity and quality of the Athabasca River's flow are having adverse effects on the ability of ACFN members to access territories, and to practice their aboriginal and Treaty rights, including hunting, trapping, fishing, and related activities. Adverse effects are particularly evident where the preferred manner, or location, of exercising rights involves access to territories by boat, or where the right relies upon confidence in the quality, or safety, of foods or other resources procured on traditional lands influenced by industrial use.

2.1. Treaty No. 8: A Living Document

The Cree and Dene speaking peoples of Fort Chipewyan signed Treaty No. 8 in 1899. The Treaty confirms the rights of First Nation peoples, including those of the Athabasca Chipewyan First Nation (ACFN) and Mikisew Cree First Nation (MCFN), and those of the Canadian crown, in relation to lands covered by the Treaty and is recognized and affirmed every year through payment of Treaty monies by the Canadian government. Amongst many other promises that the Crown made on entering into Treaty No. 8, the Crown's own negotiators confirm, shortly after signing, that, "We had to solemnly assure them [First Nations] that only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary in order to protect the fish and fur-bearing animals would be made, and that ***they would be as free to hunt and fish after the treaty as they would be if they never entered into it.***" (Laird, Ross and McKenna, Report of Commissioners for Treaty No. 8, 1899, emphasis added).

The Athabasca River occupies a central role in the culture and economy of the aboriginal peoples of the Fort Chipewyan area (including the MCFN and ACFN), and is critical to the ability of these First Nations to hunt, trap, fish, and otherwise practice their aboriginal and treaty rights in a preferred manner. Largely because of the role of the river in transportation, the unique transportation needs of ACFN and MCFN hunters and river users, and the long history of aboriginal rights practice on the river, delta, and adjoining tributaries, meaningful exercise of aboriginal and treaty rights, including hunting, trapping, fishing, and other rights, within a large portion of ACFN and MCFN traditional lands, relies upon the quality and quantity of water in the Athabasca River.

One ACFN participant in the Study described the Athabasca River this way:

"When we were younger the Athabasca River was ... a wild beast. In other words, because it was alive, it had tremendous amount of water, it fed all the tributaries, lakes and everything. When the spring flood and that occurred ... it brings life to the delta and when it brought life to the delta it also kept our people healthy, our population stable and, in other words, it sustained our way of life for our people for the existence of who we are today." (A06)

At the time of Treaty, the Crown was well aware of the extent of resources that lay beneath the area encompassed by Treaty No. 8. In 1888, the director of the geological survey of Canada, Dr. Robert Bell, confirmed, "the existence in the Athabaska and Mackenzie valleys of the most extensive petroleum field in America, if not in the world... it is probable this great petroleum field will assume an enormous value in the near future and will rank among Canada's chief assets." (quoted in Hein 2000: 2-3).

Ten years later, Treaty No. 8 was signed. Almost seventy years later, in late 1960's, the first large scale oil sands mining operation (what would become Suncor) opened north of Fort McMurray. Existing and planned future industrial scale oil sands operations also depend heavily on the flow of the Athabasca River.

2.2. Study Goals and Context

The primary goals of the Study were to effectively and respectfully involve the key elders and knowledge holders of the ACFN and MCFN to:

- Complete a preliminary submission regarding navigation concerns, and their relationship to the practice of treaty rights.
- Complete a final non-confidential report, and customized reports for ACFN and for MCFN containing confidential information, and summarizing the results of a more comprehensive study of Athabasca River Use and Traditional Ecological Knowledge, including navigation concerns, but also addressing broader water quality and quantity issues related to the practice of treaty rights on the Athabasca, and how those may be impacted by the Phase 2 Framework.

Key topics addressed in the study include perceived changes in the river, including quantity and quality of waters that have resulted in, or contributed to, changed patterns of community use. The role of the river as a transportation corridor for accessing traditional lands, and for traveling between Fort Chipewyan and Fort McMurray was a key focus of this study. The implications of change in this corridor, including limited access, reduced quality of lands or waters for subsistence use, and erosion of opportunities for cultural transmission are considered.

2.3. Water-based Access and Preferred Mode of Practice

Figures 1 and 2, below, show the first and last times participants used the Athabasca River. The majority of study participants first used the river when they were less than five years old, and had last used it within a week of the time of interview. This provides an indication of how important boating and water based access is to the ACFN mode of life. In Spring, Summer and Fall (the primary seasons for hunting, fishing, and subsistence procurement), boat access is still the only option for moving between Fort Chipewyan and seasonal camps and villages, Indian

Reserves, and core ACFN territories along the Athabasca delta, the river itself, and its tributaries. Water-based access by boat is also the preferred mode of practicing aboriginal and Treaty rights, including hunting, trapping, and fishing, even where road access is possible. The ecology of the delta and Athabasca river means that, at good water levels, a web of interconnected waterways exists that can be used to 'go anywhere' in the delta area. At good water levels, tributaries to the Athabasca River also allowed access deep into adjacent watersheds. Moose, the preferred game sought by most ACFN hunters, tend to congregate near water in summer months, so boats make for an ideal means of locating, shooting, and carrying the many hundreds of pounds of meat that results from a successful kill. Boats also allow for procurement of fish or other resources adjacent to river banks, and allow ACFN members to access territories without disturbance from industrial traffic associated with many of the roads closer to Fort McMurray and the oil sands developments. These advantages, combined with ACFN member's familiarity with water navigation for subsistence, and associated creek, rivers and water based knowledge, help explain why boat access is the preferred means by which ACFN members choose to exercise rights such as hunting, trapping, and fishing.

While navigation for the purpose of transport may tend to follow the most direct channel available between two points, subsistence-based boat navigation, and particularly hunting, by ACFN river users relies upon access to smaller side channels of the Athabasca River, and adjoining tributaries. ACFN participants explained that moose and other game prefer to be near rivers and streams as the water provides relief from biting insects, and a refuge from carnivores like wolves. However, moose also tend to avoid banks facing the main channel of the Athabasca because of regular boat traffic and noise along the main channel. Because of this, the best hunting locations tend to be those accessible by boat, but away from the main channel of the Athabasca River including along side channels, tributaries, and on the far side of islands away from the main channel. As discussed below, these smaller channels and tributaries are especially vulnerable to loss of access due to low water levels.

Road access to the Athabasca Delta area, and Fort Chipewyan, is limited to ice road, and is only possible in winter. Permanent road access (from Fort McMurray) is possible to some southern portions of the ACFN territory, including portions of the Muskeg River and Poplar Point (IR Chipewyan 201G), as well as more southern areas. However, even in these cases, boat is frequently the preferred mode for hunting and practicing other rights, particularly for members resident in Fort Chipewyan.

3. Methods

Data collection for the Study was primarily interview based. Interviews were conducted with individuals, included documentation of prior informed consent, and used a standardized interview guide (see **Appendix 1**) designed to meet the needs of the study and to provide a consistent, but flexible, framework for soliciting and recording responses.

Map data was collected on acetate overlays using standardized map coding on custom 1:50,000 maps incorporating satellite imagery, and based on standard techniques (Tobias 2010). Interviews were recorded on digital audio recorder, and through interview notes captured on interview forms, or notebook. Questions were designed to gain an understanding of perceived river change, and to collect data that was location specific (point, line, or polygon) where possible, and temporally grounded (season and year was recorded where possible). The study was designed so that disaggregation of community data (MCFN or ACFN) and individual participant data was possible. The study area focused on lands and waters within an area 5km on either side of the Athabasca River from Fort McMurray north to Fort Chipewyan, and the Athabasca River was defined to include all those areas influenced by the flow of the Athabasca River, including delta lakes and areas, such as Lake Clare and Lake Mamawi (see **Map 1**). A more complete account of the Study methods, including the digitization and mapping process, can be found in **Appendix 2**. A copy of the informed consent form used can be found in **Appendix 3**.

After preliminary analysis and synthesis of the information gathered, community engagement meetings were held in Fort Chipewyan in early July 2010. One meeting was held with ACFN Elders and interview participants, and an open ACFN community meeting was held. At these meetings information on the preliminary study results, as well as information on the P2 Framework and P2FC recommendations were presented for community consideration and input.

3.1. Participant Profiles

Fourteen ACFN elders and frequent river users were interviewed for the Study in May 2010. The age of the participants ranged from 26 to 76 years old, with the average age being fifty. All interviews were conducted in English. Consistent with an understanding that river navigation is primarily a male role, all ACFN participants were male. All fourteen ACFN participants are long term and active river users. Nine of fourteen reported first using the Athabasca River when they were less than five years old (see **Figure 1**), and twelve reported using the river within the past year, with eight having used it in the past week (see **Figure 2**).

Figure 1: When was the first time ACFN participants used the Athabasca River?

- Less than 5 years old
- Between 5-10 years old
- Between 10-15 years old
- No response

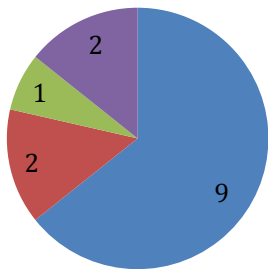
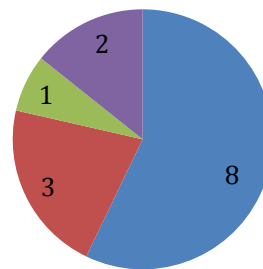


Figure 2: When was the last time ACFN participants used the Athabasca River?

- In the last week
- In the last two months
- In the last year
- No response

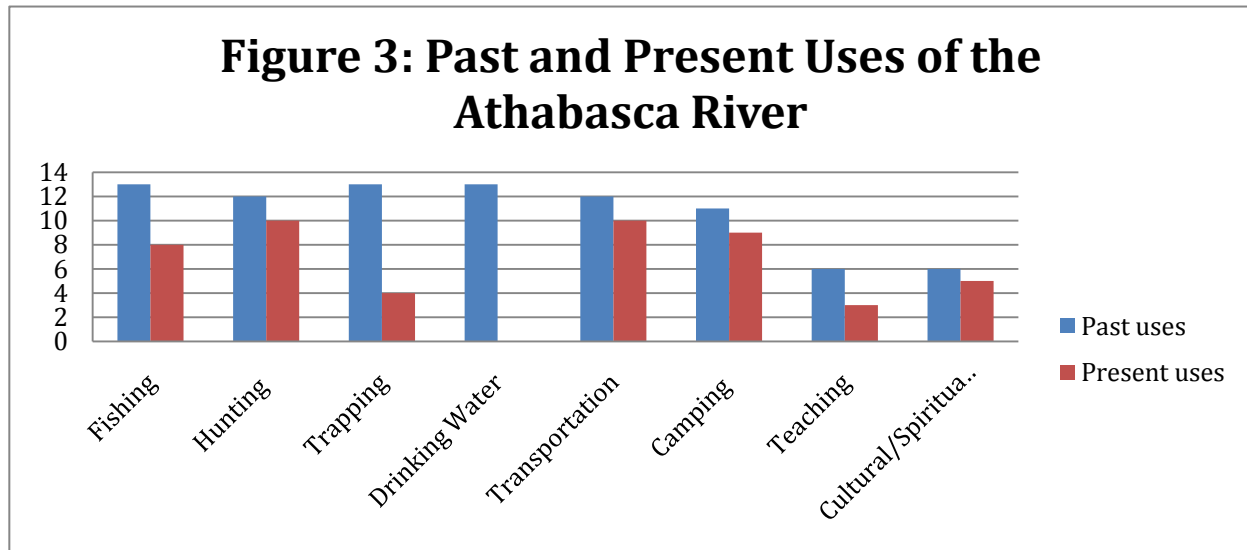


Many of the older ACFN participants spent much of their lives living on or near the Athabasca River, particularly at ancestral village settlements in the Athabasca River delta, such as Jackfish, or along the banks of the river itself (see Tanner and Rigney 2003). Many of these areas are still returned to, and seasonally occupied, especially in summer months, though access to adjacent areas, including subsistence areas, and sacred areas, and including an important gravesite, is limited at low water levels.

4. Results

The past and continued importance of the Athabasca River for the practice of ACFN aboriginal and Treaty rights is clear from the responses of participants. **Figure 3** shows the kinds of reported uses by participants and their families when they were young (generally defined as younger than twenty), compared with what they and their families use the river for now. It illustrates that use of the river, at least by the sample of those interviewed, is still strong and diverse, and while use has generally declined, it has declined in some use areas more than others. In particular, use for drinking water, trapping and teaching seem to have declined more than use for hunting, transportation, and cultural/spiritual and wellness practices. It is important to note that this diagram does not distinguish between practices within the general use categories (such as shifting from subsistence fishing to catch and release), or avoidance of

using particular parts of the river in favor of others because of access or quality concerns. It is also important to note that the participant sample selected for elders and active river users. Use in other segments of the ACFN community may not follow similar patterns.



4.1. Flooding and Seasonal Cycles

Based on the ACFN interviews, it is clear that the ability of ACFN member to practice rights, including hunting, trapping, and fishing, has always depended on the seasonal flooding of the Athabasca River. It is also recognized that the Athabasca River is a highly variable natural system with some years of high water, and others of low. The ability of ACFN members to access territories, or practice other rights, may be naturally constrained by the absence of adequate water levels, particularly during ice free seasons when rivers and streams become important transportation corridors. The frequency of annual floods on the Athabasca, particularly in early to mid Spring, is considered critical in maintaining the grass and water ecology of the delta area, and the main and side channels of the Athabasca River itself, as well as contributing to healthy wildlife and fur populations (particularly muskrat).

“In the olden days, when I was really young, we had no problems with the water ... when the rivers jammed, the water rose, overflowed the banks, which enriched all the marshlands that were in the back and that caused a lot of fur, like the muskrats and the beavers to really flourish. There was a lot of water. In the early, mid-eighties, like the water started to go down quite a bit. You noticed the difference when the ice breaks up. The water didn’t rise and go over the banks, therefore it would not fill up the back sloughs and stuff like that and the muskrats and the beavers depend on that, the water supply to come in.” (A01)

Without exception, respondents reported that the seasonal flow of the Athabasca has changed over their lifetimes, that the trend is for the river to be lower than in the past, and that the reduction in flow is making it more difficult for boat travel or subsistence practice. Many of the

participants identified oil sands withdrawals as the most likely cause of reduced water levels on the Athabasca. Many participants also mentioned or described the cumulative effects occurring in delta areas as a result of the combined influence of reduced water flowing from the Peace river watershed, including the W.A.C. Bennett Dam, and reduced water flowing from the Athabasca River.

4.2. Navigational Hazards and Incidents

One of the key issues raised by ACFN participants was the difficulty of accessing traditional lands at low river levels because of challenges in navigating the main stream of the Athabasca River between Fort Chipewyan and Fort McMurray, or because of an inability to access smaller creeks and rivers running into the Athabasca due to shallow water. As one participant explains:

“...and there’s sandbars like I said everywhere. It’s dangerous. Like all these little shortcuts we were able to use to cut off time, right here, you come through here, all these little islands, you used to be able to navigate through all of them ... See, there’s a shortcut here, sometimes you got to go all the way round here, come all the way back like that, it depends on how the current is, the sandbars are always moving. And it’s dangerous. Some places here you could walk right across on the Athabasca River.” (A08)

Map 2 shows reported navigational hazards and incidents including sand bars, dangerous rocks, and log jams, and illustrates the predominance of sand bars in many parts of the Athabasca River itself. The absence of reported hazards or incidents south of Fort McKay is because the primary ‘take out’ location for ACFN users is Shell Landing, on the east side of the Athabasca near Fort McKay. Use of the Athabasca River by participants was reported most frequently in the Athabasca delta area, with use further up stream (south) along the river towards Fort McMurray being less frequent.

“For a while it was getting so low... it’s on this side of the river from Fort McKay to Fort McMurray, there’s more gravel bars so you get to do more damage to your motor on this side of the river. From Fort McKay this way, so not too many people use the river on this side.” (A03)

While the precise location of sandbars is constantly shifting, particular stretches of the river are known to be particularly bad. Sand bars become more frequent and exposed at low water levels, and seasonal flooding may not reach levels required to clear log jam areas. As such, the obstacles and hazards indicated on **Map 2** are mostly associated with low water levels and are considered to be more frequent now than in the past. A total of 92 separate accounts of hazards or incidents (41 points and 42 polygons) were reported and are shown on **Map 2**. The majority of them (60) were associated with sand bars, 11 with shallows, 8 with mud flats, and 8 with dangerous rocks, and 5 with other hazards or incidents.

Reported effects of sand bars and hazards include:

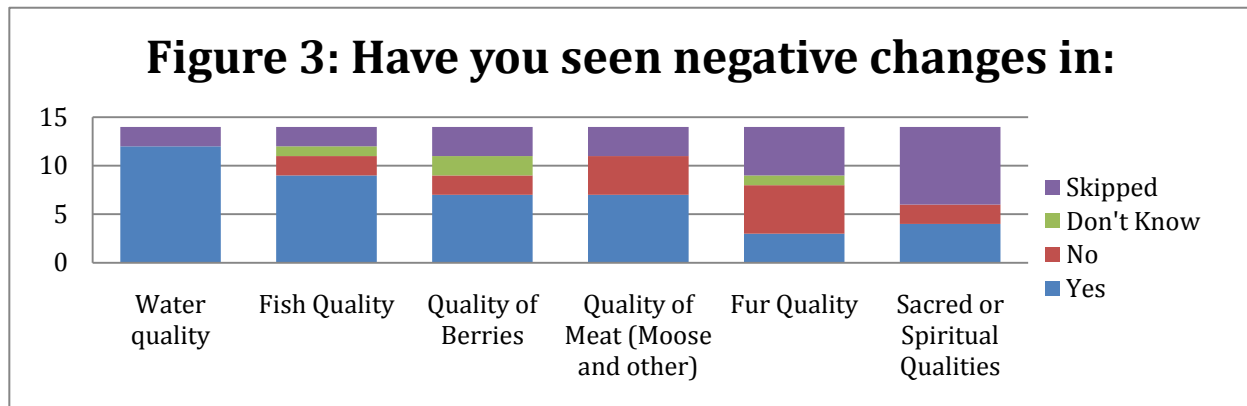
- lost access to side channels and streams adjoining the River (see **maps 5 and 6**);
- increased travel time and expense due to reduced speed and need for increased care;

- increased travel time and expense due to getting stuck on sand bars (including occasional inability to find a channel through);
- increased travel time and expense due to avoidance of sand bar areas (including large areas where the Athabasca delta joins Lake Athabasca);
- damage to boats, engines, and equipment; and,
- safety concerns related to collisions with sand bars or other hazards.

Map 3 shows reported specific instances of lost use because of water level. Examples include trying to access cabins and not being able to because of low water, trying to hunt in a particular area, but finding that the water was too low to get in, or wanting to shoot a moose and not doing so because the water level was too low to get the meat out. A large portion of the Athabasca River delta area, including ACFN reserve lands, becomes inaccessible at low water levels, and this map of specific instances of lost use due to water levels reflects the vulnerability of the area to low water levels. A total of 101 separate accounts of lost use due to water level are represented on **Map 3** (43 points and 58 polygons), including 9 instances of lost use of permanent or temporary habitation areas, 29 instances of lost subsistence use, and 63 instances of lost general use.

4.3. Water Quality and Industrial Pollution

Beyond water level (and water quantity), confidence in Athabasca River water quality, and ecosystem health more generally, is also essential for the continued meaningful practice of aboriginal and treaty rights by ACFN members, including hunting, trapping, fishing, and other rights, along the Athabasca, in the delta, and along adjoining tributaries. Confidence in the quality of resources harvested from the Athabasca River is a very important factor in changing land use patterns. As shown in **Figure 3**, the majority of participants indicated that, over their life times, they have seen negative changes in the Athabasca River, or in the resources gathered or hunted from its banks.



