

Attachment 13
Gunn Metis Local 55



From: <email address removed>
To: [ARC Team](#)
Cc: [REDACTED]; [Jenny Biem](#); [Les Lafleur](#)
Subject: Gunn Métis Local 55 - Statement of Concern - Application 1725257
Date: Wednesday, July 09, 2014 3:44:01 PM
Attachments: [CoalValley_AER_GML55_July09,2014.pdf](#)
[TT 001 \(LacSteAnne\).pdf](#)

Please see attached.

Regards,
Tracy L .Friedel, PhD
Gunn Métis Local 55 Council Member
Co-Chair, Gunn Métis Local 55 Community &
Industry Engagement Committee



Website: <http://lacsteannemetis.com>





GUNN MÉTIS LOCAL NO. 55
Preserving Our Past... Ensuring Our Future

Métis Nation of Alberta Association
Gunn Métis Local No. 55



Authorizations Review and Coordination Team
Alberta Energy Regulator
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[via email]

RE: Gunn Métis Local 55 Statement of Concern regarding the Proposed Robb Trend Project (Coal Valley Resources Inc.) – Application 1725257

Gunn Métis Local 55 (“GML 55”) is the association representing the Aboriginal rights and interests of our members, who are Métis people living in Lac Ste. Anne and other local Métis communities in west central Alberta including Gunn, Wabamun and surrounding areas. As per the wishes of our members, GML 55 is the body that shall intervene with various government agencies (and corporate entities) when our members’ Aboriginal rights and interests are at risk of adverse impact from industrial development. GML 55 is a member of the Métis Nation of Alberta, Region 4 (MNA R4) and as such, works collaboratively with MNA R4 on various initiatives. However, it is on behalf of GML 55 that this statement of concern is being submitted.

The Robb Trend Project is proposed within an area that our members have historically, and continue currently to use, for the harvesting of traditional resources and the exercise of other Aboriginal rights. This “Area of Interest” is captured by the “Deemed Territory” shown on the map attached to this letter as “Attachment 1”. This map was produced by Alberta in association with its 2010 Métis Harvesting policy, and while it falls short of reflecting our ancestral and current use of lands to the west, for the purposes of this submission is adequate to reflect our Area of Interest. We are concerned that the Project along, and in combination with other industrial development in our Area of Interest, will directly and adversely affect the Aboriginal rights and interests of our members.

1. Background on GML 55's Rights

GML 55 members are Aboriginal people within the meaning of section 35 of the Constitution Act, 1982, and therefore holders of Aboriginal rights. Our members are descended from the Métis of Lac Ste. Anne, one of the oldest Métis settlements in Alberta, and surrounding areas. Many of our members are descended from Louie Kwarakwante who established the settlement at Lac Ste. Anne in the 1800s. Historically, the ancestors, grandparents and parents of our members derived their livelihood from the land. Our members continue to exercise their rights to harvest traditional resources, and engage in other land-based cultural and spiritual activities that are essential to our Métis culture and identity.

The proposed project is within GML 55's Area of Interest, which encompasses the lands

upon which our members currently, and their ancestors historically, lived on and used to sustain themselves, their families and communities in accordance with their traditional culture and lifeways, including the harvesting of traditional resources through hunting, trapping, fishing and gathering. The land continues to sustain GML 55 members and is at the heart of our culture, traditions, identity, spirituality and rights. Our family histories tell of use historically in the region south of Edson, and we know of Metis harvesters from our community who remain active today on lands in the area of the proposed Project. While carrying out our traditional harvesting activities, many older GML 55 members pass down their knowledge and skills to younger GML 55 members. The imparting of traditional harvesting knowledge and skills is essential to the survival of GML 55 members' culture and distinctiveness as a people. It is clear that as development increases, it is becoming more difficult for GML 55 members to hunt, fish, trap and gather, and engage in other cultural activities on the land.

GML 55's Area of Interest is of critical importance to past, present and future practice of GML 55 use and rights. It encompasses the lands and places where GML 55 history, culture, and livelihood are most firmly rooted, and upon which GML 55 members rely on, and require priority access to, now and into the future.

Section 35 of the Constitution Act, 1982 provides constitutional protection to the aboriginal and treaty rights of Aboriginal peoples in Canada. The Act provides that:

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, "Aboriginal Peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
- (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
- (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

In 2003, the Supreme Court of Canada clarified Métis rights under section 35(1) of the Constitution Act, 1982 in the R v. Powley also known as the Powley ruling. As stated on the Aboriginal Affairs and Northern Development Canada website, "In R. v. Powley [2003] 2 S.C.R., affirmed Métis have an Aboriginal right to hunt for food as recognized under section 35 of the Constitution Act, 1982. This case was important for Métis people in Canada as it was the first instance in which the highest court in the land affirmed the existence of Métis Rights."

