

Undertaking Responses by Dr. Candler for Shell JPME Hearings– November 15, 2012

Undertaking #1 (read verbally into the record on Nov. 9):

Regarding exhibit 006-024 , Map 1 at page 10, we can confirm that the area labeled 'ACFN consultation area' shows a rectangle approximately 775 km N-S and approximately 320 km E-W. The area of this rectangle would be approximately 245,881 Square Kilometers.

Undertaking #2 (read verbally into the record on Nov. 9):

Regarding an undertaking to provide a list of resources recorded as harvested within the JPME footprint (disturbance +250m) by ACFN members, based on exhibit 006-0131, the list would include:

- Moose, deer, beaver, muskrat, marten, fisher, mink, wolf, grouse, rabbit, geese and ducks, jackfish, goldeye, suckers, and berries, including blueberries and huckleberries. Medicinal plants, and drinking water were also identified as collected.

Subject to Check #3:

Regarding a number, taken subject to check, and provided by Shell as a calculation of the area of the ACFN traditional territory, we have checked this number and can confirm that it is NOT correct. The number provided in the transcripts for Nov. 9 (Vol. 11, adobe 2482, line 6) by Mr. Denstedt is 4,383,440 hectares. While the source for that number is unclear from the transcripts, we understand that Mr. Denstedt refers to a number used by Shell to calculate the ACFN traditional territory. The number occurs at page 128 of appendix 2 of Shell's May 2012 SIR 11- Cumulative Effects response. The same number appears to be used by Shell as an 'RSA' for calculating the percent of ACFN lands disturbed by the JPME project. No source map or reference for calculating the number is provided, and we were unable to tell from Shell's documentation what spatial area it is a calculation of.

We understand that the number cited was likely calculated by Shell based on maps shown in the 2003 ACFN publication included as exhibit 006-013J ("Footprints on the Land..."). Maps in this document show an approximate historic extent of ACFN activities composed of multiple distinct polygons or 'territories' associated with different ACFN sub-communities. In order to arrive at a number of 4,383,440 hectares for the ACFN traditional territory, Shell appears to have amalgamated the polygons and assumed that ACFN occupancy and use of lands and resources is undifferentiated. The net effect of this is that the number provided by, and relied upon, by Shell is far too large. Use of such a large number as an RSA or context area for understanding JPME effects on ACFN use of lands and resources makes JPME appear small by comparison.

The panel should not rely on this appearance, but should instead consider the specifics of ACFN use and practice, and the ongoing importance of the Kearl Lake and JPME areas as a focus for that practice. As discussed in Dr. McCormack's evidence (006-013K), areas that are occupied and used and referred to sometimes as 'traditional territories', are not static boundaries and are subject to change over time. It is incorrect to treat the ACFN traditional territory as a static area or number without attending to the specific nature of ACFN interests at

specific times. However, while it is explicitly not a traditional territory, should the panel require a static area, a more appropriate context area within which to consider the Project's effects on ACFN use and knowledge would be the Regional Study Area presented by Dr. Candler in his evidence and shown in 006-0131, p. 38.

Undertaking #4:

Regarding a request by Mr. Denstedt to 'confirm that Chief Jim Boucher is the nephew of Annie L'Hommecourt' (transcripts for Nov. 9, Vol. 11, adobe 2625, lines 9-19) , we can confirm that, consistent with the evidence brought forward by the ACFN, the membership, histories, and territories of the ACFN and the Fort McKay First Nation (FMFN) are closely intertwined through marriage and sharing. This is especially true in areas such as Kears Lake and the area of the proposed JPME mine, where the families that now make up the ACFN and FMFN have lived and shared with each other for generations. Indian act band membership is often flexible, changes over time, and does not replace or sever intertwined cultural and historical relationships between people and the land.

As an example, and based on the knowledge of ACFN elders and authorities, we can confirm that Chief Jim Boucher of the Fort McKay First Nation was born into the ACFN, and like many FMFN members, became part of the Fort McKay First Nation later in life. Annie L'Hommecourt was an ACFN member most of her life, and was the sister of Chief Boucher's father, Theodore (Ted) Boucher. As such, Annie L'Hommecourt was both the paternal aunt of Chief Jim Boucher (with Chief Boucher being her nephew), and the mother of Marvin L'hommecourt, as well as several other children. Later in life, Annie was the common-law partner of Benny Powder (Old Man Powder) and became a member of the FMFN, which Benny Powder had also joined. Her son Marvin, and other members of the L'Hommecourt family, remained members of the ACFN. In relation to this undertaking, it should also be noted that, consistent with evidence put forward by ACFN, a commercial trapline right is entirely distinct from aboriginal and treaty rights. Trapline rights may be passed on privately through family lines, or through other arrangements. Aboriginal and treaty rights are not attached to the disposition of traplines. ACFN evidence (exhibit 006-0131, p. 28) provides some additional clarification in this regard and may be of use to the panel.