Within the interviews, perceptions of declining environmental quality were often explicitly connected to concern regarding oil sands related emissions, and linked to both received risk knowledge from government authorities and other ‘experts’, as well as local or traditional ecological knowledge related to perceived environmental change. Frequently reported water

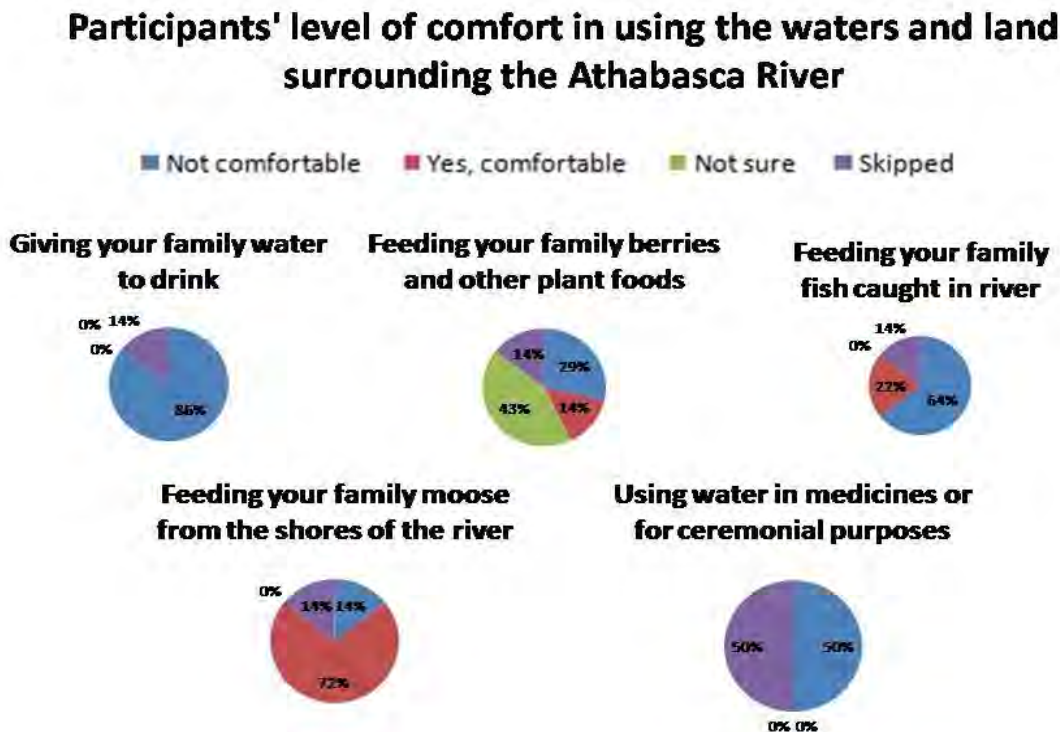
quality indicators included change in the taste and smell of Athabasca River water, presence of unusual foams, or films on the water, and the absence or decline of particular species, including insects, along the Athabasca River.

Map 4 shows reported instances of lost use due to concerns regarding quality. Examples include places where a moose was shot, but the meat was left on the land because of some abnormality in the meat, fish caught, but thrown back or fed to dogs because of some perceived quality issue (e.g. deformities, loss of colour, excessive slime). In the vast majority of reported instances, concerns regarding quality were associated with oil sands developments.

Map 4 shows a cluster of lost use, or avoidance due to quality, near Fort McKay, as well as instances in the delta area, and north into the Peace River drainage. A total of 21 separate accounts of lost use due to quality are represented on **Map 3** (18 points and 3 polygons), including 19 instances of lost subsistence use, and 2 instances of lost general use.

In conjunction with other interview findings, instances of avoidance due to concerns regarding quality suggest that, at least amongst some ACFN land users, a lack of confidence regarding the quality of resources, largely related to perceived oil sands emissions, is having adverse effects on subsistence use and the practice of aboriginal and Treaty rights in and around the Athabasca River. **Figure 4** illustrates the level of comfort participants reported with feeding their families from the Athabasca River and its shores. 64% indicated they would not be comfortable feeding their families fish from the Athabasca, and 14% indicated that they would not be comfortable feeding their families moose, 29% were uncomfortable, and 43% unsure regarding berries and all who responded were uncomfortable giving Athabasca water to drink.

Figure 4:



Taken together, **figures 3 and 4**, and **map 4** support an understanding that psychosocial factors, consistent with Health Canada guidance (Health Canada 2005) and related to fear of contaminants related to oil sands produce on the Athabasca River and surrounding areas, are resulting in avoidance of traditional foods and resources by ACFN members, especially fish and drinking water, and may be resulting in adverse effects on the meaningful practice of aboriginal and treaty rights along the Athabasca, in the delta, and adjoining tributaries.

4.4. Subsistence Navigation and Access

Particular attention was paid to mapping areas where access becomes limited at low and extreme low water levels. The standard of transportation specified in interviews, and on which responses were based, was a fully loaded boat, as after a successful hunt, or outfitting a trapping cabin, with an outboard motor. This is the standard and preferred mode of transportation used by ACFN subsistence river users. Explanations for why outboard motors were the preferred mode of subsistence transport included the cost of gas, the cost of motor repairs and availability of parts, and reliability in the variety of conditions encountered in ACFN territory (including open lake, river, stream, and weedy lakes). Based on interview responses, and later verification with the ACFN elder's council, the safe navigational depth (including start-up) for this kind of boat was confirmed to be approximately four feet (1.2m).

Map 5 shows, in blue, areas of the Athabasca River, including side channels and confluences with smaller streams, where ACFN members are able to travel at normal high water levels, but that become impassible at extreme low water levels. Extreme low water levels were defined in the interview setting as the lowest that the participant could remember the Athabasca River being. As shown in **Figure 5**, for many participants (10 of 14), either the time of interview (mid-May 2010), or the previous fall (2009) was reported to be the lowest they could remember the Athabasca River being. Many commented that the Spring 2010 levels were of particular concern as it was a time of year when the waters should be quite high.



Map 5 also shows, in red, tributaries to the Athabasca River that are reported to be navigable at normal summer high water for at least a portion of their length, but that become too shallow to navigate at extreme low water. Blue areas indicate reported low water limits (LLW and XLW). Red tributaries were extrapolated using watershed data (see appendix 2). It is particularly

important to note that access to large portions of key ACFN territories, including Indian Reserves, and areas around Richardson Lake and into the Richardson back country, is lost at extreme low water levels.

Major streams and waterways accessed by ACFN for the practice of Treaty and aboriginal rights, but reported to become inaccessible at extreme low water include, but are not limited to:

- Richardson River, which becomes inaccessible at low water near where it joins the Athabasca River, resulting in lost or limited access to territories, including cabins and trap lines, within a large area frequently referred to as the Richardson Backcountry.
- Jackfish Creek, which becomes inaccessible at low water near where it joins Richardson Lake, resulting in lost access to hunting, fishing, and cultural sites, including burials, located within IR Chipewyan 201E.
- Richardson (Jackfish) Lake itself, located adjacent to IR Chipewyan 201E, and constituting the majority of its area, which becomes inaccessible at low flow levels at its outlet into Jackfish Creek resulting in lost access to very important hunting, fishing, and cultural sites located within and adjacent to IR Chipewyan 201E.
- Various waterways in the delta, including within Indian Reserves (particularly IRs Chipewyan 201, 201B, 201C, 201D, and 201E) and extensive areas of Wood Buffalo National Park, including Lake Claire and surrounding area (see Mamawi Lake) become inaccessible at low flow levels.
- Mamawi Lake which becomes inaccessible at very low flow levels and in several places resulting in loss of access to a very large territory within Wood Buffalo National Park, including Lake Claire, Birch River and McIvor River.
- Numerous side channels of the Athabasca River itself become inaccessible at low flows resulting in lost or impeded access to cabins, trap lines, important hunting areas, and other values, including areas within IR Old Fort 217, IR Chipewyan 201F, and IR Chipewyan 201G.
- Firebag River, which becomes inaccessible at low flow levels where it joins the main stream of the Athabasca resulting in loss of access to hunting areas and other values.
- Other tributaries to the Athabasca, including Muskeg River, Ells River, and Dover/McKay Rivers.

Map 6 takes the same watersheds lost at extreme low water and identified in red in map 5, and applies a 5km buffer (roughly 3.1 miles) in pink. This pink buffered area approximates the distance easily traveled in a day trip from the river or stream, as when hunting or trapping using the river as a base. A 5km buffer (in orange) is also applied along the Athabasca River itself to reflect that boat travel along the Athabasca, and day trips for hunting or other purposes from it, are still possible at extreme low water, but may be more difficult (see **map 2**), with access to side channels impossible by boat, and access to river banks and shore frequently impaired because of expanses of mud flats or other barriers to land transport due to low water. This map

is designed to illustrate, or model, in a general way, the relationship between lost water access and the wider lands and watersheds within which aboriginal and Treaty rights are practiced. It reflects only restrictions to access for subsistence purposes by boat (frequently the preferred or only means) and does not consider the navigable limit of streams at normal summer high water levels, or territories that may be accessed by road or trail.

“If you got no water you can’t travel, or it makes it pretty tough going. Gotta have that water, like I wanted to hunt last week here and many a place I wanted to go I couldn’t, not enough water.” (A07)

5. Defining Aboriginal Base Flow (ABF) and Aboriginal Extreme Flow (AXF)

The results of the Athabasca River Use and Traditional Ecological Knowledge Study suggest two thresholds that define the ability of ACFN members to access their traditional territories, and to practice aboriginal and treaty rights by water. The first threshold, an Aboriginal Base Flow (ABF), reflects a level on the Athabasca River and adjacent streams where ACFN members are able to practice their rights, and access their territories fully. The second threshold, an Aboriginal Extreme Flow (AXF), reflects a level at which widespread and extreme disruption of Treaty and aboriginal rights occurs along the Athabasca river, delta, and tributaries due to a loss of access related to low waters.

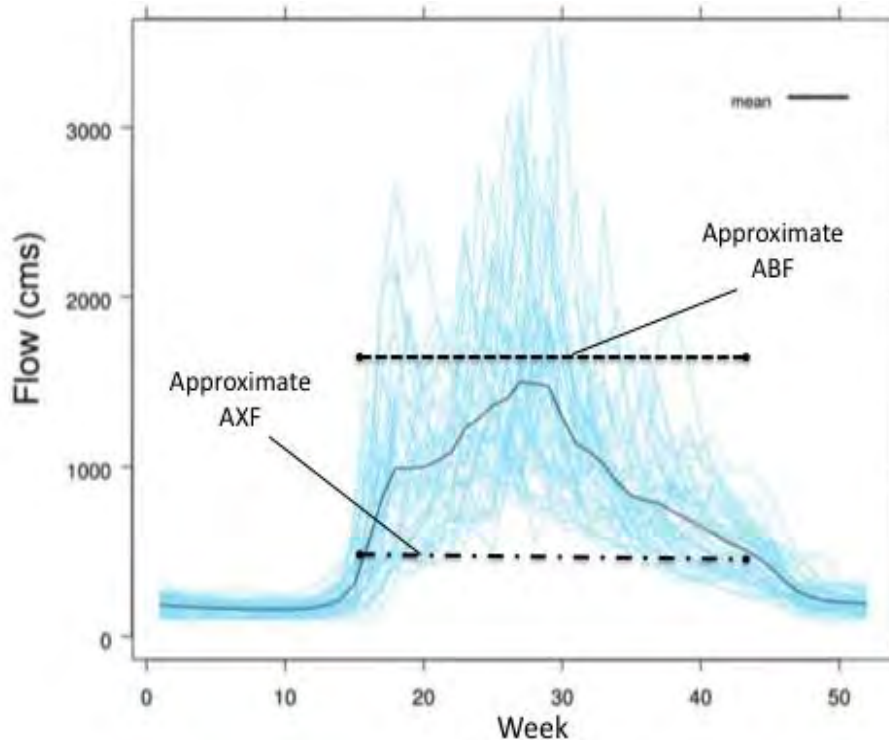
ACFN participants report that until recent decades, the ABF level was reached frequently and would last for much of the summer. A conservative estimate of this level, based on a normal high spring-summer level as shown on a hydrograph for the Lower Athabasca River provided in Ohlson *et al.* (2010.), would be approximately 1600 m³/s. This is proposed as an initial threshold, subject to monitoring and refinement, for identifying where Treaty and aboriginal rights with regard to navigation, access and water level may be practiced fully along the LAR and adjoining tributaries.

A conservative estimate for the AXF, a flow level where widespread and extreme disruption of Treaty and aboriginal rights occurs, can be arrived at by comparing the timing of the ‘extreme low water’ event reported at the time of interviews (mid-May 2010) with flow measurements at that time. Based on this, the AXF would be approximately 400 m³/s. This is a conservative estimate because, at this flow level, key waterways (including Richardson Lake) were already inaccessible. While ACFN participants indicate that the practice of rights in the delta area has already been irreversibly impacted due to the Bennett Dam on the upper Peace river, and resulting drying of the delta, an AXF of 400m³/s is likely a reasonable initial threshold, subject to refinement and monitoring, for an Aboriginal Extreme Flow (AXF) on the Athabasca River. This level would identify where flow levels are likely to result in widespread and extreme adverse effects on access to territories relied on for the practice of treaty and Aboriginal rights.

At flow rates between the ABF and AXF, varying levels of adverse effects to aboriginal use and rights can be anticipated due to water levels. The levels currently set for both the ABF and AXF

are preliminary thresholds and may be refined through additional work. Figure 4 provides a visual depiction of the preliminary thresholds.

Figure 6. Athabasca River hydrograph¹ showing approximate Aboriginal Base Flow (ABF) and Aboriginal Extreme Flow (AXF) thresholds.



6. Recommendations

Given the above findings, and in consideration of the proposed AXF and ABF, it is recommended that the ACFN consider the following recommendations:

1. Encourage the Crown to sit with the ACFN and MCFN prior to the approval of the Phase II Water Framework to jointly determine an Aboriginal Baseline Flow (ABF) for practice of ACFN and MCFN rights and interests, based on the recommendations of this report or otherwise as agreed by the parties jointly. The ABF would be considered to be a reasonable level at which full practice of aboriginal rights on the river, in the delta, and along adjoining tributaries, can be expected to occur.
2. Encourage the Crown to also sit with ACFN and MCFN prior to the approval of the Phase II Water Framework to jointly determine a lower level (the AXF) at which the Aboriginal Baseline Flow (ABF) is exceeded to such a degree that wide spread and extreme

¹ Hydrograph showing 50 years of flow on the Athabasca River based on weekly average (mean) Ohlson *et al.* (2010.)

disruption of aboriginal rights along the Athabasca river, delta, and tributaries is understood to be likely. It is recommended that this level be based on the recommendations of this report (approximately 400 m³/s), or otherwise as agreed by the parties jointly.

3. Encourage the Crown to sit with the ACFN and the MCFN to establish an Athabasca River Consultation and Accommodation Framework to govern future water management. Such a framework might include the following components:
 - Should a Crown decision be made to permit any withdrawals of water from the Athabasca River, and that decisions result in or contribute to a water level that causes the ABF to be exceeded, then adverse effects to Treaty rights would be understood to be caused or exacerbated, and a corresponding duty to meaningfully consult, and to adequately accommodate, would arise.
 - Should the Crown wish to permit any withdrawals of water from the Athabasca River that would cause the AXF threshold (400 m³/s or as otherwise determined) to be exceeded, then it would be recognized that this would be permitting of an activity that is likely to cause or worsen wide spread and extreme disruption of a central aboriginal right along the Athabasca river, delta, and tributaries. It is recommended that such a permission should require the permission of the Crown agent, and permission of authorized authorities of the ACFN and MCFN.
4. For ecological and aboriginal rights reasons, a goal should be set for how frequently the river and delta is allowed to achieve spring flood levels, recognizing that ice dams are often critical components of this flooding. This goal could be integrated within a Traditional Resource Use Plan (TRUP) or other document to guide Athabasca River management into the future.
5. In collaboration with ACFN and MCFN, additional work and action is required to further understand and address water quality issues and concerns, including psychosocial factors, and resulting adverse effects on treaty and aboriginal rights, along the Athabasca River, delta, and adjoining tributaries. In particular, the Crown should work with the ACFN and MCFN to enable the Phase 2 Framework process to meaningfully consider, address, and monitor the relationship between Athabasca River water levels, and water quality, including potential contaminant concentrations at various flow levels and seasons.

Bibliography

A01 Transcript of May 17, 2010, Interview from the Athabasca River Use and Traditional Ecological Knowledge Project. Athabasca Chipewyan First Nation Industry Relations Corporation.

A06 Transcript of May 19, 2010, Interview from the Athabasca River Use and Traditional Ecological Knowledge Project. Athabasca Chipewyan First Nation Industry Relations Corporation.

A08 Transcript of May 20, 2010, Interview from the Athabasca River Use and Traditional Ecological Knowledge Project. Athabasca Chipewyan First Nation Industry Relations Corporation.

A03 Transcript of May 18, 2010, Interview from the Athabasca River Use and Traditional Ecological Knowledge Project. Athabasca Chipewyan First Nation Industry Relations Corporation.

Health Canada 2005. Addressing Psychosocial Factors Through Capacity Building: A Guide for Managers of Contaminated Sites. Ministry of Health.

Hein, Francis J (2000). "Historical Overview of the Fort McMurray Area and Oil Sands Industry in Northeast Alberta" *Earth Sciences Report 2000-05*. Alberta Geological Survey. Energy and Utilities Board.

Laird, David, J.H Ross, and J.A.J. McKenna, Report of Commissioners to Clifford Sifton, Superintendent General, Department of Indian Affairs, Ottawa, September 22, 1899, in Copy of Treaty No. 8 Made June 21, 1899, and Adhesions, Reports, etc. (Ottawa: Queen's Printer, 1966).

Ohlson D, G Long, T Hatfield (2010). Phase 2 Framework Committee Report. Final report of the Phase 2 Framework Committee.

Tanner, J. and A. Rigney. 2003. Athabasca Chipewyan First Nation Traditional Land Use Study. Athabasca Chipewyan First Nation.

Tobias, Terry. (2010). Living Proof: the Essential Data-Collection Guide for Indigenous Use-and-Occupancy Map Surveys. Ecotrust Canada and the Union of British Columbia Indian Chiefs: Vancouver, Canada.

Appendix 1

ACFN and MCFN Athabasca River Use and Traditional Ecological Knowledge (TEK) Project
Interview Guide

Participant:

ID#:

Interviewer:

Co-interviewer

May 14, 2010

Interview Date:

Other Recordings:

ACFN and MCFN Athabasca River Use and Traditional Ecological Knowledge (TEK) Project
Interview Guide

PRE-INTERVIEW CHECK LIST

- ALWAYS Test your recorder and microphone by listening through headphones.
- Make sure you have enough note books, pens, and other supplies for the interview.
- Make sure you have all of the maps you need laid out and marked with Interview ID#, date, interviewer names and participant names.
- If you are using overlays, make sure you have marked them all with at least 3 anchor points and the map number.
- Make sure the elders or community members you are interviewing are comfortable. Get them a tea or coffee, and talk for a while about the interviews and why we are doing them. Make everyone as relaxed as possible.
- Read the consent form to the participant and ask them to sign it. Let them know that they don't have to answer any questions that they don't want to.
- Start the tape and begin the interview.
- Let them know that we will be reporting back to the community and them in the next couple of months.

Interview Introduction

(read with RECORDER ON before every session)

Today is _____, 2010. We are sitting here interviewing _____ for the [ACFN OR MCFN] **Athabasca River Use and TEK Project**. Thank you for coming.

My name is _____ and my co-researcher is _____. We're here at the ___ building in [Ft. McMurray or Ft. Chipewyan]. _____ has read and signed the consent forms and we have assigned Interview ID # _____. We are going to be recording this interview on a digital voice recorder, with notes on this questionnaire, and using maps. We will be mapping on [MAP SHEETS OR DIGITAL] at a scale of 1:____,000. The project area covers [verbal description of project area] .

In this project, MCFN and ACFN are both documenting detailed community use, knowledge, and issues related to the Athabasca River and especially changes experienced on or near the river. The information is needed so that the ACFN and MCFN can provide a strong response to government plans for how much water industry will be able to take from the Athabasca in future years.

The focus of this study is on the Athabasca River, and in that we **include those parts of the Athabasca Delta, and smaller creeks and streams running into the Athabasca**, that are

Participant:

ID#:

Interviewer:

Co-interviewer

May 14, 2010

Interview Date:

Other Recordings:

affected by changes in how much Athabasca water level and the quality.

The interview will take about 3 hours to complete and we'll take a break about an hour and 45 minutes in. There are 4 main sections or types of questions:

- The first section (about half an hour) focuses on your experiences on the river and changes you've seen in the river.
- The second section (about an hour), focuses on how water levels and water quality have affected your use. We'll take a break after this section.
- In the third section, about half an hour, we'll talk about the main routes you use to travel on the river, and we'll map some of the main places that you go.
- In the last section, again about half an hour, we'll want to hear about what you think the results will be for ACFN/MCFN member's abilities to practice important uses if the government goes forward with their plans.

The first questions are very broad, and others are very detailed. The reason for the detailed questions is so that the ACFN/MCFN can be in a strong position if they need to defend information in court or elsewhere.

Also, if there are things we don't ask about, but you think we should be raise in our reports to leadership, please let us know.

Mapping Note: Every site should be consistently labelled with a code that indicates site use, site # and source respondent (ex: TX02-M08 where the Mikisew person with ID #08 reports the second mapped place where she has camped in a temporary shelter). This should be followed by the date of the event, if possible [ex: CB02-A08(summer 1985)]. First hand knowledge should be mapped in black ink, [Second hand knowledge in blue ink.](#)

Participant: ID#:

Interviewer: Co-interviewer

May 14, 2010

Interview Date: Other Recordings:

1.0 BIOGRAPHICAL AND BACKGROUND QUESTIONS

1.1	What is your full name?	
1.2	Where were you born?	
1.3	How old are you?	
1.4	Where were you raised?	
1.5	Are you a member of the ACFN or MCFN?	
1.6	Have you ever travelled on the Athabasca River? How old were you the first time? In an average year, how many times a year(ice freesummer or winter)	
1.7	When was the last time you travelled it?	