The Aboriginal rights of GML 55 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 ample lands and resources in which the rights can be exercised. 'Ample' refers to not only quantity but also quality, and is assessed from the viewpoint of what is required to fulfill not only subsistence requirements, but also cultural needs, of the Métis group now and into the future. Determining what is 'ample' entails a complex of interconnected tangible and intangible resources that underlie the meaningful practice of rights. Such resources include, but are not limited to:

- routes of access and transportation;
- construction and habitation of cabins and other infrastructure;
- 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/sacred sites.

2. Initial Concerns about the Adverse Effects of the Project

Based on available Project information¹, including the map attached to this letter as “Attachment 2” showing the location of the proposed Project (Townships 46, 47, 48, and 49, Ranges 18, 19, 20, 21, and 22, West of the 5th Meridian, covering about 10 113 hectares), it appears that the Project:

- Is located in our Area of Interest, including but not limited to the “Deemed Territory” map produced by the Government of Alberta and described earlier;
- Involves construction in waterways (and tributaries) associated with the Pembina River and McLeod River watersheds. Potentially impacted tributaries include, but are not limited to, Lovett River and Centre Creek (Pembina River watershed), and Embarras and Erith rivers (McLeod River watershed). It is noted that the Pembina and McLeod rivers are themselves important tributaries of the Athabasca River. These various waterways are important to our use of the land and the harvesting of resources.
- Goes through large game (elk, moose, deer) hunting areas that are currently used and important to our members.
- Goes through Key Wildlife and Biodiversity Areas for ungulates, which coincide with our members’ hunting areas.
- Goes through Key Huckleberry Areas, which coincide with our members’ gathering areas.
- Will increase access roads and traffic associated with haulers used to transport coal.

Based on our initial look at the project information, we see the possibility for significant adverse impacts on our rights. Our preliminary concerns are as follows:

- The Project, alone or together with other industrial development that has been carried out in this region, would have a direct and adverse effect on GML 55’s

¹ Alberta Environment and Sustainable Resource Development: <http://environment.alberta.ca/03466.html>

Aboriginal rights and interests (including harvesting), and the general enjoyment of Métis traditional territory.

- The Project either through direct disturbance or through sensory disturbances (noise, odour, visual) associated with clearing, construction and operations would impact hunting, gathering and camping activities by GML 55 members resulting in avoidance and loss of use of the area, perhaps permanently.
- The Project will impact key habitat areas and contribute to cumulative destruction of habitat for huckleberries, and for moose, deer and elk, which are important plant and game species relied upon by GML 55 members. This could occur through direct disturbance as well as through increased access into key ungulate areas for sports hunters and recreationalists.
- Increased access could also result in increased competition for game and other resources our members harvest in the Project area as well as increased traffic and noise that could interfere with our use and enjoyment of the area.
- There is the potential for spills and contamination and resulting risk to important waterways (and associated fisheries) and lands within which our members exercise harvesting rights. Our members, based on their lived experience with industrial contaminant spills that have occurred in our Area of Interest (such as the rail way disaster and spill into Wabamun Lake) are very concerned about the potential for spills or leaks and resulting contamination of lands and water that are important to their use of the land.
- GML 55 members are concerned that industrial development is having negative and adverse impacts on lands that have been used by our Ancestors, and that continue to be used today, and that companies such as Coal Valley (now owned by Westmoreland Mines), among others, are not meaningfully engaging with our Local in order to understand and mitigate our rights, interests, concerns.
- Based on our initial cursory review of the Project, we believe that it is necessary to identify and assess, and give proper and full consideration to the impacts to GML 55 members by this proposed activity. In our view, the Application cannot be deemed complete until such information has been developed and included.
- GML 55 is very concerned about the lack of a clear process to assess and address impacts on its constitutionally protected rights, interests, culture and community well-being. We recognize Coal Valley's desire to hear about our "ethno-historical" connections in relation to the Project, and we would like to be able to provide this information. We note, however, that consultation should not be limited to ethno-history as this is not sufficient for determining the impacts to our rights and interests.

The applicable legal principles determining direct and adverse impacts include:

- as per Section 35(1) of the *Constitution Act, 1982*, and in *R. v. Sparrow*, 1990 1 S.C.R. 1075 - that impact is to be construed in a purposive way i.e. a generous, liberal interpretation is demanded given that the provision is to determine aboriginal rights.
- in *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74, [2004] 3 S.C.R. 550, at para 32, that the potential negative derivative

- impacts of a project must also be taken into account;
- in Mikisew, supra at paras. 15, 44 and 47, that the injuries that a project causes on the exercise of rights within that vicinity must be taken into account.