2.0 IMPORTANCE OF THE RIVER

Through past meetings and other studies, ACFN / MCFN members have made it clear that the Athabasca River is important, and that changes in it, especially water levels, and water quality, are big concerns.

2.1	In your own words, is the Athabasca River important to you and your family?	
2.2	Why or why not?	

Participant:

ID#:

Interviewer:

Co-interviewer

May 14, 2010

Interview Date:

Other Recordings:

3.0 COMPARISON AND CHANGE

<p>3.1 When you were young [age <20, anchor to year or event], what was the Athabasca River like?</p> <p>PROMPTS, IF NEEDED: Water levels? Water quality?</p>		
<p>3.2 How did you and your family use the river then [when you were young]?</p>	<p>Fishing__ Hunting__ Trapping__ Drinking Water__ Transportation__ Camping__ Teaching__ Cultural/Spiritual/Wellness __ Other__</p>	
<p>3.3 How do you and your family use the river now?</p>	<p>Fishing__ Hunting__ Trapping__ Drinking Water__ Transportation__ Camping__ Teaching__ Cultural/Spiritual/Wellness __ Other_____</p>	
<p>3.4 How has the Athabasca River changed since you were young?</p>	<p>3.5 About when did the change take place?</p>	<p>3.6 What do you think caused the change?</p>
<p>1. 2. 3 4</p>		

Participant: ID#:

Interviewer: Co-interviewer

May 14, 2010

Interview Date: Other Recordings:

<p>3.7 <u>Over your lifetime, would you say that use of the Athabasca River by you and your family has:</u></p> <p>3.8 <u>Why?</u></p>	<p>Increased__ Decreased__ stayed the same__</p>
<p>3.9 <u>Over your lifetime, would you say that the waters of the Athabasca River have:</u></p> <p>3.10 <u>Why?</u></p>	<p>Improved__ gotten worse__ or stayed the same__</p>
<p>3.11 <u>Have you ever seen any problems or negative changes in:</u></p> <p>3.11.1 <u>water quality from the River?</u> Yes No Don't know</p> <p>3.11.2 <u>fish caught from the river?</u> Yes No Don't know</p> <p>3.11.3 <u>quality of berries, or plants collected in or near the river?</u> Yes No Don't know</p> <p>3.11.4 <u>quality of meat (moose or other) hunted on the river?</u> Yes No Don't know</p> <p>3.11.5 <u>fur quality trapped along the river?</u> Yes No Don't know</p> <p>3.11.6 <u>the spiritual or sacred qualities of the river?</u> Yes No Don't know</p>	
<p>3.12 <u>Have you ever seen any problems or negative change in anything else related to the river?</u></p>	
<p>3.13 <u>Would you feel comfortable:</u></p> <p>3.13.1 <u>Giving your family water to drink from the Athabasca River?</u></p>	

Participant: ID#:

Interviewer: Co-interviewer

May 14, 2010

Interview Date: Other Recordings:

<p>Not comfortable not sure yes, comfortable</p> <p>3.13.2 <u>Feeding your family fish from the Athabasca River?</u></p> <p>Not comfortable not sure yes, comfortable</p> <p>3.13.3 <u>Feeding your family berries or other plant foods from the shores of the river?</u></p> <p>Not comfortable not sure yes, comfortable</p> <p>3.13.4 <u>Feeding your family moose meat shot on the shores of the river?</u></p> <p>Not comfortable not sure yes, comfortable</p> <p>3.13.5 <u>Using water from the Athabasca River in medicines, or ceremonial or spiritual practices (ex. making medicine tea, using in church, using in a sweat lodge)?</u></p> <p>Not comfortable not sure yes, comfortable</p>	
<p>3.14 [If any of the answers above (in 3.10) was 'not comfortable' or 'not sure',]Why?</p>	
<p>3.15 How did you learn to use the Athabasca River and the lands along it?</p> <p>3.16 Have you been able to pass on your knowledge of the river to younger people in a similar way?</p> <p>3.17 Why or Why not?</p> <p>PROMPT, IF NEEDED:</p> <p>for example, how to use it properly, or the cultural importance of places along it?</p>	

Participant:

ID#:

Interviewer:

Co-interviewer

May 14, 2010

Interview Date:

Other Recordings:

<p>3.18 Are you able to share as much moose, or fish, or other resources, harvested from the Athabasca River, as you were able to in the past?</p> <p>3.19 If not, why not?</p> <p>3.20 How does your ability to share meat and other resources from the River affect you, and the people who you share with? Who are those people?</p>	
<p>3.21 Have changes in the Athabasca River (flow or quality) affected how you or your family feel about living on the land or the river?</p>	

Participant: ID#:

Interviewer: Co-interviewer

May 14, 2010

Interview Date: Other Recordings:

<p>3.22 Have changes in the Athabasca River(either flow or quality) had an affect on what you and your family eat?If so, when did the changes in what you and your family eathappen? Why?</p>	
<p>3.22.1 When you were young [<20yrs], about how often (times/ week) did you and your family eat fish caught on the land? How about moose?</p>	<p>Approx. # of meals of wild fish/week (past):</p> <p>Approx. # of meals of moose/week (past):</p>
<p>3.22.2 When you were young [<20yrs], how much of that fish meat would have been caught in the Athabasca River (including parts of the delta or other creeks and streams, that are affected by the flow of the Athabasca)? How much of the Moose meat?</p>	<p>Approx. %of subsistence fish caught in Athabasca River (past):</p> <p>Approx. % of subsistence moose harvested in Athabasca Delta (past):</p>
<p>3.23 Over this last year, about how often (times/ week) have you and your family eaten wild caught fish? About how often have you eaten wild caught moose?</p>	<p>Approx. # of meals of wild fish/week (now):</p> <p>Approx. # of meals of wild moose/week (now):</p>
<p>3.24 Over this last year, about how much of the wild fish that you and your family ate came from the Athabasca River (again, this includes the delta or other creeks and streams, that are affected by the flow of the Athabasca)? About how much of the moose meat?</p>	<p>Approx. %of subsistence fish caught in Athabasca River (now):</p> <p>Approx. % of subsistence moose harvested in Athabasca Delta (now):</p>
<p>3.25 Do you think changes in the water level or quality of the Athabasca River have had any effect on your</p>	

Participant: ID#:

Interviewer: Co-interviewer

May 14, 2010

Interview Date: Other Recordings:

<p>ability, or the ability of your family, to practice your culture? If so, how?</p> <p>3.26 If you had no concerns about water levels in the Athabasca River, would you use it more? What would you do more of?</p> <p>3.27 If you had no concerns about water quality in the Athabasca River, would you use it more? What would you do more of?</p>	
---	--

TIME CHECK! Interview should be at about 40-45 min.

Participant: ID#:

Interviewer: Co-interviewer

May 14, 2010

Interview Date: Other Recordings:

4.0 PERSONAL RESPONSES AND EXPERIENCES

In the previous section, we focused on background information, changes you have seen in the Athabasca River, and the effects those have had on the community. In the next section, we are going to be asking more detailed questions about how those changes have affected you and your practices on the river.

<p>4.1 In general, how have changes in the Athabasca river water quality (ex. smell, taste, appearance) changed how, or how often, you and your family use the river for hunting, trapping, fishing, or other activities that are important to you? If so, how so?</p>	<p>Hunting:</p> <p>Trapping:</p> <p>Fishing:</p> <p>Other activities:</p>
<p>4.2 How about water levels:In general, how have changes in the Athabasca river water levels changed how , or how often, you and your family use the river for hunting, trapping, fishing, or other activities that are important to you? If so, how so?</p>	<p>Hunting:</p> <p>Trapping:</p> <p>Fishing:</p> <p>Other activities:</p>
<p>4.3 Other than changes in the river, are there other things that have changed how or how often you and your family use the Athabasca River? If so, What are they?</p>	

Participant:

ID#:

Interviewer:

Co-interviewer

May 14, 2010

Interview Date:

Other Recordings:

<p>4.4 <u>In your experience, dewater levels on the Athabasca affect water quality? For example, when the river is low, is the water quality in the Athabasca better, worse, or about the same?</u></p> <p>4.5 <u>When you are on the river, how do you know if the water is good or bad?</u></p> <p><u>PROMPT, IF NEEDED:</u></p> <p><u>ex. things you look for in the water? presence/absence of particular animals? Frogs? Insects? Plants?</u></p> <p>4.6 <u>If there are things you look for to know about water quality, do you see them on the Athabasca? When did you start seeing them?</u></p>	<p>BetterWorseAbout the same</p>

Participant: ID#:

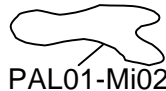
Interviewer: Co-interviewer

May 14, 2010

Interview Date: Other Recordings:

5.0 PREFERRED ACCESS LIMIT VIA RIVER AND RESTRICTIONS BY FLOW

*Mapping Note: Mark extent of access via river using a large, transparent polygon labelled with letter code and a number, followed by the community code and the participant ID. **PAZ1-M01** should be the first area mentioned by the Mikisew member with PIN #01, **PAZ2-M01** the second, etc. In most cases, there should only be one PAL per ID#.*



5.1	In your experience, during what months does the Athabasca River have the lowest levels?	
5.2	<u>In your experience, during what months is use of the Athabasca River most important for you and your family? Why?</u>	
5.3	<u>How deep does river water need to be for you and your family to navigate safely in a fully loaded boat with outboard motor?</u>	
5.4	<u>In your experience, at normal low water levels (average September) are there any other parts of the river, or larger territory, where you cannot enter because of sand bars or mudflats, or because water levels are too low or unsafe (based on 5.3 above)?</u>	
MAP using Controlled Polygon, and code LLW (Low Limit Water)		

Participant:

ID#:

Interviewer:

Co-interviewer

May 14, 2010

Interview Date:

Other Recordings:

<p>5.5 Some of the next questions involve remembering dates. To help, we want to establish some events in your life that can help us figure out the order of things.</p> <p>Possible Community Benchmarks: Present =within 10yrs, c. 1985=new school built, c. 1982= oil spill on the Athabasca, c. 1975=Syncrude starts in McMurray, c. 1968=dam on the Peace in BC.</p> <p>Possible Personal Benchmarks: Birth of first child, moved to X, worked at X.</p>	<p>Benchmark 1 (most recent):</p> <p>Benchmark 2:</p> <p>Benchmark 3:</p> <p>Benchmark 4:</p> <p>Benchmark 5 (oldest):</p>
<p>5.6 <u>In your experience, when was the Athabasca River the very lowest that you can remember? (exact year and season if possible)</u></p>	<p>Year and Season:</p>
<p>5.7 <u>When the river was at its very lowest[reference year], were there any other parts of the river or larger territory, where you could not enter because of low water levels (based on 5.3 above)?</u></p> <p>MAP using Controlled Polygon, and code XLW (Extreme Low Water)</p>	
<p>5.8 Are there particular places on the river where you have experienced obstacles or hazardscaused bylow water levels, including near misses, that resulted in damage or delay.</p>	

Participant:

ID#:

Interviewer:

Co-interviewer

May 14, 2010

Interview Date:

Other Recordings:

<p>What? When? Where? (Map)</p> <p>MAP using Controlled Polygon or point, and code (NO lines)</p> <p>ISB= Incident - Sand Bar</p> <p>IMF= Incident - Mud Flat</p> <p>ISH= Incident – Shallows (too shallow to pass)</p> <p>IDR= Incident - Dangerous Rocks</p> <p>ISL= Incident - Snags or Dangerous logs</p> <p>IWH= Incident - Winter or Ice Hazard</p> <p>IRA= Incident - Difficult Rapids</p> <p>IDC= Incident - Dangerous Current</p> <p>IOH= Incident - Other Hazard (specify in brackets)</p>	
<p>5.9 At good water levels (normal July), are there specific hazards in the river that are more difficult to navigate than others? Where? Why are they challenging.</p> <p>MAP using Controlled Polygon or point, and code (NO lines)</p> <p>GSB= Good -Sand Bar</p> <p>GMF= Good - Mud Flat</p> <p>GSH= Good - Shallows</p> <p>GDR= Good - Dangerous Rocks</p> <p>GSL= Good - Snags or Dangerous logs</p> <p>GWH= Good - Winter or Ice Hazard</p> <p>GRA= Good - Difficult Rapids</p> <p>GDC= Good - Dangerous Current</p> <p>GOH= Good - Other Hazard (specify in brackets)</p>	
<p>5.10 At normal low water levels (September), are there any other</p>	

Participant:

ID#:

Interviewer:

Co-interviewer

May 14, 2010

Interview Date:

Other Recordings:

<p>specific hazards that become difficult to navigate? Where? Why?</p> <p>MAP using Controlled Polygon or point, and code (NO lines)</p> <p>LSB= Low - Sand Bar LMF= Low - Mud Flat LSH= Low - Shallows LDR= Low - Dangerous Rocks LSL= Low - Snags or Dangerous logs LWH= Low - Winter or Ice Hazard LRA= Low - Difficult Rapids LDC= Low - Dangerous Current LOH= Low - Other Hazard (specify in brackets)</p>	
<p>5.11 At the very lowest water levels you remember, are there any other specific hazards that become difficult to navigate? Where? Why?</p> <p>MAP using Controlled Polygon or point, and code (NO lines)</p> <p>XSB= Extreme - Sand Bar XMF= Extreme -Mud Flat XSH= Extreme -Shallows XDR= Extreme -Dangerous Rocks XSL=Extreme-Snags or Dangerous logs XWH= Extreme - Winter or Ice Hazard XRA= Extreme -Difficult Rapids XDC= Extreme - Dangerous Current XOH= Extreme - Other Hazard (specify in brackets)</p>	
<p>5.12 Are there particular places on the river where you have found water quality (eg.taste, smell,</p>	

Participant:

ID#:

Interviewer:

Co-interviewer

May 14, 2010

Interview Date:

Other Recordings:

<p>appearance) to be especially good or bad? What? When? Where? Why?</p> <p>MAP using Controlled Polygon or point, and code (NO lines)</p> <p>QSM= Quality– Smell QOS= Quality – Oil Sheen QVP= Quality – visibility problem QOP= Quality – other problem QGW= Quality – Good Water</p>	
<p>5.13 In your experience, are there creeks or tributaries running into the Athabasca where you have noticed exceptional changes in water quality? Where are they? When did you first notice the change?</p> <p>5.14 In your experience, are there creeks or tributaries running into the Athabasca where you have noticed exceptional changes in water level? Where are they? When did you first notice the change?</p>	
<p>5.15 Have you ever wanted to hunt, trap, fish or use the Athabasca but chosen not to because of concerns about low water levels? (eg. wanted to shoot a moose, drink water, establish a camp, or planned to make a trip, or conduct a cultural practice) When? Where? What was the specific concern that led to</p>	

Participant:

ID#:

Interviewer:

Co-interviewer

May 14, 2010

Interview Date:

Other Recordings:

<p>avoidance? Can we map it?</p> <p>MAP using point and code ASL (Avoidance on Level)</p> <p>5.16 Have you ever wanted to hunt, trap, fish or use the Athabasca but chosen not to because of concerns about low water quality? When? What was the specific concern that led to avoidance? Can we map it?</p> <p>MAP using point and code ASQ (Avoidance on Level)</p> <p>5.17 Are there particular kinds of animals, fish, plants, or other resources you would like to hunt, trap, fish, or collect in or near the Athabasca River, but that you avoid because of concerns about water quality?</p>	
--	--

TIME CHECK! Interview should be at about 1hr 45 min.

Congrats, we made it this far! Take a 10 Min Break

Participant:

ID#:

Interviewer:

Co-interviewer

May 14, 2010

Interview Date:

Other Recordings:

6.0 PREFERRED TRAVEL ROUTES

*Mapping Note: Mark travel routes using a SOLID line for the main good water route, DASHED line for Normal Low Water Route, and DOTTED line for the Extreme Low Water Route, or make otherwise clear. Code for main Good water route = **GWR**, Normal Low Water Route = **LWR**, Extreme Low Water Route = **XWR**, Winter Trail = **WTR** with SOLID line in a contrasting colour.*



<p>6.1 When travelling on the river at good water levels (average July) can you show us what river route you follow? (Map for Fort Chip to Shell Landing, and any destinations off the main flow of river, including delta)</p> <p>MAP using solid line and code GWR (Low Water Route)</p>	
<p>6.2 When travelling on the river at normal low water (average September), would this route be different? If so, how?</p> <p>MAP using dashed line and code LWR (Low Water Route)</p>	
<p>6.3 How about that time when you remember the water being the lowest ever? Did you travel the river then? If so, how was your route down the river different (Map extreme low water route)</p>	

Participant: ID#:

Interviewer: Co-interviewer

May 14, 2010

Interview Date: Other Recordings:

<p>MAP using dotted line and code XWR (Extreme Water Route)</p> <p>6.4 If you ever travel the river in winter, can you show us the travel route that you would travel.</p> <p>MAP using solid line and code WTR (Winter Trail)</p>	
--	--

Participant:

ID#:

Interviewer:

Co-interviewer

May 14, 2010

Interview Date:

Other Recordings:

<p>Can you show us on the map, some of the key places used by you or your family and accessed via the Athabasca River [For each location: time of use (use benchmarks), or frequency of visit, and who was there].</p> <p>6.5 These include:</p> <p>6.5.1 Places on the river where you stop regularly as a rest stop.</p> <p>MAP using point and code ST</p> <p>6.5.2 Places where you have camped overnight in a tent, lean-to, or other temporary structure.</p> <p>MAP using point and code TX</p>	
<p>6.5.3 Places where you have built or used cabins or other permanent structures.</p> <p>MAP using point and code PX</p> <p>6.5.4 Places where you access trails or other travel routes from the river.</p> <p>MAP using line and point and code TR</p> <p>6.5.5 Places where people are buried</p> <p>MAP using point and code BU = Burials</p> <p>6.5.6 Places where spirit beings live.</p> <p>MAP using point and code SP</p>	

Participant: ID#:

Interviewer: Co-interviewer

May 14, 2010

Interview Date: Other Recordings:

<p>6.5.7 Special places used for ceremonies (drum dances, sweat lodges).</p> <p>MAP using point and code CP = ceremonial place.</p> <p>6.5.8 Places where you have hunted, fished, or collected hard to find animal, fish, plant foods, medicines, or other resources that are hard to find.</p> <p>MAP using point and code KS= kill site, FS= fishing site, FP= food plant (EG= Eggs), MP=medicine plant</p> <p>MAP using polygon and code TP= trapping</p> <p>6.5.9 Teaching areas, or places that have special knowledge or stories associated with them.</p> <p>MAP using point and code TA</p> <p>6.5.10 Salt licks, or other unique environmental features</p> <p>MAP using point and code EN</p> <p>6.5.11 Areas of particular industrial developments that you feel is important to put on the map (i.e. water intake valves).</p> <p>MAP using point and code IND</p>	
---	--

Participant:

ID#:

Interviewer:

Co-interviewer

May 14, 2010

Interview Date:

Other Recordings:

<p>6.6 In your experience, do low water levels in the Athabasca affect animals, plants, fish or other things that you or your family depend on?</p> <p>6.7 Have you noticed any changes in where animals, for example Moose or muskrat, can be found on the river, or how they use the river? Fish? Plants? (key locations of change may be mapped, if time allows).</p>	
<p>6.8 Based on your experience, if more water is taken out of the Athabasca river each year in the summer and fall, and the water levels are as low or lower, every year, as the lowest they have ever been in the past fifty years, what will change for</p> <ul style="list-style-type: none"> - your family? - your community? - the territory? 	

Interview Conclusion

(read after every tape session)

Participant:

ID#:

Interviewer:

Co-interviewer

May 14, 2010

Interview Date:

Other Recordings:

Today is _____, 2010.

We have just finished interviewing _____ for the [ACFN OR MCFN] **Athabasca River Use and TEK Project**. Thank you for coming here today.

My name is _____ and I'm here in the _____ building with _____. We've given him/her TUS ID #____. We've used __, _____, _____, and _____ maps at 1:50,000 (or other?) scale and a total of _____ tracks on the digital recorder. Notes are recorded in _____ note book.

Appendix 2

ACFN and MCFN Athabasca River Use and Traditional Ecological Knowledge (TEK) Project
Interview and Mapping Methods

ACFN and MCFN Athabasca River Use and TEK Study Interview and Mapping Methods

The methods for the study were developed by Dr. Craig Candler and Rachel Olson of the Firelight Group to document detailed community use, knowledge, and issues related to the Athabasca River and especially changes or problems experienced on or near the Athabasca that may be related to water levels, or water quality. The study focused on individual interviews with Athabasca River users and knowledge holders from both ACFN and MCFN. Each interview took approximately two-three hours to complete. Methods were based on standard field practice, combined both quantitative survey questions (closed) and qualitative questions (open-ended). The final component of the method included mapping places and/or areas of observed changes in water level and/or quality and the associated effects of these changes on the continued use of the identified areas for the practice of Aboriginal and Treaty Rights. Tobias (2010) was referred to in preparing the mapping methods.

3.1 Participants

Fourteen ACFN members were interviewed for the study. The selection of participants focused on elders with extensive knowledge of the river, or younger knowledge holders recognized as having knowledge of the river. Efforts were made to involve knowledgeable elders and river users from different families or segments of the communities. The sample was determined by beginning with a set of elders or people known by MCFN-GIRC and ACFN-IRC staff to have extensive experience on the river. From this, opportunistic sampling took place, and identified participants were recruited subject to availability, and willingness to participate in the study. Each participant received an honorarium for their time.

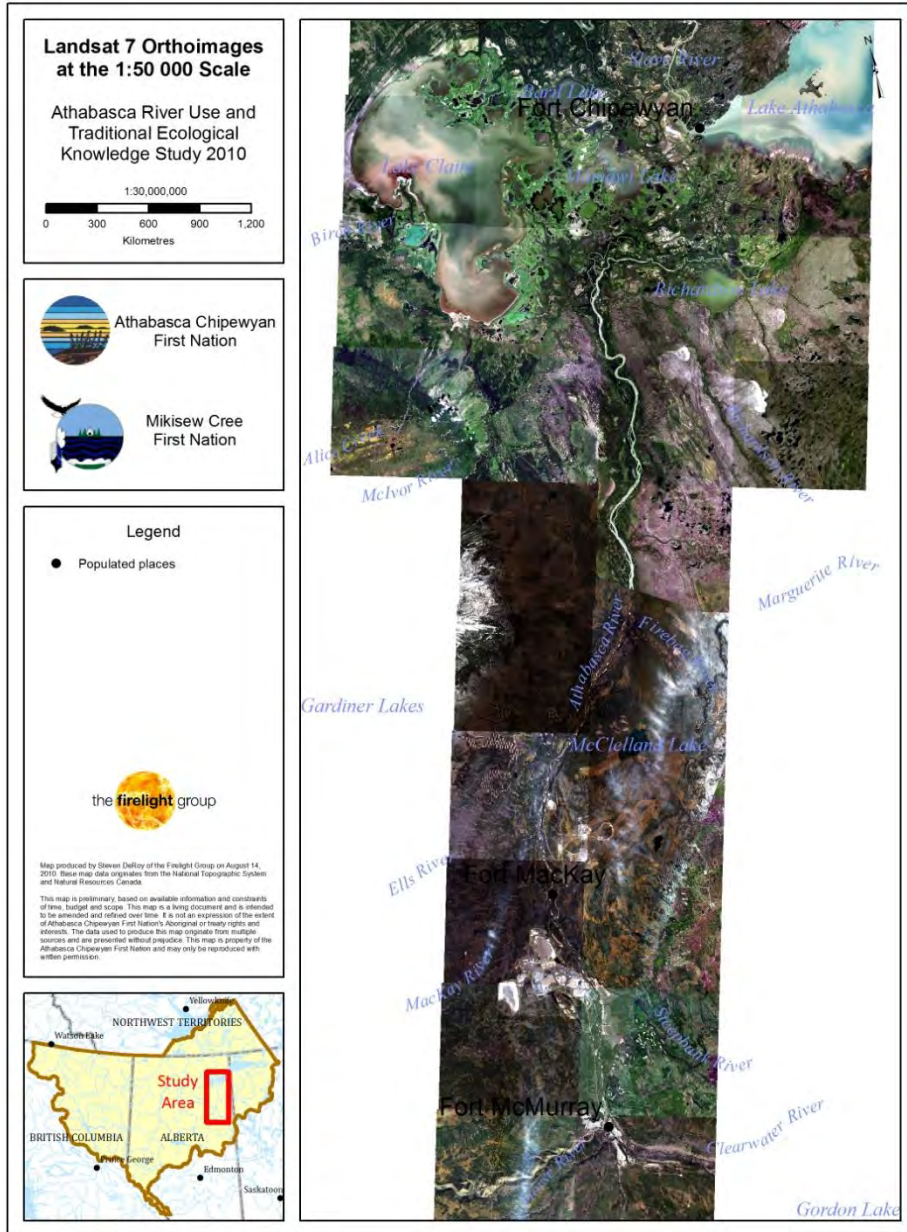
3.2 Study Area

The study area was defined as the Athabasca River, including those parts of the Athabasca Delta, and smaller creeks and streams running into the Athabasca, that are affected by changes in how much water runs in the Athabasca (water level) and the quality of that water. The geographic focus of the study was further defined by a corridor of approximately 5km either side of the Lower Athabasca River, extending downstream from Ft. McMurray and including the Athabasca Delta area, as well as areas of use in the vicinity of Fort Chipewyan that may be influenced by low water levels on the Athabasca. This 5 km buffer provided an approximation of the distance easily travelled, by foot, in a day trip from the river. Where appropriate, areas outside of the study area were documented. The study area was explained to each participant at the beginning of the interview through reference to the maps available at the interview.

3.3. Base Maps

Mapping was based on a set of four base maps that covered the study area outlined above. As shown below in Map 1, the base map area extended from Fort McMurray to north of Fort Chipewyan.

Map 1: Extent of Base Map Imagery



The maps were created at a scale 1:50,000 using LANDSAT satellite photos and overlaying relevant NTS base data. Creating the four base maps used the following steps:

3.3.1. Determine required data sets

The GIS software package chosen for all mapping and analysis was ESRI ArcGIS 9.2. This was because ESRI is an industry standard commonly relied upon for professional applications, government data sources are distributed in a common data format (shape files) and ArcGIS can load data from numerous sources.

An overview map was created in ArcGIS highlighting major rivers, waterbodies, town sites, First Nation reserves, and a 1:50,000 NTS reference grid. Using this map, each NTS sheet was labelled to determine which map datasets were required to provide a minimum of 5 kilometres on each side of the Athabasca River.

Data from this overview map came from the following Government of Canada online GIS data repositories:

- National Framework - Hydrology, Drainage Network:
ftp://ftp.geogratis.gc.ca/frameworkdata/hydrology/analytical/drainage_network/canada/
- Atlas of Canada 1,000,000 National Frameworks Data, Canadian Place Names:
<http://www.geogratis.gc.ca/download/frameworkdata/popplace/>
- National Framework Canada Lands Administrative Boundary (CLAB) Level 1 (First Nation reserves):
http://www.geogratis.gc.ca/download/frameworkdata/Cda_Lands_Adm_L1/
- National Topographic System 1:50,000 reference grid:
<ftp://ftp2.cits.rncan.gc.ca/pub/index/>

3.3.2. Gather necessary base map data:

Using the list of NTS mapsheets, data was downloaded from reliable web based sources, maintained by the Government of Canada and regularly updated. These data files were stored in a filing system that enabled quick retrieval for processing. Data was downloaded from the following websites:

- 1:50,000 National Topographic System Shape File Datasets from
<http://ftp2.cits.rncan.gc.ca/pub/bndt/>

- 1:50,000 National Topographic System CanImage (Landsat 7 Orthoimages at the 1:50 000 Scale): <http://ftp2.cits.rncan.gc.ca/pub/canimage/>

3.3.3. Process data to create seamless layers

Using ArcGIS, common themes were merged together to create a seamless geodatabase layer for each feature type. Duplicate labels from the "toponym" layer were removed, mostly where mapsheets were joined together.

The following feature types were merged into a personal geodatabase:

- Contours
- Toponym
- Water bodies
- Water courses

3.3.4. Produce base maps

Using ArcGIS, each map sheet was measured to confirm coverage of the study area and to create seamless base maps. Each map sheet measured 36 inches wide by 72 inches long (3x6 feet), and the scale of each map was 1:50,000. Four maps with both imagery and pre-symbolized linework data were created, along with the Map Title on all sides of each base map, a north arrow in 4 corners of the map and a map scale at each end of the map. Maps were output into a TIFF image format at 300 dpi, and 2 copies of each map were printed at a professional print shop in Winnipeg, MB.

3.4 Interview Process

Each participant signed an informed consent form, agreeing to participation in the study. In two instances, signing of the consent form was refused (due to either personal preference or physical disability), and in these cases, the informed consent text was read to the participant on the voice recorder and consent was given orally. Each interview was recorded either continuously on one track of a Sony digital voice recorder or multiple tracks. The number of tracks used in the interview was recorded in the concluding remarks of each interview. Notes were taken during each interview, both in the printed interview guide and in an additional notebook.

3.5 Interview Guide

The interview guide was developed by Dr. Craig Candler and Rachel Olson. The guide was reviewed internally through a Firelight Group peer review process, as well as reviewed and discussed by both the ACFN-IRC and the MCFN-GIRC. The guide is divided into four sections. The first section focused on the individual participant's experiences on the river, observed changes in the river, or observed changes in the community's relationship with the river. The second section focused on how water levels and water

quality have affected the participant's use, including travelling in different parts of the river. The third section involved mapping individual's experiences on the land with regards to navigation and observed changes in the river's quality and flow. Emphasis was placed on areas in which access was obstructed due to low water levels, as well as the associated uses identified with that particular area. The final section asked participants what they thought the results will be for ACFN/MCFN member's abilities to practice treaty rights in regards to the proposed Phase II water management framework. The following details some of the key points of each section of the interview guide, and refinements made to the guide through the interview processes.

3.5.1. Section One: Biographical and Background Questions/ Importance of the River/ Comparison and Change

Main Points:

- This section consisted of a combination of quantitative and qualitative questions. Some of these questions were designed with reference to previous studies so that comparison of responses over time might be made.
- Where an interviewer deemed a question repetitive, or if the participant had already responded to that question in a previous answer, the questions were skipped in order to maintain a respectful flow within the interview. Questions regarding culture/spirituality were often skipped depending on the participant's initial response to spiritual uses or associations with the river (eg. If a participant responded that they had never used the river for "spiritual" purposes, questions 3.2/3.3, all other questions regarding spiritual uses of the river were omitted.).

3.5.2. Section Two: Personal Responses and Experiences

Main Points:

- This first part of this section (questions 4.1, 4.2, 4.3) was often skipped if the interviewer deemed the questions to be repetitive from the previous section.

3.5.3. Section Three: Preferred Access Limit via River and Restrictions by Flow

Main Points:

- Acetates were placed over the four base maps before each interview began. Each acetate was secured using tape, and four anchor points, or crosshairs, were marked on each map in order to support accurate referencing of the data collected.

- Red pens were used to mark crosshairs, cross out errors, or make notes to the GIS Analyst during data processing. Black pens were used to mark participant's individual experiences on the river and the land, and were the most common pen used. Blue pens were used if the participant had been told about certain places or experiences, but did not directly experience the event being recorded.
- Each point, line or polygon marked was associated with a season/month and year where possible.
- Labeling of features (points, lines and polygons) was done in permanent ink using Sharpie ultra-fine pens.
- Interviewers focused on mapping areas that participants tried to access, but were unable to access due to low water levels, and the uses associated with the areas that could not be accessed.
- Incidents, including accidents and equipment damage, were also recorded on, where possible.
- This section of the interview process was flexible and the level of detail collected depended on the participant's willingness and ability to identify locations on the maps.

3.5.4. Section Four: Conclusion

Main points:

- The concluding question of the survey was refined through clarification from government regarding the likely effects of the proposed water management framework on river levels.

3.6. Post-Interview Data Processing

After the interviews were completed, the data was taken to two locations, the Victoria office of the Firelight Group, as well as the Winnipeg office, for processing.

The recorded digital files were burned onto CDs and transcribed. Transcriptions were made, and additional notes from the interviews were entered into a spread sheet. QSR NVivo was used to support qualitative analysis.

Acetates were sorted and labeled by Interview ID, as well as base map number, and interview inventories were created for each community. The acetates were then double-checked for proper labeling of anchor points, or crosshairs, and each was scanned at the University of Manitoba. Each image was scanned at 300 DPI in a TIFF image format. During the scanning process, the scanned images were transferred to an

external hard drive and deleted off the scanning computer. This resulted in both a hard copy and digital record of each map.

The acetates were digitized using an on-screen method. This involved georeferencing the scanned images using their reference points, overlaid onto an image of the original base map used during data collection. This digitizing process resulted in an ArcGIS geodatabase storing all point and line work, as well as associated attribute tables.

Water limits (code XLW and LLW) where access to a stream adjoining the Athabasca River is restricted were sometimes recorded in the interviews using small polygons. In post processing, these small polygons were converted to points by placing the point in the approximate centre of the polygon drawn on the acetate.

Map 5 is based on the reported locations of barriers to subsistence navigation (codes LLW and XLW) identified and mapped in the interviews. Streams reported to be obstructed by an LLW or XLW were further identified, and their furthest extent highlighted, based on watershed data from sources noted in 3.3.1 above.

Map 6 was developed based on a model of resource use that assumes a 5km extension from streams within sub-watersheds of the Athabasca River reported to be navigable for at least a portion of their length. The 5 km extension of use was based on an estimated distance traveled in a day trip of hunting or trapping by land, beginning at a point on the stream and returning to it. This assumption was reviewed and confirmed in follow-up meetings with ACFN and MCFN elders and river users. A 5km buffer was applied to all streams identified and highlighted in on Map 5. Use of buffers is a common and accepted practice in GIS analysis.

Appendix 3

ACFN and MCFN Athabasca River Use and Traditional Ecological Knowledge (TEK) Project
Informed Consent Document

ACFN Athabasca River Use and Traditional Ecological Knowledge (TEK) Study

Declaration of Informed Consent and Permission to use Information

I (name) _____, on this day (complete date) _____, give permission for _____ to interview me for the Athabasca River Use and TEK Study.

I understand that the study is being conducted by the Athabasca Chipewyan First Nation. The purpose of this study is to help plan for and document the rights and interests of Athabasca Chipewyan First Nation in and around the Athabasca River area, and to inform provincial and federal government decisions regarding the River. By signing below, I indicate my understanding that:

- (a) I give my consent to have my words and responses regarding my land use knowledge and my traditional ecological knowledge recorded on maps, in notes, and using audio or video recording equipment.
- (b) I am free to not respond to questions that may be asked without penalty.
- (c) I am free to end the interview at any time that I wish without penalty.
- (d) The Athabasca Chipewyan First Nation will maintain intellectual property rights over information and recordings collected through my participation in this interview.
- (e) The Athabasca Chipewyan First Nation may use the information collected, including audio, video, or pictures, in pursuit of its claims, and for defending and communicating the rights, interests, and titles of its members. This will include, but is not limited to, sharing information for the purposes of environmental assessment and planning for the Phase II Water Management Framework.
- (f) The Athabasca Chipewyan First Nation will make reasonable efforts to consult me, or my descendents after my death, before using my information for any purposes not indicated above.

For more information, please contact:

Signature of participant

Witness

PIN #:

Appendix 6:

Dene Nation Resolution on the Alberta Tar Sands



DENENDEH NATIONAL OFFICE

*Assembly of First Nations Regional Office
Arctic Athabaskan Council, Yellowknife Office*

5120-50th Street
P.O. Box 2338
Yellowknife, NT, X1A 2P7

Phone: (867) 920-2632
Fax: (867) 920-2636
Website: www.denenation.com



DENE LEADERSHIP MEETING
February 16-19, 2009 Yellowknife, Denendeh

MOTION #09/010-006

SUBJECT: ALBERTA TAR SANDS

MOVED BY: Proxy Francois Paulette, Smith Landing First Nation

SECONDED BY: Grand Chief George Mackenzie, Tlicho Government

DECISION: Carried by consensus

WHEREAS the Dene Nation has convened a Dene Leadership Meeting at the Explorer Hotel Inn Yellowknife, NT from February 16-19, 2009 for the purpose of addressing issues and concerns facing the Dene;

WHEREAS, the Dene entered into the Peace and Friendship Treaties of #8 in 1899/1900 and Treaty #11 in 1921/22; and

WHEREAS these Treaties were to be in place as long the sun rises, the rivers flow and the grass grows; and

WHEREAS Alberta was part of the NWT until 1905; and

WHEREAS the tar sands are located in the Treaty #8 Territory; and

WHEREAS the Governments of Alberta and Canada have failed to live up to their financial, fiduciary and moral responsibilities to manage the Alberta tar sands in an environmentally responsible way; and

WHEREAS the Government of Alberta has encouraged the rapid expansion of the Alberta tar sands without implementing adequate regulatory or environmental protections to reduce negative impacts of individual projects or the cumulative impacts of all projects considered together; and

WHEREAS the Government of Canada has failed to take adequate steps to protect water, fish and migratory species; and

WHEREAS this colossal mismanagement is no longer an issue just for Albertans, it is now an urgent threat to all downstream communities in the Mackenzie Basin, most critically at this point in time, in terms of risks to water quality posed by leaks from the huge tailing ponds into the Athabasca River; and

WHEREAS a large-scale breach of tailing ponds, with a resulting massive, uncontrolled inflow of highly toxic, poisonous water into the Athabasca River and the rest of the Mackenzie Basin is an unimaginable concern.

THEREFORE BE IT RESOLVED THAT all member communities of the NWT Association of Communities call on the Government of Alberta to immediately halt tar sands expansion until the following provisions are in place:

- 1) Public contingency plans for catastrophic breaches of tar sands tailings ponds;
- 2) A plan to fix existing leaks in current tailings ponds;
- 3) A 10-year plan to reclaim all existing tailings ponds that does not involve any releases of toxic effluents into the river system;
- 4) A commitment to use dry tailings technology for all future tar sands development; and
- 5) A commitment to hold extensive environmental hearings - with standing for NWT communities - on the cumulative effects of the tar sands projects, including any plans to allow water from the tailing ponds into the Athabasca River;

AND BE IT FURTHER RESOLVED THAT until these conditions are in place, all governments in the Northwest Territories and across North America be called upon to implement a low carbon fuel standard that would decrease reliance on, or entirely eliminate the use of, dirty tar sands oil;

AND BE IT FURTHER RESOLVED THAT the Dene National Chief communicate this motion to the Premiers of Alberta and the NWT, to the Prime Minister of Canada and to other appropriate governments and agencies.

Certified copy of a resolution adopted on the 19th day of February 2009 in Yellowknife, Denendeh

Appendix 7:

Assembly of Treaty Chiefs Resolution to Support the Keepers of the Athabasca Watershed Council in the Call for No New Approvals for Development in the Alberta Tar Sands

OFFICIAL DOCUMENT
02-22-2008/#008R



Treaty No. 6



Treaty No. 7



Treaty No. 8

ASSEMBLY OF TREATY CHIEFS RESOLUTION

RESOLUTION: 02-22-2008/#008R

**SUBJECT: SUPPORT OF THE KEEPERS OF THE ATHABASCA
WATERSHED COUNCIL IN THE CALL FOR NO NEW
APPROVALS FOR DEVELOPMENT IN THE ALBERTA TAR
SANDS**

WHEREAS the Chiefs of Treaty No. 6, Treaty No. 7 and Treaty No. 8 [Alberta] known as the Assembly of Treaty Chiefs [herein after AoTC] did meet in a duly convened assembly held February 20, 21, and 22, 2008 at the Fairmont Palliser Hotel, in the City of Calgary, Treaty No. 7 Territory; and

WHEREAS it has come to the attention of the Assembly of Treaty Chiefs that various industries, including oilsands, mining, and forestry developments have been awarded approvals and continue to apply for approvals throughout the traditional territories of the Treaty First Nations; and

WHEREAS the inherent and treaty rights of First Nations to land, water, minerals and other natural resources have not been extinguished by Treaty, legislation or any other means; and

WHEREAS the inherent and treaty rights to jurisdiction of First Nations to govern the use of natural resources was not extinguished by Treaty, legislation or any other means; and

WHEREAS the inherent and treaty rights of First Nations to engage in practices, customs and traditions that sustain them on the Land have been afforded protection under Treaty, the Natural Resource Transfer Act (1930)[NRTA] and the Constitution; and

RESOLUTION: 02-22-2008/#008R

Page 2 of 3

**SUBJECT: SUPPORT OF THE KEEPERS OF THE ATHABASCA WATERSHED
COUNCIL IN THE CALL FOR NO NEW APPROVALS FOR
DEVELOPMENT IN THE ALBERTA TAR SANDS**

WHEREAS the existing developments have adverse effects on the exercise of inherent and treaty rights, and the Province of Alberta contemplates approving developments that may have additional and cumulative adverse effects on the exercise of these rights, in particular, the right to livelihood within the Athabasca River and Lake watershed; and

WHEREAS these developments affect the air and water traveling across provincial and territorial boundaries, and thereby adversely affect the rights and interests of Treaty First Nations in Alberta, British Columbia, the North West Territories and Saskatchewan, destroying and poisoning animal and fish habitat and infringing on the traditional livelihood of the First Nations downstream and downwind of the developments; and

WHEREAS the Government of Saskatchewan desires to facilitate rapid investment in the Saskatchewan oil sands; and

WHEREAS the Government of Alberta has failed to take into consideration the existing and potential cumulative adverse effects of rapid development on the protected inherent and treaty rights to livelihood; and

WHEREAS scientific research and traditional ecological knowledge has shown that the people and biota of the Athabasca River Delta and the western Lake Athabasca are exposed to higher levels of some contaminants that are those upstream; and

WHEREAS the primary contaminants of concern may be arsenic, mercury and polycyclic aromatic hydrocarbons and that concentrations of these contaminants are already high and appear to be rising; and

WHEREAS a petition by Peter Cyprien [Athabasca Chipewyan First Nation] to the Auditor General of Canada [submitted on January 4, 2008] requests the Minister of Fisheries and Oceans and the Minister of Health to stop federal approvals of new projects in the Alberta Tar Sands region until such time that contamination of the Athabasca River, the Peace-Athabasca Delta and Lake Athabasca is stopped and any further development meets/exceeds stringent regulations for safeguarding water quality.

THEREFORE BE IT RESOLVED that this Assembly of Treaty Chiefs call for no new approvals for development in the Alberta Tar Sands until such time as:

1) a comprehensive watershed management plan has been established with the involvement of First Nations directly affected. Such plan shall incorporate limits to the contamination of the Athabasca River, the Peace-Athabasca Delta and Lake Athabasca and a safeguard for water quality, quantity and flow so as protect the First Nations inherent and treaty rights to water and to livelihood; and

RESOLUTION: 02-22-2008/#008R

Page 3 of 3

SUBJECT: SUPPORT OF THE KEEPERS OF THE ATHABASCA WATERSHED COUNCIL IN THE CALL FOR NO NEW APPROVALS FOR DEVELOPMENT IN THE ALBERTA TAR SANDS

2) a comprehensive resource development plan has been negotiated with the involvement of First Nations whose traditional lands are directly impacted including matters of the protection of environmental integrity, compensation for environmental destruction and a share in the benefits of natural resource extraction and adherence to First Nations environmental standards; and

3) all applicants for development approvals can demonstrate that they have met or have exceeded the standards for environmental protection as established by the comprehensive watershed management plan.

MOVED BY: CHIEF WALTER JANVIER, COLD LAKE FIRST NATION

SECONDED BY: CHIEF ROSE LABOUCAN, DRIFTPILE FIRST NATION

QUESTION CALLED

VOTE: UNANIMOUSLY CARRIED

FOR: 21 AGAINST: 0 ABSTENTIONS: 0

RESOLUTIONS CHAIRPERSON: Alayna Many Guns
ALAYNA MANY GUNS



PO Box 366
Fort Chipewyan, AB T0P 1B0

Phone: (780) 697-3730
Fax: (780) 697-3500

Athabasca Chipewyan First Nation Advice to the Government of Alberta Regarding the Lower Athabasca Regional Plan

Provided to the Land Use Secretariat

November 22, 2010

Disclaimer

This information is being provided to the Government of Alberta for the purpose of informing development of, and consultation on, the Lower Athabasca Regional Plan. Nothing in this submission should be construed as to waive, reduce, or otherwise constrain the Treaty and Aboriginal rights of the ACFN. Consultation and accommodation regarding ACFN rights will be expected in accord with the fullest extent of the honour of the Crown throughout the ACFN consultation areas and cultural protection zones presented in this document.

Introduction

On behalf of the Athabasca Chipewyan First Nation (“ACFN”), the ACFN IRC, with the assistance of The Firelight Group, has analyzed the Lower Athabasca Regional Advisory Council’s Advice to the Government of Alberta (“GoA”) Regarding a Vision for the Lower Athabasca Region (“RAC vision document”) to identify areas of opportunity and weakness. Information contained herein is provided to Alberta for the purposes of development of the Lower Athabasca Regional Plan (LARP).

The ACFN submission includes six components, plus appendices:

- Section 1 contains a Declaration provided by ACFN Elders on ACFN Rights to Land Use
- Section 2 provides context on ACFN Mode of Life and Livelihood
- Section 3 sets out an ACFN Vision for the Lower Athabasca Regional Plan (LARP) that has Treaty 8 as a foundational document for land management in the Lower Athabasca Region;
- Section 4 includes a map and definition of ACFN Cultural Protection Areas, including homeland zones, proximate zones and critical waterway zones;
- Section 5 makes general comments on how the LARP Draft Vision conflicts with the ACFN vision for co-management; and,
- Section 6 provides additional technical comments on the LARP Draft Vision.

These comments are in addition to the joint submission of ACFN, CPFN and MCFN on the RAC vision document dated October 29, 2010 (see appendix 1).

From the outset, ACFN has consistently declared in their correspondence on LARP, that their utmost concern in respect of land use planning is to ensure that the meaningful practice of their Treaty 8 rights can be sustained for future generations. For the purposes of this submission, the Treaty Rights of ACFN are understood to include, but are not limited to, hunting, fishing, trapping and gathering for sustenance and livelihood purposes. The full practice of these rights reasonably includes, and is not limited to, access to sufficient lands and resources in which the rights can be exercised. “Sufficient” refers not only to quantity but quality, and is evaluated from the perspective of what is required to fulfill not only subsistence requirements, but also cultural needs, of the First Nation now and into the future. Determining what is “sufficient” encompasses a suite of interconnected tangible and intangible resources that underlie the meaningful practice of practice of rights. These “resources” include, but are not limited to: routes of access and transportation; water quality and quantity; healthy populations of game in preferred harvesting areas; cultural and spiritual relationships with the land; abundant berry crops in preferred harvesting areas; traditional medicines in preferred harvesting areas; the experience of remoteness and solitude on the land; feelings of safety and security; lands and resources accessible within constraints of time and cost; sociocultural institutions for sharing and reciprocity; spiritual sites; etc.

Information provided herein is the most current available to ACFN, but is not complete due to lack of resources. Nothing in this submission should be construed as to waive, reduce, or otherwise constrain ACFN rights within, or outside designated cultural protection areas. ACFN reserves the right to amend, refine, or add to this document, and to its understanding of associated needs, at any time.

A Traditional Land and Resource Use Management Plan (TRUP, see appendix 2), or similar land and resource use analysis and planning process, is critical to filling information gaps on the criteria, thresholds and indicators necessary to sustain Treaty 8 rights into the future. This information is required in order for any planning process to adequately assess and accommodate ACFN Treaty 8 rights. To date, the ACFN has not received a response from GoA regarding provision of resources for an identification of resources and requirements necessary for the practice of rights by ACFN members, although a few meetings have taken place.

Section 1: ACFN Elders' Declaration on Rights to Land Use

This is our Dené suline territory, our Traditional Lands. We have occupied these lands for the last 10,000 years and maybe longer. Our traditions go on and we have the right to continue our traditional way of life. We agreed only to share our lands and we still consider these lands ours. Clearly we have been here longer than anybody. The Government must recognize that we still have the right to use these lands.

Our Rights to use the lands and water on Traditional Lands have never been extinguished. The Traditional Lands, and our rights to use of the lands, are central to our Dené culture, identity and well-being. They are essential to the well-being of our future generations and their ability to sustain our culture in a changing world.

The meaningful practice of our treaty rights depends on having sufficient lands and resources to exercise those rights. Sufficient refers to not only quantity but quality, including what is required to fulfill our cultural and spiritual needs.

Our parents and grandparents have told us that Treaty 8, signed by our Chief Laviolette in 1899, is an intergovernmental agreement that, in return for sharing our Traditional Lands, upholds our inherent Dené rights to land use and livelihood. In our experience, Alberta is not upholding their end of the Treaty and is sacrificing our rights to industrial development. We have never been properly consulted and the Federal and Provincial Governments have never accommodated our rights or compensated us for infringements.

ACFN has had enough with having our land destroyed, no one is dealing with it; neither the Federal nor the Provincial Crown. Yet you come to us for approval of new projects. It is time for the Government to stop cheating us of our rights to land use and livelihood, culture and identity without proper consultation, mitigation and compensation.

As the Elders of our community, we demand that our ability to practice our constitutionally protected treaty rights and traditional uses is sustained within our Traditional Lands for future generations. We demand that our rights are protected in the LARP and any other initiatives proposed by the governments.

The lands from Firebag north, including Birch Mountain on the west side of river, must be protected. Richardson Backcountry is not to be given away – not to any government.

Everything we do here, we do to protect our rights to land use, livelihood and culture.

- ***Declared by the Athabasca Chipewyan First Nation Elders Council,
July 8, 2010, Fort Chipewyan, Alberta***

Section 2: ACFN ‘Mode of Life’ and Livelihood

Livelihood, in the Dené understanding, is about supporting the total way of making ones way in the world as a Dené individual. It is about “the way of life on the land” and how that relates to maintaining culture in the face of change. This includes the relationship between the physical acts of making a living and the spiritual and moral obligations of Dené individuals to themselves, to their community, and to the Earth and all of the creatures thereon. It requires that physical and spiritual needs are met in order to sustain oneself and one’s community. As such, livelihood is central to individual and community well-being and to cultural continuity.

In the view of the ACFN Elders, the promises of the Treaty, including protection of ‘mode of life’ referred to in section three of this submission, have not been upheld. “When they signed the Treaty, the Government made a lot of promises to the Native people but nothing has been done. A lot has been broken ... It should not have happened like that.”¹ ACFN Elders continue to express concern over the violation of their Treaty Rights:

“Anytime the Government... allows Industry to come develop something on the land like that and the Industry puts out regulation that you’re not allowed to go on that site... and if you know there’s fur bearing animals there, you need to feed your family, you know you could kill moose or caribou in that area and they don’t allow you, what are they doing to you? They’re violating your Treaty Rights. When you look at things like that, what was really ours, it seems like we’re not allowed to do anything on those lands and that’s not right. It shouldn’t be that way. I think that Treaty 8, whatever was said at the signing of Treaty 8, it tells a lot of different stories from what you see happening today. So, Treaty Rights is the right that we have to remember, it’s not just First Nations people that asked for what’s in the Treaty Rights, that was promised to them by the Crown, by Canada.”²

Dené livelihood ties people with place and culture with the land. These connections have implications for individual and community health and well-being and for maintaining the resilience of culture in the face of change. In the traditional Dené cosmology, the land is alive. The Creator imbued the land, the waters and all creatures that dwell upon or therein, with spirits and ACFN Elders remember the spirits that helped their ancestors to survive:

“[L]ong time ago, Native people had their own spirit which told them how to do things and how to make things... Before there were guns, they used to use a bow

¹ Bruno, R. 2010. Oral History regarding Treaty 8 as told to N. Nicholls, and interpreted by A. Bernaille, on February 8, 2010. Fort Chipewyan, Alberta. Recording and transcript in possession of the ACFN IRC, Fort McMurray, Alberta

² Focus Group PA-1. 2009. ACFN Land Use Plan - Preservation Areas Study Focus Group PA-1, Fort Chipewyan, Alberta, October 15 and October 19, 2009. Transcript in possession of the ACFN IRC, Fort McMurray, Alberta.

and arrow. Their spirit told them how to make and use these things. Before the white man hit this country, Native people were here already and they survived because their spirit told them how to do things.”³

The spirit of the people is linked inextricably with the spirit of the land.

Large-scale modification of the landscape can disrupt the balance of power in the relationship between people and their environment and can be “negative” to a person and destroy the spirit of the land:

“All that development will disrupt the natural law of the land, the natural ecosystem, the ecological system of the land. Everything will become unnatural.”⁴

“If industry digs a big hole in the ground, they’ll destroy the spirit of the land. If you go out and see beer cans, people that don’t respect the way of the land, it’s depressing. They destroy the spirit of the land, and then I won’t want to go there. But I have to go there anyway, because it’s part of me, part of my heritage.”⁵

³ Focus Group PA-1. 2009. ACFN Land Use Plan - Preservation Areas Study Focus Group PA-1, Fort Chipewyan, Alberta, October 15 and October 19, 2009. Transcript in possession of the ACFN IRC, Fort McMurray, Alberta.

⁴ Focus Group PA-10. 2009. ACFN Land Use Plan - Preservation Areas Study Focus Group PA-9, Fort McMurray, Alberta, October 21, 2009. Transcript in possession of the ACFN IRC, Fort McMurray, Alberta.

⁵ L’Hommecourt, M. 2009. In the Court of Queen’s Bench of Alberta Judicial District of Edmonton between Athabasca Chipewyan First Nation and Minister of Energy, Canadian Coastal Resources Ltd., Standard Land Company Inc., and Shell Canada Ltd., Affidavit # of Marvin L’Hommecourt, sworn January 30th, 2009, Action No. 0803 17419, Edmonton Registry.

Section 3:

Athabasca Chipewyan First Nation Vision for the Lower Athabasca Regional Plan

This section is the third component of the *ACFN Advice to Alberta on the LARP* and consists of ACFN's Vision for the LARP.

Treaty No. 8 is the foundation of the ACFN Vision for the Lower Athabasca Region. Consistent with the spirit and intent of Treaty No. 8, the reconciliation of Crown and First Nation interests must be a primary goal of the Lower Athabasca Regional Plan.

Treaty No. 8 forms the foundation on which all land use in the region depends, including Crown and industrial use, and the reasonable taking up of lands. The spirit and intent of Treaty No. 8, among other promises and guarantees, involves ACFN's agreement to **share** lands and resources with the Crown. In exchange, as a priority over all other uses, the Crown confirmed protection for ACFN's way of life, throughout the extent of Treaty 8.

Shortly after signing, the Crown's own negotiators wrote:

"We had to solemnly assure them [First Nations] that ... they would be as free to hunt and fish after the treaty as they would be if they never entered into it. We assured them that the treaty would not lead to any forced interference with their mode of life..." (Laird, Ross and McKenna, Report of Commissioners for Treaty No. 8, 1899, emphasis added).

ACFN's vision for LARP includes the following:

- 1) All ACFN members have a right, now and in the future, to practice their Treaty 8 rights in their preferred manner and locations with confidence, to sustain the health and well-being of themselves and their families, and to pass their culture on to their children. Their ability to do so requires priority access to sufficient quality and quantity of the tangible and intangible resources (e.g., water, game, fish, berries, spiritual sites, cultural landscapes and homelands, traditional knowledge, and others) that underlie meaningful practice of rights.
- 2) Definition and implementation of LARP designations must proceed in step with negotiation and implementation of meaningful and reliable consultation and accommodation frameworks, including co-management mechanisms with First Nations in areas critical for the past, present and future practice of their rights. This would include:
 - a. Establishing co-management boards, or other cooperative land and resource management arrangements, guided by the principles of shared decision-making

and joint stewardship for lands and resources of critical importance to the continued practice of rights.

- b. That a reasonable share of wealth generated from traditional lands and associated resources should flow to those First Nations who suffer, or have suffered, direct, indirect, or cumulative adverse effects from developments that harm, or take up, air, land and water to the point that their rights under Treaty No. 8 have been or will be infringed.

3.1 Co-management is a Critical Part of Deep Consultation and Accommodation

The critical issue for ACFN is to ensure that their rights are sustained for future generations. Reconciliation must start with providing a much greater say for ACFN in decision-making where decisions have the potential to adversely affect and/or infringe ACFN's Treaty No. 8 rights. This goes beyond GoA's current approach to the "right to be consulted", which has not resulted in the slowing down of the taking up of lands and adverse impacts to rights. At minimum, deep consultation and accommodation is required; at the higher end, full participation in resource management and decision-making, along the lines of resource co-management boards in NWT, Yukon and Nunavut, is required. This can be implemented as a spectrum from more to less involvement in the LARP area.

Co-management "broadly refers to the sharing of power and responsibility between government and local resource users"⁶. Although co-management can encompass a spectrum of arrangements based on the level of power-sharing, the type of arrangement that ACFN is referring to in this proposal is joint decision-making authority. This may not be the same as the 'cooperative management' mentioned in RAC vision documents. ACFN has been recommending and pursuing co-management of critical lands for some time, and raised the need for co-management during consultation on the Land Use Framework (appendix 3).

3.2 Operationalizing the ACFN LARP Vision

In Section 4, we have provided a draft map and definition of ACFN Cultural Protection Areas. These include three ACFN 'homeland zones', three 'proximate zones', and a network of critical waterway zones. These zones are set within the larger extent of ACFN practice and rights indicated by critical and standard consultation zones.

LARP is, in essence, a Crown plan to take up land under Treaty No. 8 for five categories of land use. ACFN expects the Crown to engage in meaningful and detailed consultation concerning ACFN's input into LARP. This must include establishing an appropriate framework for collaborating on how best to manage each of the land categories to give confidence that the Treaty, the honour of the Crown, and ultimately the public interest, will be respected. However, such consultation can only be meaningful with the presence of adequate information and studies.

⁶ Notzke, C. 1995. A new perspective in aboriginal natural resource management: co-management. *Geoforum* 26(2): 187-209.

ACFN strongly recommends that the Crown provide adequate resources and time for a measured, realistic, and reliable consideration of resources needed to exercise Treaty No. 8 rights. It should be noted that ACFN has raised with GoA the concept of a TRUP as early as October 2008. A more detailed submission, at the request of GoA, was made on September 28, 2010 (see appendix 2). Unfortunately, GoA has still not responded to this request. The ACFN considers TRUP to be a critical tool for identifying thresholds and criteria to be implemented in land, air, and water management, monitoring and decision-making. ACFN expects a detailed response on the TRUP concept from GoA. A legalistic response to the effect that “you should have used your LARP funding to do this work” will not suffice, particularly when ACFN has made it clear to GoA through detailed budgets and work plans and subsequent correspondence that the LARP funding was inadequate for ACFN to carry out LARP-related tasks such as respond to the RAC Vision Document and to produce these submissions.⁷ As the TRUP proposal makes clear, funding for and the carrying out of such a study is a complex, time-consuming and expensive prospect.

⁷ For example, see: (1) ACFN’s July 2009 submission of a scope of work for consultation on LARP that included developing an ACFN-specific land use plan; (2) The August 29, 2009 joint letter of ACFN and MCFN regarding the First Nation Consultation Plan for LARP; (3) ACFN’s January 30, 2010 scope of work for the LARP funding provided by Alberta; and, (4) ACFN’s November 22, 2010 letter to Dave Bartesko summarizing concerns expressed in the spring and summer of 2010 about the LARP funding agreement.

Section 4: Athabasca Chipewyan First Nation Cultural Protection Areas

4.1 Definition of ACFN Cultural Protection Areas

ACFN has identified three cultural protection areas or zones (see Map 1: ACFN Cultural Protection Areas). Each zone is the result of detailed analysis of existing ACFN information. A rationale and recommended management approaches for each are provided below. ACFN wishes to work collaboratively with GoA to define further land use designations within particular zones as information improves.

Nothing in this submission should be construed as to waive, reduce, or otherwise constrain the rights of the ACFN within, or outside designated cultural protection areas. Consultation and accommodation regarding ACFN rights will be expected in accord with the fullest extent of the honour of the Crown throughout ACFN consultation areas and cultural protection zones.

The ACFN Cultural Protection Areas include three land use designations:

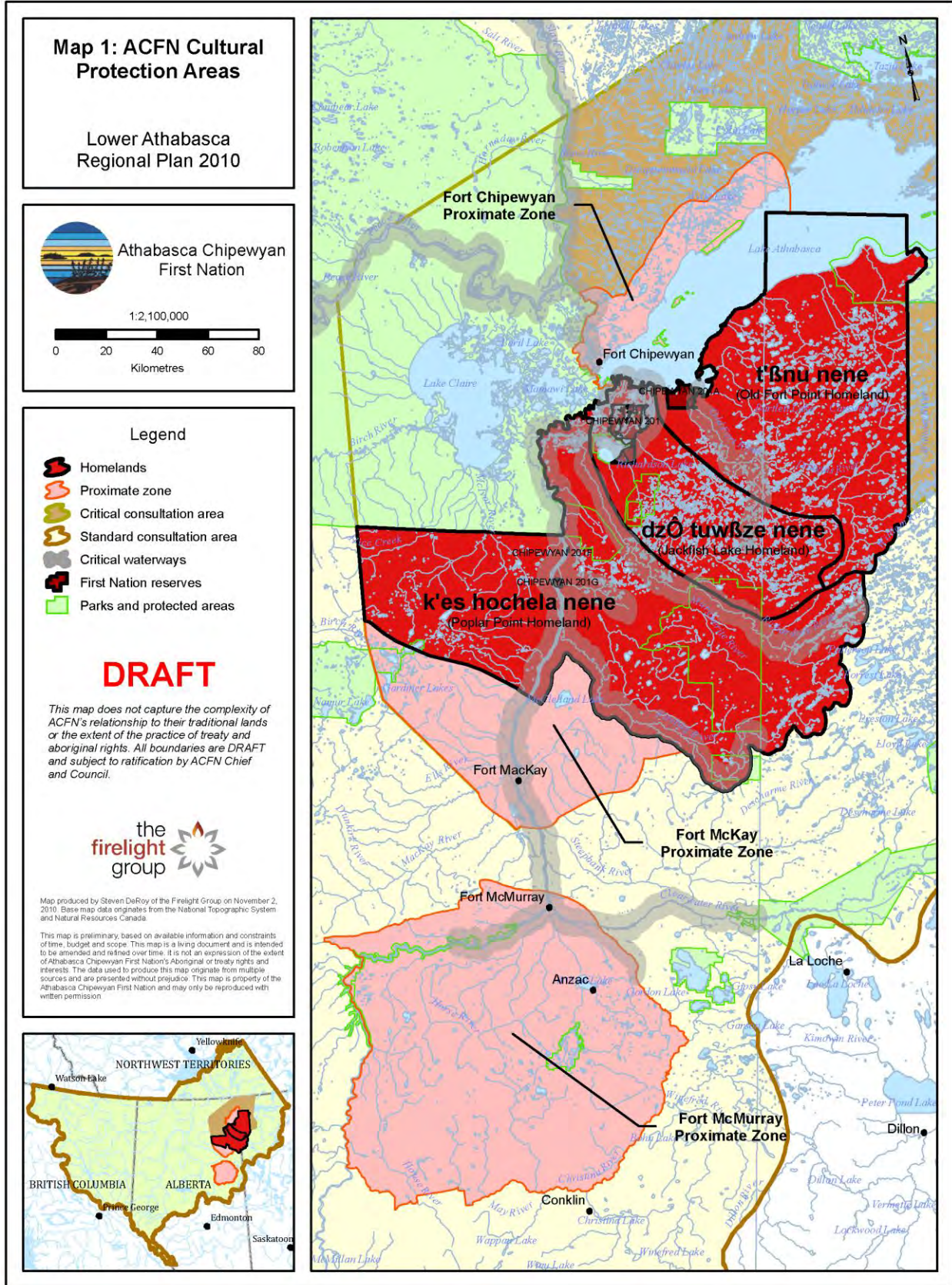
1. Homeland Zones

These are specific areas that are of critical importance to past, present, and future practice of ACFN rights. Based on available information, each zone is integral and necessary to the meaningful practice of rights by ACFN members within core traditional lands. The deepest levels of consultation and accommodation would be required within the 'homelands. ACFN envisions that this would be accomplished through co-management of sub-regional planning and shared decision-making authority with the Crown regarding any future developments or designations within these zones. The three Homeland Zones (defined below) are:

- *dzÔ tuwßze nene* (Jackfish Lake Homeland)
- *t'ßnu nene* (Old Fort Point Homeland)
- *k'es hochela nene* (Poplar Point Homeland)

2. Proximate Zones

These areas are relied upon for the practice of rights by an increasing number of ACFN members living in and around Fort Chipewyan, Fort McKay, and Fort McMurray. A reliable process for consultation and accommodation in consideration of Treaty 8 rights would be required in these zones. Three Proximate Zones are identified. They include areas around Fort Chipewyan, Fort McMurray, and Fort McKay.



3. Critical Waterway Zones

These areas recognize the integral importance of water quality and quantity to the ACFN membership and their practice of rights. These interconnected zones extend 5km on either side of waterways that are critical for the practice of ACFN rights. There is a need to establish cumulative effects frameworks and co-management frameworks that properly consider the requirements to sustain treaty rights and share decision-making with respect to the Critical Waterway Zones.

Due to the limitations of existing ACFN information and studies, further research and dialogue with the ACFN community and ACFN Chief and Council is required to confirm the extent of these three zones. Additional sub-regional planning is required for all designations.

4.2 Reasons for Designation

4.2.1 Impacts and Encroachments on ACFN Rights and Land Use

The pace and scale of industrial land-use activities, most importantly oilsands exploration and development, is threatening the long-term sustainability of ACFN rights and culture. Impacts to the land, air and water resources are occurring, and the magnitude and scale of these impacts will accelerate in the coming decades, if oilsands activity increases as planned (appendix 4). Industrial growth also increases the population of the Lower Athabasca Region. The numbers of recreational land users are increasing in ACFN cultural protection areas, leading to increased competition and conflict. Key issues for the meaningful practice of rights occur when the environmental (including the ecological, economic and social environments) effects of competing land uses (and associated policies and regulations that support competing land uses) impact the tangible and intangible resources that underlie the meaningful practice of ACFN rights.

While many specific management issues exist, the nine issues of greatest concern to ACFN at this time are:

1. Landscape and ecosystem alteration and degradation;
2. Contamination of traditional foods and resources;
3. Declines in water quality and quantity;
4. Competition for traditional resources;
5. Impacts of increased numbers of recreational land users (e.g., vandalism; desecration of the spirit of the land; and, direct conflict);
6. Restrictions on access to traditional lands;
7. Lack of involvement in land and resource decision-making, monitoring and enforcement;
8. Cumulative Infringements on ACFN's treaty and aboriginal rights;
9. Methodology for considering and accommodating ACFN treaty and aboriginal rights in land use planning and regulatory decision-making.

These issues are directly contributing to the loss of ACFN culture and traditional land-use practices. These issues have direct, indirect and cumulative impacts on ACFN's ability to exercise their constitutionally protected Treaty No. 8 rights.

As further discussed in this section and in section 5, ACFN membership has already experienced extensive erosion of its lands and rights, including within Cultural Protection Areas. Some of these impacts include, but are not limited to: contamination of waters and fish resulting in avoidance of traditional foods; reduced water levels in the Athabasca River and Delta resulting in restricted access to critical harvesting and cultural areas including reserve lands; destruction of hunting and trapping areas as a result of oil sands mining. These changes are of particular concern given that the population of ACFN and other First Nations in the region is growing, and that future resource requirements for the practice of rights will be greater in the future, not less. These few examples convey the urgent need for a better method of considering ACFN rights in planning and sharing of decisions regarding development that may affect ACFN traditional lands. ACFN is offering an opportunity to develop this method collaboratively with GoA, building on the cultural protection areas and management recommendations described here.

4.2.2 Information Sources

Rationale for designating three cultural protection areas zones and the spatial boundaries of each zone, are based on:

- The knowledge, recommendations and advice of the ACFN Elder's Council obtained through close collaboration with them;
- Community engagement (planning survey, visioning sessions, update meetings) with ACFN membership in Fort Chipewyan and Fort McMurray;
- Analysis of ACFN's database of mapped land use values including close to 5000 points, lines, and areas associated with the practice of rights by its members;
- Dené family-based homeland affiliations within the ACFN community;
- Ecological information related to critical wildlife habitat and water flow;
- An understanding of ACFN land use as a complex adaptive system; and,
- Ongoing ACFN research.

Cultural protection area boundaries are subject to adjustment by ACFN Chief and Council, based on further input from the ACFN Community.

4.2.3 Critical Values Supported

The primary objective of the ACFN cultural protection areas is to protect and sustain the rights of ACFN members. This requires protection of sufficient quantity and quality

of lands, animals and other resources in areas where ACFN members choose to exercise their rights. Preferred harvesting areas are often those that are accessible to ACFN members within certain limits of time and cost, and therefore often occur in proximity to where ACFN members live. Sustaining the meaningful exercise of rights, and ultimately the health and culture of ACFN families, in these areas requires sufficient quality and quantity of resources, including: tangible resources such as water, minerals⁸, timber, plants, fish, fur, small and large game animals, locations of cultural importance; and intangible resources such as cultural landscapes, and resources of traditional knowledge and learning.

With the exception of recently developed ACFN preliminary thresholds for water flows on the Athabasca River (see appendix 5), studies to determine levels or thresholds of quality and quantity for resources required to protect Treaty and aboriginal rights are not yet available due to a current lack of technical and financial resources on the part of ACFN. Again, we note the lack of response from the GoA regarding fund the TRUP (see Appendix 2). While co-management, through shared planning and decision making, offers an opportunity to manage resources with consideration to treaty implications, it is only with more complete information on what is needed to sustain the exercise of ACFN's rights that land use planning will truly be effective.

4.3 Homeland Zones

The three ACFN Homeland Zones cover a total of approximately 2,723,200 hectares. These are the places where ACFN history, culture, and livelihood are most firmly rooted. They are places that are a living part of ACFN identity. As the population of the ACFN continues to rapidly grow, the resources needed to sustain the practice of rights will also increase. The Homeland Zones are the places that ACFN members are most likely to rely upon, and require priority access to, in the future. They include approximately 44% of the ACFN critical consultation area, and approximately 3.5% of the standard consultation area defined by Treaty No. 8.

"Homeland" is a profound concept to First Nations peoples, which "encompasses their personal and cultural identities, their histories, and their religions" (McCormack 1998: 27)⁹. There is not only a cultural connection, but also a familial and spiritual connection with place that is integral to one's identity as ACFN and Dené sūline. ACFN members consider the homelands sacred as they are necessary to the rights, identity, and ultimately, the cultural survival of ACFN. ACFN members, above all else, wish to protect these lands as sanctuaries for their current use and that of future generations.

⁸ Use of specific rocks and minerals, including bitumen, has always been an integral component of the ACFN economy. Archival accounts of collection, refinement, and use of oil sands bitumen by First Nations for transportation and construction (as waterproofing for canoes and other items), as well as trade in bitumen involving First Nations through the fur trade period, pre-date both Treaty No. 8, and the establishment of Canadian jurisdiction in the region.

⁹ McCormack, P. 1998. Native Homelands as Cultural Landscapes. In, Oakes, J., R. Riewe, K. Kinew, and E. Maloney [Eds.], *Sacred Lands: Aboriginal World Views, Claims and Conflicts*. Occasional Paper No. 43. Edmonton, Alberta: Canadian Circumpolar Institute, University of Alberta, pp. 25-31.

Each homeland area differs from the other in terms of the ecological and landscape patterns and processes, including abundance of various resources, that characterize it. It is important to note that while different ACFN families are associated with (i.e. occupy) particular homeland areas, individual members may use the characteristic resources of the other homeland areas as part of their overall patterns of land use. Thus, no one homeland zone can “replace” another in terms of utility for sustaining ACFN use. All are required as part of a connected system.

Large, contiguous areas, such as the homeland zones, are essential to past, present, and future ACFN practice of rights because of the wide ranging and dispersed nature of wildlife resources in the boreal, especially large ungulates such as moose, bison, and caribou, upon which much of ACFN’s cultural practice and traditional economy depends. The importance of large areas within which livelihood can be practiced is likely to increase as a result of perceived contamination of waters by oil sands activities along the Athabasca drainage, which has largely eliminated ACFN opportunities for subsistence fishing, and which is resulting in ACFN members traveling further afield in search of ‘clean’ areas where game animals can be harvested with confidence.

While the homeland zones do not reflect the full extent of ACFN rights, and while mapped land use locations do not convey the depth and importance of cultural ties to these areas, the majority of ACFN’s mapped land use values (72%, or more than 3500 separate mapped locations) are within the Homeland Zones. Thirty-nine percent of mapped land use values are located within *dzÔ tuwßze nene* (Jackfish Lake Homeland), 17% within *t’ßnu nene* (Old Fort Point Homeland) and 15% within *k’es hochela nene* (Poplar Point Homeland). Detailed base data is maintained by the ACFN IRC and may be made available on an as needed basis in direct consultation with Crown and proponents.

4.3.1 *k’es hochela nene* (Poplar Point Homeland):

This homeland includes approximately 1,292,290 hectares of lands and waters critical to ACFN members, and particularly those families affiliated with the Poplar Point (IR Chipewyan 201G) and Point Brule (IR Chipewyan 201F) areas. It is an area that is critical to historic, current, and future ACFN practice of rights. It includes areas west of the Athabasca River to the Birch Mountains and east of the Athabasca River into Saskatchewan. East of the Athabasca River, the southern boundary of *k’es hochela nene* is defined by the Firebag River corridor (5km on either side of the Firebag River). The Firebag River is a critical use corridor, and demarcates what many ACFN members see as the boundary between where they are still able to practice their rights safely, and where industrial contamination and disturbance now makes it unsafe to subsist on the land. The importance of the Firebag area as a critical corridor of rights practice is highlighted by the density of ACFN land use values recorded (to date) along the river. One hundred thirty-five ACFN land use values, including critical hunting areas, camps, cultural/spiritual areas, trails, ACFN trap lines, and key wildlife and endangered Boreal Caribou habitat have been recorded within 5 km of the Firebag River. Seven hundred forty-seven land use values have been mapped within the *k’es hochela nene* homeland as a whole. West of the Athabasca River, the southern and western boundaries of this homeland are defined by core wood bison range extending south and west from the

area of Ronald Lakes, extending into the Birch Mountains. Bison from this area are relied upon heavily by ACFN members, and are especially critical to those families affiliated with the Poplar Point and Point Brule areas. Impacts to this area are being experienced as a result of recreational use of the area. As an area where ACFN rights can still be meaningfully practiced, the importance of the *k'es hochela nene* homeland is likely to increase as industrial effects continue to accumulate upstream along the Athabasca.

4.3.2 *dzÔ tuwßze nene (Jackfish Lake Homeland)*

This homeland includes approximately 463,435 hectares of lands and waters critical to ACFN members, and particularly those families affiliated with the Peace-Athabasca Delta (IR Chipewyan 201), Big Point (IR Chipewyan 201B), Jackfish Lake (Richardson Lake) and Jackfish Village areas (IR Chipewyan 201E). It includes the Athabasca River delta and Richardson Lake. To the south, along the Richardson River, it borders *k'es hochela nene*, and to the north along the Old Fort River, *t'ßnu nene*. It is an area that is critical to the historic, current, and future ACFN practice of rights. While this homeland is the smallest of the three, with more than 1900 mapped use sites it also has the highest concentration of documented ACFN use. Land use values mapped here include villages, cabins, and camp locations; cultural/spiritual areas; trapping areas; critical moose hunting, fishing, and other resource procurement sites; and land and water based transportation corridors. The density of recorded use is in part due to the ecological richness of the delta area, which supported particularly high levels of commercially important aquatic fur (beaver and muskrat) prior to impacts from damming of the Peace River (which dramatically reduced water levels in the delta and irreversibly impacted its ecology) and from oil sands (which ACFN members understand to contribute to low water levels, as well as pollution of the delta). The density of recorded sites is also due to the emphasis placed on the delta and nearby reserve areas during early ACFN mapping research. As this homeland is dominated by the delta, *dzÔ tuwßze nene* is especially sensitive to low water levels on the Athabasca River, and potential contamination from oil sands development. Large portions of the Athabasca delta, including Jackfish Lake itself, are now made inaccessible by low flows. As an area where ACFN rights can still be meaningfully practiced, the importance of this homeland is likely to increase as industrial effects continue to accumulate upstream along the Athabasca.

4.3.3 *t'ßnu nene (Old Fort Point Homeland)*

This homeland includes approximately 967,477 hectares of lands and waters critical to ACFN members, particularly those families affiliated with the Old Fort settlement (IR Chipewyan 201A), and the N22 trapping block area of Saskatchewan. *t'ßnu nene* includes areas north to Lake Athabasca, and south to the Old Fort River drainage. To the east, the boundary of this homeland is defined by the legal bounds of the N22 trapping block, an area used extensively by ACFN families for trapping and other subsistence practices. With 860 mapped ACFN use values, this homeland includes villages, cabins, important trail networks, cultural/spiritual areas, fishing and resource procurement

areas, and critical habitat for woodland caribou, moose, and fur bearing animals. As an area where ACFN rights can still be meaningfully practiced, the importance of this homeland, like the others, is likely to increase as industrial effects continue to accumulate upstream along the Athabasca.

4.4 Proximate Zones

The three ACFN Proximate Zones cover a total of approximately 2,236,800 hectares of land and water that are particularly important for ACFN members who cannot easily access the homeland zones. While not necessarily “prime” lands in terms of quantity and quality of resources, proximate zones are critical for providing ACFN members living away from the homelands, with accessible areas for harvesting resources and reconnecting with the land. For those members, the Proximate Zones are important not only based on where they live, but because financial, time and other constraints may prevent them from exercising their rights in the Homeland Zone on a regular basis.

Because they are more readily accessible (in terms of distance from settlement and because specialized equipment, for example, boats and snowmobiles are not required to access much of them), and may not necessarily be the most productive lands, competition for available resources in the proximate zones is high. As proximate zones become increasingly polluted and impacted by oil sands development, ACFN use may shift to other areas where constraints of travel time and expense allow, however, with each removal of lands or reduction in tangible resources, competition increases, costs increase, opportunities for transmission of knowledge are lost, and the number of ACFN members who no longer feeling able to practice their rights as frequently as they would like, or at all, increases.

4.4.1 Fort Chipewyan Proximate Zone

This proximate zone includes approximately 423,525 hectares of lands and waters historically and currently relied upon by the majority of ACFN members who live in and around the Fort Chipewyan settlement. It includes much of Lake Athabasca, its islands, and its northern shore extending approximately 20km inland and east beyond the border with Saskatchewan. In addition to areas accessible by road from Fort Chipewyan, this proximate zone includes large areas of the ‘North Shore’ accessible only by boat, and is defined by ACFN trap lines, camps, cabins, trails, hunting, fishing and resource procurement areas, habitat areas used historically by barren ground caribou, as well as other species, and cultural/spiritual areas. The northern and eastern bounds of this proximate zone should be reconsidered as additional information becomes available.

4.4.2 Fort McKay Proximate Zone

This proximate zone includes approximately 476,880 hectares of lands and waters historically and currently relied upon by ACFN members living in and around the Fort McKay settlement, or in Fort McMurray. Strong family connections with the Fort McKay First Nation have resulted in a number of ACFN members, many of them members of families affiliated with Point Brule, Poplar Point, and *k'es hochela nene* (Poplar Point Homeland), living and practicing within this zone. This proximate zone includes areas

east and west of the Athabasca River, extending in the west to the area of Gardiner Lakes, and east to the Firebag River and is generally accessible by road from Fort McKay or Fort McMurray.

Because of impacts including restricted and gated access to areas controlled by oil sands companies, traffic, disturbance, and perceived pollution, since the late 1990's, many ACFN members have begun avoiding large portions of this proximate zone for the practice of rights, including subsistence rights. The area includes important ACFN trap lines, camps, cabins, trails, hunting, fishing and resource procurement areas, habitat areas used historically by bison and woodland caribou, as well as other species, and cultural/spiritual areas. Despite such adverse impacts, practice of ACFN rights in this zone by some members remains strong. However, available evidence suggests that adverse effects from oil sands has already reached a threshold where many ACFN members feel that harvesting of resources such as fish, moose, or medicinal plants is no longer safe throughout much of this zone. As a result, several ACFN members who relied upon the Fort McKay proximate zone up to recent years now must travel further (north of the Firebag river, or south to the Fort McMurray proximate zone) in order to practice their rights, or alternately, are not able to practice their rights due to the elimination of opportunities formerly relied upon. It is likely that, if not for impacts from oil sands, the Fort McKay proximate zone, and the Fort McMurray proximate zone, would be contiguous.

4.4.3 Fort McMurray Proximate Zone:

This proximate zone includes approximately 1,336,400 hectares of lands and waters currently and increasingly relied upon by ACFN members living in and around Fort McMurray. Connections between ACFN families and those of other Fort McMurray area First Nations are strong and economic factors have resulted in an increasing percentage of ACFN membership living in the Fort McMurray area permanently or seasonally. Because of down-stream oil sands impacts north of Ft. McMurray, ACFN rights-based activities have in recent years extend upstream (south) generally following existing road networks accessed by highways 63, 69, and 881, including the Anzac area, to Conklin in the south, and extending to the west along the Athabasca River and west of Fort McMurray. This proximate zone, while outside the generally identified historical extent of ACFN traditional lands, is increasingly being accessed by ACFN members for subsistence resource procurement (hunting, berry picking, and related activities) and is increasingly preferred over road accessible areas north of Fort McMurray (including the Fort McKay proximate zone) because of greater perceived pollution and other impacts around the existing oil sands operations north of Fort McMurray. For ACFN members who access these areas, they do so because (in comparison to other areas affected by industrial development), there may still be places where exercise of those rights is possible. This should not be understood, however, as any overall comment or analysis by ACFN on the state of the environment or practice of rights in those southern areas. Often, where there is industrial development in various places, a choice to exercise

rights or attempts to do so in one place over another represents a choice between the “lesser of two evils” in terms of existing impacts.

4.5 Critical Waterway Zones

Critical waterway zones are identified within 5km of major streams and waterways that are important hunting, transportation and access zones and/or drinking water sources. These critical waterways include the Athabasca, Firebag, Maybelle, Old Fort, Richardson, and Clearwater rivers. The zones are intended to recognize the critical ecological role of rivers and associated riparian areas (see appendix 5), and to provide a buffer along major water ways where additional management procedures would be applied. ACFN recommends that within these zones, water quality and quantity should be carefully monitored and managed to maintain opportunities for the use of rivers in the practice of ACFN rights.

4.6 ACFN Recommendations for Management of Cultural Protection Zones

ACFN strongly recommends that GoA implement processes for deep consultation and accommodation, including co-management of lands and resources that are critical to the current and future practice of ACFN rights. Co-management, consisting of full participation and shared authorities in resource planning, management and decision-making, can be implemented as a spectrum from more to less involvement throughout LARP. The highest level of involvement must be in the ACFN Homelands.

Consistent with past proposals made by ACFN to the Crown regarding co-management of the Richardson Backcountry, ACFN wishes to work collaboratively with the Crown to establish a framework for co-management of its homelands so that appropriate and full consideration of ACFN rights can take place in planning and making decisions regarding resources and lands critical ACFN rights and culture. ACFN recommends that LARP should do the following in order to achieve the goals and principles of consideration of ACFN rights:

1. Homelands as Cultural Units for Co-management

Recognize the three ACFN homelands as cultural units for appropriate land, water, and air co-management and shared decision making within the Lower Athabasca Region.

2. Watershed Planning and Management for Critical Waterways

Establish and implement co-management arrangements with ACFN for shared watershed planning and cumulative effects management for the ACFN Critical Waterways.

3. Rights-based Cumulative Effects Management Framework

Establish and implement cumulative effects frameworks that include criteria, thresholds and measures for the current and future exercise of ACFN rights.

4. Sub-regional Planning Process

Establish and adequately fund, a collaborative sub-regional planning process with ACFN for all ACFN cultural protection area designations (homelands, proximate zones, and critical waterway zones).

5. Traditional Land and Resource Use Management Plan

Establish and adequately fund information collection activities to inform these processes, including development of a Traditional Lands and Resource Use Management Plan (TRUP) (see appendix 2).

6. Co-management Frameworks

Establish and adequately fund a collaborative process with ACFN to consider and negotiate establishment of an appropriate co-management framework, including co-management tables, or other mechanisms, for planning and shared decision making on lands and resources critical to the current and future practice of ACFN rights of;

7. Protection of ACFN Rights that Depend on the Athabasca River

Recognize and implement the ACFN's recommendations regarding the Athabasca River Phase 2 Water Management Framework. These recommendations include establishing a Phase 2 Consultation and Accommodation Framework, and implementing ecosystem base flow (EBF), Aboriginal Base Flow (ABF), and Aboriginal Extreme Flow (EXF) thresholds for the Athabasca River (see appendix 5).

8. Community-based Monitoring

Work collaboratively with ACFN to establish, and provide adequate funding for, an ACFN community based monitoring and enforcement program. This program would collect data, and regularly review and report on rights-based performance indicators identified in sub-regional plans for ACFN cultural protection zones. The intent of this monitoring would be early identification of, and response to, changes that:

- a) May affect the use and access of ACFN members within cultural protection areas (including homelands, proximate zones, and critical waterway zones).
- b) May affect wide ranging species relied upon for cultural use.

9. ACFN Conservation Areas and No-Net Loss

Within 1 year of completing the final TRLUMP:

- a) Establish ACFN Conservation Areas¹⁰ totalling at least 40% of the total area (including waters) of each of the three ACFN homeland zones. Conservation Areas would be intended to provide firm protection of lands and waters, in perpetuity, for the practice of ACFN rights. This may require buying-back leased

¹⁰ It is important to note that the conservation areas proposed in the Regional Advisory Council Vision document are not sufficient to fulfill this goal, as discussed below in Section 6.

lands, and mechanisms that ensure the areas are not alterable except through ACFN prior informed consent;

- b) For lands outside of an ACFN Conservation Area, but within an ACFN homeland, establish a 'no-net loss' policy requiring any new taking up of lands or waters to be compensated through restoration of a similar or greater area of land, within the homeland affected. "Restoration" must include establishing sufficient quantity and quality of the tangible and intangible resources upon which the meaningful practice of rights depends; and,
- c) For lands outside of an ACFN Conservation Areas, but within an ACFN homeland, establish a 'no-net increase' policy in relation to roads and linear developments (including seismic work) within each ACFN homeland.

10. LARP Review Process

Agree to a joint crown-ACFN process for funding, reviewing and adjusting LARP every five years or as otherwise agreed.

Section 5: General ACFN comments on the RAC Vision Document

The following comments include general comments on the RAC Vision document by the ACFN. These comments are in addition to the joint submission of ACFN, CPFN and MCFN detailing legal comments on the RAC vision document (the “Joint Submission”) dated October 29, 2010 (see appendix 1).

5.1. Reconciliation Mandated by Section 35 of the *Constitution Act, 1982*

Within the RAC Vision, the economic imperative of oil sands development is clearly identified as the central and primary goal for the region. This characterization of the economy of the Lower Athabasca Region completely misses the fact that there is a valid and important *subsistence economy* in this region. The subsistence economy is fundamental to the well-being, health, diet and culture of aboriginal peoples in the region. The economic and cultural reality of the subsistence economy should be recognized and validated.

It is imperative that ACFN rights be considered and accommodated in any regional plan. As discussed in the Joint Submission, the RAC Vision document does not provide assurance that this can be achieved in LARP. ACFN wishes to emphasize this point, and has the following concerns with the RAC Vision document:

- No concrete means are provided for how the rights and livelihoods of Aboriginal peoples will be ensured into the future.
- The focus is on monitoring impacts on treaty rights and possibly compensating for rights infringements. Monitoring and compensation is not necessarily a reasonable approach when avoidance of infringement is possible.
- No analysis of possible impacts to Treaty rights that would result from implementation of RAC vision recommendations is provided. Nor is there an explanation of how impacts to Treaty rights have been assessed and considered in making the RAC recommendations.
- Where LARP, itself, or any decision taken under LARP, has the potential to infringe ACFN’s rights, priority must be given to those ACFN rights
- The existing baseline proposed in the LARP assumes a starting point of 2010. Serious impacts to ACFN rights have already been experienced by ACFN members as a result of industrial development, government policies, increased population in the region, and other sources. Given the existing impacts, a 2010 baseline is not a sufficient baseline for understanding impacts to rights.
- The RAC document severely discounts and understates the relevance of Treaty rights. A good example is p. 3 where “aboriginal communities” are mentioned as one of several factors. The constitutional protection of treaty rights must be front and centre in this document.

5.2. Proper Consideration of Treaty Rights Requires Better Knowledge

Planning for the meaningful practice or rights in the Lower Athabasca Region requires that criteria, thresholds and indicators for the tangible and intangible resources that underlie the meaningful practice of rights are developed and incorporated into planning methods. A robust data set regarding ACFN cultural needs must be developed, including identification of a pre-industrial baseline and future needs. ACFN has proposed a series of research plans for adequate information and studies to establish thresholds for maintaining underlying conditions necessary to the practice of rights in the region¹¹. Reference to the need for this research, or mechanisms to accomplish such research and incorporate it into planning, does not appear in the RAC Vision document.

While there is some support for community based monitoring within the RAC vision, the areas of study are largely limited to ecological parameters rather than the specific relationship to practice of constitutionally protected Treaty Rights. Further, the purpose and intent of data collection is not clear. This could result in research findings not being applied through follow-up actions and mitigations.

There needs to be a basis for this planning in thresholds, criteria and measures to assess impacts on First Nation rights. Despite written submissions by ACFN to RAC and Land Use Secretariat, the RAC Vision does not clearly contemplate the need to develop and consider rights-based thresholds for consideration in planning.

ACFN has recently completed a landmark study that demonstrates how rights-based thresholds can be identified and provides recommendations on how it can be applied in a cumulative effects management context. The Athabasca River is central to ACFN identify, culture and practice of rights. The ACFN study on knowledge and use of the Athabasca River (see appendix 5) illustrates how water quality and quantity has changed over time, and suggests rights-based thresholds. Other data sets and thresholds relevant to other aspect of ACFN's way of life need to be developed and considered in planning. LARP must include mechanisms to integrate rights-based thresholds, as they become available, into cumulative effects management, monitoring and regulatory processes. LARP must also explicitly state the need to develop these thresholds within a specified timeframe.

¹¹ In October 2008, ACFN submitted a Proposal for Co-management of Richardson Backcountry (see appendix 3), as a submission on the Land Use Framework. This proposal included a description of the research requirements needed to consider ACFN rights in planning. In April 2009, ACFN's initial submission on the LARP included the need to develop thresholds for the meaningful practice of rights and referenced the need for a traditional land and resource use plan. In July 2009, ACFN submitted a consultation proposal for the LARP that included a work plan for an ACFN-specific land use plan, which would develop information necessary for appropriate planning. In September 2010, ACFN submitted a detailed proposal for a Traditional Land and Resource Use Management Plan (see appendix 2).

5.3. A Moratorium on Future Approvals Until Knowledge Is Improved

A moratorium on all future oil sands projects should be considered until better knowledge (and resulting thresholds) regarding resources required to maintain the meaningful practice of rights is in place. Where this is not possible, a moratorium on development in 'homeland' areas, at least, should be implemented until adequate knowledge, and co-management frameworks, are in place (see appendices 6 and 7).

5.4. RAC Vision Must Give Confidence that Rights will be Sustained

The five land-use classifications that have been proposed in the RAC Vision document do not give any confidence that Treaty rights will be maintained or respected, even within conservation areas. In order to provide confidence that ACFN rights will be sustained, LARP should establish firm and precautionary caps on the pace and scale of development. Currently, there is no mention of pace and scale of development within LARP, other than the cap that suggests oil sands extraction cannot disturb more than 15% of the mixed-use areas. We recommend that this figure is simply too high, given that:

- It represents a tripling of what is currently being disturbed in these regions. ACFN is already experiencing significant impacts to the ability of members to practice treaty rights. Development in some areas is already reaching, or breaching, a threshold beyond which members cannot practice rights. Tripling development will only make this worse.
- This figure only includes oil sands development. The land disturbance threshold should account for cumulative impacts of all industry.
- There should be consideration given to sequencing the pace of development over time.
- The mixed use area represents a massive area. It is possible to imagine that 15% of the extraction could be localized in the homeland of one family, wiping out their collective land base, culture and collective memory. We have been consistently requesting constraints on development in parts of our Traditional Lands¹², and continue to do so. As such, ACFN recommends that the application of any land development thresholds occur at a sub-regional level in the LARP, rather than at the scale of the LARP planning area itself.
- Thresholds for treaty rights should be considered in developing additional caps based on air, water, and other resources.
- There seems to be an assumption that the exercise of Treaty Rights is compatible with some of the land uses designated in the classifications. This is not necessarily the case. As discussed earlier the meaningful practice of rights depends on sufficient quantity and quality of a number of tangible and intangible

¹² ACFN Submission to Alberta Sustainable Resource Development Regarding Consultation on the *Lower Athabasca Regional Plan*, April 16, 2009.

- resources. These can be adversely impacted by a variety of land use activities including industrial use, recreational use, and even conservation.
- i. In the case of mixed use areas, many of these resources will be impacted by industrial development activities and cannot be restored through reclamation. Further analysis and application of requirements for sustaining or accommodating for Treaty rights in a “working” landscape is required.
 - ii. In the case of recreation/tourism areas, ACFN rights have been adversely impacted by recreational uses. Impacts occur, for example, through vandalism, competition for traditional resources, direct conflict and threats on safety, and adverse effects to the spiritual and aesthetic experience of place that are important to identity and feelings of security. Further, restrictions that may be implemented to manage recreational use (e.g., recently proposed changes to Public Lands Act Regulations) may impact the ability of ACFN members to practice their rights. Therefore, recreational use is not necessarily compatible with ACFN use. Involvement of ACFN in planning and managing recreational use is absolutely necessary to ensure that such use can occur in a way that minimizes land use conflict and optimizes the possibilities for compatibility.
 - iii. Conservation areas, as described in the RAC Vision document, are also not necessarily compatible with the exercise of Treaty rights. Any restrictions placed on ACFN hunting and use of conservation areas would be an infringement of rights. Through experiences with Wood Buffalo National Park and other conservation measures implemented unilaterally by the Crown in the past (e.g., hunting and trapping regulations), ACFN is very familiar that the creation of conservation measures by the Crown frequently results in alienation or elimination of livelihood rights.

5.5. Consultation on the RAC Document and on LARP has been Inadequate

LARP designations must proceed in step with negotiation and implementation of appropriate consultation and accommodation mechanisms with First Nations throughout their traditional lands, and across all LARP designations. In respect of lands and resources critical to sustaining the future practice of treaty rights, negotiated co-management frameworks may provide a formal basis for deep consultation and accommodation.

It is the view of ACFN that, to date, consultation on LARP development has not been meaningful. From the outset, ACFN has raised serious concerns with the LARP process, including the lack of meaningful consultation, and the structure and function of the RAC. Despite concerns, ACFN representatives met with RAC Chair on several occasions in 2009, as well as submitted letters directly to the RAC so that issues of concern to ACFN could be considered in the RAC process. The RAC Vision document does not demonstrate how the issues of ACFN concern were considered in the process. This may stem from the fact that no consultation was required at key points in the RAC process, especially at the terms of reference (or “scoping”) stage and on Cabinet’s guidance to RAC. We wish to reiterate the point that GoA

confirmed on several occasions that Roy Vermillion, a Treaty 8 RAC representative, was not on RAC to represent individual First Nations or to carry out consultation on LARP on behalf of ACFN or any other First Nation. This is also made clear by the fact that on numerous occasions ACFN was denied access to critical RAC documents and discussions on the basis that such discussions and materials were “confidential.”

The First Nations of the Lower Athabasca Region are more than stakeholders – they have unique constitutionally protected rights that must be considered and accommodated in planning and decision-making by the Crown. Our primary objective is to ensure that we have meaningful input into the development of the LARP, including input into the kinds of information that we feel are necessary to develop a credible land-use plan.

According to the LARP Terms of Reference, Cabinet was to provide guidance to RAC including such things as:

- General directions on priorities for the region;
- Specific policies that should be considered by the RAC;
- Qualitative and quantitative assumptions that the RAC should follow;
- Possible land-use conflicts that must be reconciled; and
- Key land-use questions on which Cabinet would like the RAC’s advice.

ACFN was not consulted on this guidance, in particular on regional priorities, on assumptions, on land-use conflicts and on key land use questions. Consultation on strategic (guidance) aspects of the LARP is critical to developing a land use plan that considers First Nations issues, concerns and rights in a credible and meaningful way.

Because of a lack of resources sufficient to develop the necessary regional studies and thresholds, a lack of consideration of adverse impacts on treaty rights, and lack of dialogue on key issues of concern, it will be important to ensure that the approach to consultation on the LARP shift now to a more collaborative, mutually agreeable process. It will also be important that the LARP itself provide, at minimum, for the following:

- Co-management of lands and resources essential to the meaningful practice of rights;
- Mutually agreeable and reliable processes for consultation and accommodations;
- Rights-based cumulative effects thresholds for the tangible and intangible factors that underlie the exercise of treaty rights;
- A regulatory decision-making system that requires the analysis of rights-based impacts and has information and tools to do so.

ACFN has already communicated these expectations to GoA in other submissions.¹³

5.6. Reclamation Does Not Restore Rights

Reclamation does not re-create cultural or ecological landscapes that are consistent with aboriginal traditions of knowledge or use. The practice of treaty rights is not only about access to subsistence resources, but also requires the ability to practice, and transmit, place-based cultural knowledge. A common standard of socio-cultural impact assessment is that when an area has been removed from aboriginal use for one generation (approximately 22 years), impacts to the transmission of knowledge regarding that area are considered permanent and irreversible. Where disturbance involves removal of landforms and where areas relied on for teaching are fundamentally altered or made inaccessible, then the cultural landscape is fundamentally and irrevocably changed through development. In these circumstances, permanent impacts to the cultural landscape cannot be mitigated through even the best and most sensitive reclamation techniques. Compensation and funding of cultural documentation and language retention programs, while important activities, are only partial mitigations for the loss of use of lands.

5.7. Without Concrete Mechanisms for the Incorporation and Use of Aboriginal Knowledge, there is No Basis for Trust, Transparency and Use of Data

Throughout the document, references are made to involving aboriginal peoples and their knowledge. It may be helpful in this document to refer to the *authorities* that represent aboriginal people. While municipalities are mentioned, aboriginal governance structures are rarely discussed. Each First Nation in the Lower Athabasca region has a Chief and Council that makes decisions on traditional lands, but there is often an institution within each administration for lands analysis, policy and traditional use. These institutions are deeply connected and accountable to their communities. The people in each of these organizations are a huge resource to the province in planning, and are critical to the successful implementation of this LARP vision. Reference to the appropriate structures of governance should be made.

As an example of this, on page 6, reference is made to “utilization of aboriginal knowledge, and involvement of aboriginal knowledge holders early on in the process.” This example could lead LARP staff down the path of selectively involving people who they believe hold “aboriginal knowledge”. This would potentially serve to exclude fundamentally the voices of youth, women, and other elders less well known to GoA. These vulnerable populations must be consulted, because it is they who are often most impacted by industrial development. Further, these populations may have quite different things to say. It is for this reason that we suggest that more specific language be used, potentially replacing the above noted statement with “the involvement of administrations representative of aboriginal peoples in Alberta, and

¹³ For example, see: ACFN October 2008 submission to Alberta Sustainable Resources Development regarding co-management of Richardson Backcountry; ACFN April 2009 submission to the Land Use Secretariat regarding consultation on LARP; ACFN, CPFN and MCFN October 2010 joint submission to the Regulatory Enhancement Task Force.

involvement of the aboriginal knowledge of men, women, elders and youth, early in the process.”

The process of sharing traditional knowledge follows strict protocols. It should be noted that the ACFN, along with many other First Nations, has a formal process to collect and use this knowledge and requires a TEK sharing agreement. The RAC Vision document provides no guidance on how aboriginal knowledge is to be incorporated into management plans, or how it is to be used together with scientific and socio-economic data. As stated earlier, without concrete means specified for implementing this information, research results may not be utilized in land use management, monitoring and decision-making. We recommend that the LARP define how data regarding the state of knowledge of fish and wildlife resources and the effective management of these resources is to be used to create a real commitment to respect treaty rights.

5.8. The Intent and Use of Conservation Zones is of Utmost Concern

The specific uses and intent of conservation zones is of specific concern to the ACFN. GoA continues to present the conservation areas network as the primary means by which to incorporate First Nations input and as spaces in which to meaningfully practice section 35 rights. As presented in the RAC document, the conservation areas might include multiple uses (tourism, recreation, and industry) that are not necessarily compatible with ACFN use. Further, the conservation areas represent a trade-off of rights that will be impacted outside of the conservation zone. There are no thresholds data on the minimum standards for practice of rights in which to base these assumptions that these uses can all co-exist. Nor do these trade-offs compensate for the loss of traditional territories to industrial development outside of the conservation areas.

ACFN recommends:

- Conservation Area implementation should only be legislated after mutually acceptable agreements have been reached on the co-management of all land use designations, including conservation areas, within ACFN Homeland Zones (these include Richardson Backcountry, see appendix 3), and Critical Waterway Zones.
- Protecting in the range of 40 percent of the Lower Athabasca region, as suggested by the Canadian Boreal Leadership Council.¹⁴
- Supporting the connectivity that has been proposed in the LARP which may enhance conservation effectiveness.
- That no development whatsoever can occur in conservation areas. This means that “Existing commitments” should be honoured only through Government buying back leases.
- Management of conservation areas must not be privatised.

¹⁴ See letter and recommendations on the Lower Athabasca Land Use Planning Region and Alberta’s Boreal Region, submitted to Minister Mel Knight, May 6, 2010.

Section 6: ACFN Technical Comments on Specific Sections of the LARP Draft Vision

In addition to the general comments made in section 5, above, the following comments are technical comments on specific sections and subsections of the RAC Vision document. These comments are in addition to those contained in the joint submission of ACFN, CPFN and MCFN on the RAC vision document dated October 29, 2010 (appendix 1). Numbering reflects that of the original RAC vision document.

1.2.1 Regional Planning Process

The RAC Vision document makes no reference to the need for consultation during the regional planning process. While there is a vague reference to the importance of “the integration of aboriginal traditional knowledge” into a “comprehensive planning process” (p. 3), there is no explanation provided on how this has been accomplished.

1.2.2 Key Components for Phase One of the Lower Athabasca Regional Plan

1.2.2.2. Land-use Classifications

The RAC Document designates five land-use classifications for the Lower Athabasca Region: agriculture, conservation, mixed-use resource, population centres, and recreation and tourism. There seems to be an assumption that First Nations use of the land for livelihood purposes can be accommodated within these five land-use classifications. There is no assurance provided that there will be adequate measures to protect and sustain First Nations use of the land within these land-use classifications.

On page 5 the RAC document mentions that management frameworks offer a “system for understanding priority values and how these values are affected by land use decisions”. We agree that management frameworks are important; however, to make this credible for First Nations, the management frameworks must mention that constitutionally protected rights are a priority value to be considered and planned for in the LARP. Will GoA consider incorporating into LARP a management framework for protecting Section 35 rights? ACFN and MCFN have submitted a proposal to the Land Use Secretariat, Alberta Environment and Canada for developing such a management framework: the Traditional Land and Resource Use and Management Plan (appendix 2).

On page 6, reference is made for the need to utilize aboriginal knowledge, for appropriate consultation, for defining thresholds and precautionary triggers, etc. The ACFN has consistently proposed study of the thresholds that should be used for planning in order to adequately consider the fundamental rights to pursue aboriginal livelihoods. The need for thresholds for livelihood rights should be explicitly acknowledged here. Precautionary triggers are an excellent idea, and we recommend they be collectively developed based on aboriginal and western science. ACFN has requested that AENV engage in a collaborative, and adequately funded,

process for identifying appropriate thresholds and triggers for aspects to be included in management frameworks.

Thresholds and triggers should be developed for the human environment, as well as for air, water and biodiversity. While developing sociocultural and wellness indicators can be challenging, the people of this region are vulnerable, and human development should be as carefully monitored and tracked. So for example, language retention, housing indicators, and other fundamental issues that relate to wellness and identity should be monitored as triggers to action. These thresholds and triggers must be developed in collaboration and consultation with First Nations.

Section 1.3.2 Review, monitor and report

Review, monitoring and reporting are necessary for a credible land use planning and management process; however, there needs to be reference again to the triggers that might generate action if something is going wrong. Monitoring without action is meaningless. This means that conversations in Alberta have to occur about what will happen when a threshold is surpassed. In this case, will mitigation funds be triggered? What actions will be taken?

2.2 Outcomes, Objectives and Strategies

Outcome 1: The economy of the region grows and diversifies

Ensuring aboriginal and treaty rights must be mentioned in this section as a base condition that cannot be violated through economic growth. This must include an objective to maintain underlying factors and resources that sustain the traditional subsistence economy that aboriginal people depend on, including controls on the pace and scale of development that would assist in optimizing land use opportunities over time.

Objective 1.6: Increased participation of aboriginal peoples in the regional economy

Strategies “f” through “h” focus on bringing aboriginal peoples into economic development and compensating for impact. The focus is not on preserving rights, but is rather seen as a matter of monitoring impact and compensating for infringement. Protecting and sustaining rights has to be the core focus of this vision. The constitutional protection of the subsistence economy of aboriginal peoples will outlast the oil sands economy. The RAC Vision document does not provide assurances that the factors (sufficient quantity and quality of tangible and intangible resources) will be sustained to support that constitutionally-protected economy.

We question why Strategy “f” is included under a section pertaining to increasing participation of aboriginal peoples in the regional economy. Strategy “f” would be more fitting under increasing participation of aboriginal peoples in land and resource use management and monitoring. As well, Strategy “f” should refer to *co-management* rather than *cooperative management*. Models of co-management in Canada are well established in several jurisdictions (NWT, Nunavut, and Quebec) and should be adapted to the Alberta context.

Outcome 2: Infrastructure and community development needs are anticipated, planned and provided effectively and efficiently

While there is mention of a new process to assess infrastructure, social and economic implications of major projects, assessments of cultural impacts and impacts to constitutionally protected rights must also be included. Further, meaningful involvement of aboriginal peoples in scoping, terms of reference and throughout the process must be at the core of this process.

This section also calls for stewardship plans. How can these plans and this involvement be secured in Alberta if industrial development of traditional lands overrides the objections of local communities? There should be stronger roles for the voices of the stewards, specifically the voices of First Nations who have traditional rights of stewardship responsibility to the land, including the option to co-manage the terms of development.

Outcome 3: Economy growth is achieved through integrity and respect for management systems

This section should include an objective pertaining to respect for constitutionally-protected livelihood rights. For example, in Objective 3.4 the Traditional Land and Resource Use requirements of First Nations are understood, assessed and monitored. Strategies to achieve such an objective could include:

- Conduct comprehensive cultural and social impact assessments for aboriginal peoples in the region;
- Conduct a comprehensive cumulative impact assessment of livelihood rights for aboriginal peoples in the region;
- Work with aboriginal peoples to develop traditional land and resource use and management plans;
- Develop an assessment process that supports locally controlled social, cultural and aboriginal rights and use impact assessment;
- In collaboration with aboriginal peoples, develop co-management systems to control the pace and scale of development;
- Include aboriginal representation on regulatory decision-making boards;
- Include an assessment of the adequacy of consultation in the public interest assessment of regulatory decision-making;

The importance of proper social and cultural impact assessments for evaluating impacts to livelihood rights and aboriginal community wellness cannot be overstated. These core areas of research have been undervalued and, to our knowledge, there has never been an adequate social, cultural or cumulative impact assessment done for aboriginal peoples in this region.

Objective 3.1: The environment’s natural processes and natural resources are understood, respected and cared for

Strategy “a” must include reference to cumulative impacts. .

Regarding strategy “f”, (Promote the actions taken by industry and business to minimize environmental impacts) we do not understand what is meant by this strategy or how it contributes to understanding, respecting and caring for the environment’s natural processes and natural resources? Stewardship at all levels of society should be promoted.

Objective 3.2: Land, air, water and biodiversity are monitored and reported.

This section needs to include data from traditional use and rights studies, so that thresholds for rights practice can be established. In addition, once these thresholds are established, measures for if these thresholds are surpassed must be proactively identified.

In respect of strategy “e”, please replace “assess the effectiveness” with “support the effectiveness of a community based monitoring program.”

Objective 3.3 Multi-stakeholder groups contribute meaningfully to the overall responsible development of the region.

Strategy “a” is an example of the focus on multi-stakeholder groups and associations and the vague category of “aboriginal peoples”. Again, we reiterate, that aboriginal peoples are not just another type of stakeholder group. The constitutionally protected rights of aboriginal peoples require priority consideration in planning and decision-making.

Instead of including this vague category, please add another strategy as follows: “Strengthen the involvement of regional and local levels of aboriginal governance.

Objective 4.1 Landscapes are managed to maintain and enhance ecological integrity and human health.

Strategy “c” requires a reduction of the 15%, as we have described earlier in our overall discussion. The figure needs to be reduced, as the current pace and scale of development is already causing severe impacts to ACFN member’s ability to live off of the land. Development limits must ensure that no one aboriginal traditional territory will suffer an unjust burden of the 15%. Application of land development thresholds at a sub-regional level, rather than at the scale of the LARP planning area, should be considered. Further, all development zones should be included in this, and there should be limits on all kinds of development that is inclusive of cumulative impacts, not just oil sands extraction.

Strategy “i” should include develop and “implement” appropriate mitigation/mitigation strategies. In addition, while the recommendation to include aboriginal knowledge is generally a good idea, it will only work if there are regulatory changes to require incorporation of knowledge at an early point in project development, as well as funds and capacity. There needs to be moratoriums on development in areas where this knowledge is not already apparent or archived, or where knowledge is not sufficient or judged to be valid.

Objective 4.2: Disturbed land is reclaimed in a timely, progressive and aggressive manner.

ACFN believes that the reclamation section of the RAC vision document is fundamentally flawed. There must be intensive and meaningful co-management of reclamation, such that aboriginal people are stewards of this process. Indigenous science is central to recovery of disturbed ecosystems, and large scale research must be proactively conducted on how reclamation can be done consistent with inclusion of Indigenous science.

Objective 4.3: Regional biodiversity and ecosystem function is conserved and enhanced.

There needs to be more specificity in how aboriginal people will be involved in conservation and enhancement of biodiversity needs. How and when would this be achieved under LARP?

Outcome 5: The integrity of air and water are managed through responsible stewardship

There should be penalties associated with any breaches of thresholds that are agreed upon for air quality, water quality and quantity. Mutually agreeable mechanisms must be established so that First Nations who suffer impacts as a result of breaches to thresholds are compensated.

Objective 5.2: Water quality and quantity is managed to enhance and maintain ecological integrity and human health

Strategies should reference the thresholds for maintenance of livelihood rights, in particular the Athabasca River study recently completed by the ACFN and MCFN (see appendix 5). For example:

- Immediately implement Aboriginal Baseline Flow and Aboriginal Extreme Flow thresholds for the Athabasca River;
- Working collaboratively with aboriginal peoples to further understand and address water quality issues and concerns, including psychosocial factors, and resulting adverse effects on treaty and aboriginal rights, along the Athabasca river, delta, and adjoining tributaries; and,
- In consultation and collaboration with aboriginal peoples, establish a water use co-management board for Critical Waterway Zones.

Objective 6.3: Cultural diversity is valued.

This objective should include a strategy to: “support education in aboriginal languages and identity at the earliest levels.”

Strategy “f” should include indigenous control over the place name records.

Objective 6.4: Significant historical resources are protected and historical themes are identified and developed.

The focus on “historical” resources and themes suggests that culture is something that is held in the past. This objective should be refocused on “culturally valued resources”, which can include archaeological, historic, and ceremonial sites. Strategies to achieve this objective should include the management tools and guidelines for culturally valued resources.¹⁵

Strategy “b” should refocus on “culturally valued resources, including historic and ceremonial sites” rather than being limited to only historic and ceremonial sites.

Strategies should include developing legislative mechanisms and consultation processes to protect significant culturally valued areas and resources.

Outcome 7. Aboriginal people’s rights, traditional uses and values are respected and reflected in planning

While many of the recommendations in this section are strong, they largely lack implementation mechanisms that will ensure that on-the-ground practice results in meaningful consideration of rights, uses and values. In current practice, economic priorities override all other priorities and are at the expense of the livelihood rights of aboriginal peoples in this region. How will implementation measures provide “teeth” and mechanisms to these strategies so that objectives are achieved?

Objective 7.1: Aboriginal peoples are included in land management planning.

As stated above, while the strategies have merit, without proper consideration of implementation, how will these strategies result in measurable changes in actual practice? For example First Nations are already working to improve the quality of information considered in planning process, for example, by providing information on planning, infrastructure and services in project specific TORs. In current practice, the recommendations and concerns of First Nation are largely ignored.

One way to address the implementation gap is to build formal roles for aboriginal peoples and demonstrate a strong commitment to consultation in the regulatory system.

Strategy “d” under objective 7.1 has merit only if there is some means of integrating information from First Nations land use plans in land and resource use assessment and decision-making. What opportunity will there be for the results of First Nations-specific land use plans to be considered and incorporated in LARP itself?

¹⁵ NWT Cultural Places Program. 2007. Living with the Land: A manual for documenting cultural landscapes in the Northwest Territories. Yellowknife, NT: Government of the Northwest Territories.

Objective 7.2.: Land-use planning processes balance the constitutionally protected rights of aboriginal peoples and the interests of all Albertans.

In order to assess and understand how to “balance” rights, adequate and credible information is required on what is needed to sustain the rights, and what the consequences of impacts to rights will be. ACFN and MCFN have proposed to develop such information through a Traditional Land and Resource Use Management Plan (TLRUMP). Almost all strategies identified under Objective 7.2 require the kind of detailed information that would be developed under a TLRUMP. Issues with inadequate consultation and engagement could be obviated by slowing down development and placing moratoriums on new applications until planning and research is done in critical areas.

Strategy “a” should not be limited to planning, assessment and monitoring but should also include “land and resource use decision-making”.

Strategy “c” should acknowledge the thresholds that the TLRUMP will develop.

In Strategy “d” the wording “joint planning” should be replaced by “co-management.”

In strategy “e”, “Support” should be replaced by “sustain”.

An additional strategy should be added based on Objective 4.1.1. in the Oil Sands Secretariat’s policy document Responsible Action: “Work with First Nations to understand potential cumulative environmental impacts on rights and traditional uses in order to inform regional planning and consultation approaches.”¹⁶

Objective 7.3: Opportunities for traditional uses within the region are maintained and enhanced.

Strategy “a” should include “ensure” rather than “support”.

In respect of strategy “b”, it should be noted that commercial guide outfitting, recreational hunting and fishing, are not ordinarily traditional uses. Aboriginal traditional use has constitutional priority over those uses.

Outcome 8: Variety of recreation opportunities are available

These purposes should not conflict with the rights of aboriginal peoples to sustain themselves on the land. Currently, recreational use impacts tangible and intangible resources (e.g., safety, solitude, cultural sites) that are necessary to the meaningful practice of livelihood rights. ACFN members consistently express significant concerns about recreational land users and conflicts with ACFN use of lands and resources.

¹⁶ Oil Sands Secretariat. 2008. A Plan for Alberta’s Oil Sands. .
http://www.treasuryboard.alberta.ca/docs/GOA_ResponsibleActions_web.pdf

Objective 8.1: Recreational opportunities meet the preferences of residents and tourists

Strategy “a” should say “Establish recreation and tourism areas to increase regional recreation and tourism opportunities that do not conflict with aboriginal rights.”

Objective 8.2: Recreation areas are safe, sustainable and enjoyable

This should include a strategy for aboriginal co-management of planning, management and monitoring of recreational areas.

Land Use Classification System

The five land use classifications provided do not ensure that First Nations livelihood uses can be sustained or will be compatible with the classified land uses. The province should consider establishing a priority “Aboriginal livelihoods” classification.

Agriculture

While agriculture may be a primary use in the southern LAR area, the northern region does not have agriculture as a long term priority use. The long term use of this region has been for practice of aboriginal livelihoods and this should remain the priority use of this region. We suggest that this land use classification be established only for a southern sub-region under LARP coinciding with the current agricultural areas.

Conservation

The heart of this vision lies in promoting economic interests, not in balancing conservation or aboriginal rights to pursue a livelihood based in the land. There are very few tools identified for conservation, such as expropriation, easements, directives or stewardship units. These sorts of tools, and appropriate tools for the protection of aboriginal rights and engagement of aboriginal people and indigenous science, must be made central to this plan and articulated at the outset.

The priorities for use are undermined by the fact that there is no mechanism to reduce oil and gas production, or other mineral development, in conservation areas. Instead the document suggests that “existing commitments will be honoured”, suggesting that anything that is already leased to be developed, will be, and then turned into a conservation area once mined. These potential uses seem incompatible, particularly when it is remembered that First Nation use seems to be buried under conservation values within the RAC vision.

In some cases, conservation on its own may be incompatible with First Nation use. If conservation areas are expected to ‘double’ as primary areas for use by First Nations, then we can anticipate that there will be greater use pressures on them. This is likely to result in either a lack of sustainability in the practice of Treaty rights, or the regulation of First Nations use of these areas, resulting in unjustifiable limits on rights.

This raises the issue of whether or not proposed conservation areas contain sufficient lands to sustain aboriginal traditional use for all of the aboriginal groups in the LARP area. It is highly notable that no conservation areas are proposed in the mineable oil sands area. All conservation areas are at the “fringes” of the LARP area. Some First Nations traditional lands do not have any conservation areas specified at all. There may be increased hunting and use pressures on conservation areas that are more easily accessible, for example, those in Richardson Backcountry. These all pose significant challenges to the ability to maintain and exercise traditional Aboriginal rights.

The optimization of conservation areas selection cannot be done until a full consideration of the tangible and intangible resources that underlie the meaningful practice of rights is completed. Conservation areas that are devised without assessing the nature and structure of the treaty and aboriginal rights, or are governed in a manner inconsistent with cultural use, will not assure the continued ability to meaningfully practice Treaty and Aboriginal rights. For example, the “aboriginal use” referred to in Alberta’s planning criteria cannot be properly assessed without considering the sociocultural, ecological and economic factors that are integral to the *practice* of the “aboriginal use.” There is no guarantee that a conservation area, developed in absence of culturally appropriate information, will provide adequate opportunities for the land and resource uses of the multiple First Nations (and other Aboriginal peoples) in this region. Furthermore, the conservation areas network that may result from such a planning exercise does not accommodate for existing and future infringements to Treaty and Aboriginal rights and loss of land available for use elsewhere in the Lower Athabasca region. The conservation areas network itself is a compromise and a “trade off” of rights; however the LARP process does not incorporate measures or criteria to evaluate such trade-offs.

Recreation and tourism

ACFN concerns about recreation and tourism continue to be raised.¹⁷ Recreational use in the Richardson Backcountry and Poplar Point areas is already conflicting with ACFN members’ traditional use. More consultation on these issues needs to be held.

Multi-use corridor overlay

Long-term infrastructure planning is an issue of special concern. These corridors will have long term consequences for ACFN current and future interests.

¹⁷ Regional Advisory Council Letter from ACFN, July 7, 2009 regarding meeting objectives and ACFN request for suspension.

**ATHABASCA CHIPEWYAN FIRST NATION
INDUSTRY RELATIONS CORPORATION**

110B-9816 HARDIN STREET, FORT McMURRAY, ALBERTA T9H 4K3 • TEL 780-791-3311 • FAX 780-791-3632



November 22, 2010

Dave Bartesko
Land Use Secretariat
Alberta Sustainable Resource Development
9th Floor, 10035-108 Street
Centre West Building
Edmonton, AB T5K 2G8

P: 780-644-7972

F: 780-644-1034

[Via email: dave.bartesko@gov.ab.ca]

Dear Dave,

**Re: Athabasca Chipewyan First Nation (ACFN) Advice to the Government of
Alberta Regarding the Lower Athabasca Regional Plan (LARP)**

The ACFN Industry Relations Corporation (IRC) is pleased to submit, on behalf of ACFN, the enclosed document: *ACFN Advice to the Government of Alberta Regarding the Lower Athabasca Regional Plan* (“ACFN Advice Document”).

The ACFN Advice Document includes six components, plus appendices:

- Section 1: ACFN Elders’ Declaration on Rights to Land Use
- Section 2: Context on ACFN Mode of Life and Livelihood
- Section 3: ACFN Vision for LARP
- Section 4: ACFN Cultural Protection Areas
- Section 5: ACFN General Comments on the RAC Vision Document
- Section 6: ACFN Technical Comments on Specific Sections of the RAC Vision Document

The ACFN Vision for LARP is based on Treaty 8 as the foundation on which all land use in the region depends. The spirit and intent of Treaty 8, among other promises and guarantees, involves ACFN’s agreement to *share* lands and resources with the Crown. In exchange, as a priority over all other uses, the Crown confirmed protection for ACFN’s way of life. ACFN way of life is based on their cultural relationship with the land and sustained through the practice of livelihood rights. In keeping with the spirit and intent of Treaty 8, the primary goal of the LARP must be reconciliation of Crown and First Nations interests.

Reconciliation must start with providing a much greater say for ACFN in decision-making where decisions have the potential to adversely affect and/or infringe ACFN's Treaty 8 rights. This goes beyond Alberta's current approach to the "right to be consulted", which has not resulted in the slowing down of the taking up of lands and adverse impacts to rights. At minimum, deep consultation and accommodation is required; at the higher end, full participation in resource management and decision-making, along the lines of resource co-management boards in NWT, Yukon and Nunavut, is required. This can be implemented as a spectrum from more to less involvement in the LARP area. The homeland zones would be areas with a higher involvement in co-management. Without an approach that leads to greater First Nations involvement in decision-making, the current RAC Vision, including the conservation areas proposed, will not protect ACFN rights.

In order for LARP to adequately assess and address livelihood rights, there is a need to develop information on thresholds for the meaningful exercise of rights. ACFN strongly recommends that the Crown provide adequate resources and time for a measured, realistic, and reliable consideration of resources needed to exercise Treaty 8 rights. Implementation of the *Traditional Land and Resource Use and Management Plan* proposal submitted by ACFN to Alberta, and appended to the enclosed submission, would be a positive move in this direction.

ACFN has serious concerns about the consultation process to date on the LARP and sincerely requests that Alberta enter into a more collaborative and mutually agreeable process. ACFN expects that such a process will involve meaningful consultation on the information, issues and vision recommendations contained in this submission, as well as direct engagement with Alberta on the draft LARP through Leadership meetings and technical working sessions. As a first step, ACFN requests that Alberta meet to discuss this submission with ACFN Leadership, Elders and technical staff in Fort Chipewyan, in January 2011. If Alberta has any questions after reading this document, we ask that you provide them to us in advance of meeting. ACFN would be pleased to answer your questions and to discuss these matters with you in more detail.

ACFN looks forward to your positive response.

Yours Truly,



Lisa King
Director

[encl.]

cc: ACFN Chief and Council
ACFN Elders Council
Peter Watson, Deputy Minister of Energy
Jim Ellis, Deputy Minister of Environment

Morris Seiferling, Commissioner, Land Use Secretariat
Robert Freedman, Janes Freedman Kyle LLP