Whether termed "cumulative", "derivative", or "injurious affection", it is submitted that in considering GML 55's concerns, it is not enough to consider only the impacts caused by the footprints of the proposed Project. The case law clearly indicates that the impacts of development on Aboriginal rights are felt with a significantly larger area than the direct footprint of a project. That is equally true in respect of the potential effects of the Project on GML 55's rights.

GML 55's traditional lands are increasingly being taken up by coal mines and associated facilities, power plants, pipelines and facilities, gas wells, seismic lines, oil exploration wells and associated access. Industrial activity on GML 55 traditional lands has already adversely affected our members' rights and interests. GML 55 and our members are highly concerned about the expanding adverse impacts of impacts of development, including potential further coal mine developments, on their rights, mode of life and well-being within their traditional lands. New construction such as the proposed Project on lands in areas that our Members actively use for harvesting, will inevitably have a direct and adverse impact on those traditional, land-based activities.

The question is not whether there will be impact, but how severe the impact will be. This depends upon a number of factors including the importance of the rights to GML 55.

3. Continuing Engagement on this Project

While the concerns expressed by GML 55 are extensive, they are necessarily incomplete as GML 55 has not yet had an opportunity to complete a project-specific Traditional Use Study for the Project. I was one of the GML 55 representatives who met with Coal Valley representative Les Lafleur on March 18, 2014 (following from contacting him in late December, 2013). At that time, we indicated to Mr. Lafleur that stemming from an oral history project that GML 55 has been carrying out since summer of 2013, we had incidental knowledge of our members' (Lac Ste. Anne Metis harvesters) use of lands and resources within our traditional territory and within the area of the Project, specifically in general hunting and berry gathering areas. I also have personal knowledge of hunting, huckleberry gathering and camping by GML 55 members, including myself, in the Project area. We made clear that oral history interviews were not completed with the purpose of identifying specific lands and resource use in relation to the Project. The mapping methodology used within the oral history project did not focus on mapping hunting, berry gathering, etc. at a site-scale. Furthermore, oral history interviews were completed with a small segment of our membership. We followed up on this meeting by submitting a Consultation Work Plan and Budget to Mr. Lafleur on May 08, 2014.

It is important to note that GML 55's capacity limitations cannot be overstated. We are led by a volunteer council comprised of individuals managing full-time jobs, and who lack the time and/or specific expertise required to undertake comprehensive documentation of our members' land use, adequate discernment of technical project-related information, and/or navigation of various regulatory processes. In the case of the Robb Trend Project, we have

been wanting to be able to gather the necessary site-specific and non-site specific information in order to bring this forward to Coal Valley for consideration in Project planning and decision-making, and to ultimately have this included as part of their application. Capacity is needed that permits us to undertake those activities that are necessary for us to consult with Coal Valley in a fair manner, and that ensures that our concerns are adequately addressed. For this reason, the Consultation Work Plan provided to Coal Valley on May 08, 2014 was comprehensive in scope, meant to allow each of GML 55, Coal Valley, and the Regulator to understand the extent to which the Project could impact our Aboriginal Rights.

Coal Valley responded to our May 08, 2014 proposal by suggesting that rather than engage in a proper study of the potential of the Project to impact our Rights and lands, that an ethno-historical study be organized in order to discern members' historical use of the area. In our view, this would not provide the fulsome information required regarding the extent to which GML 55 members' could be impacted by the Project. We were, however, prepared to agree to this given Mr. Lafleur's offer that positive results (evidence showing historical use) would lead to further research focused on current harvesters. Despite this, in a July 08, 2014 email, Mr. Lafleur backtracked, indicating that ethno-historical funds are no longer assured. Thus, our efforts to ensure that relevant information pertaining to GML 55 is not yet included with this Application. In our view, Coal Valley's refusal to support the collection of relevant information regarding potential Project impacts on our Rights means that this is an incomplete application that cannot be disposed of by the Regulator. It is our understanding that by way of Ministerial Order 141 2013, the Regulator is charged with considering the potential impacts of Projects upon aboriginal peoples (see Purpose):

- the AER has a responsibility to consider potential adverse impacts of energy applications on existing rights of aboriginal peoples as recognized and affirmed under Part II of the Constitution Act, 1982 within its statutory authority under REDA,
- and pursuant to Direction Four, the Regulator is to:
 - require the proponent to include in its application detailed information gathered about the potential impact of the proposed project on existing rights of aboriginal peoples as recognized and affirmed under Part II of the Constitution Act, 1982

We anticipate additional information of relevance to be gained in respect of the proposed Project if we have the opportunity to conduct activities, including a traditional use study, that will allow us to:

- Document site-specific land use values and associated concerns in relation to the Project; and,
- Document broader values of relevance in determining impacts to our aboriginal land uses and rights.

We believe that the only way that the regulator can have a thorough understanding of the impacts of this Project for GML 55 is if we were to undertake a project specific Traditional Land Use study, and that this information be included with the application. Again, Coal Valley has thus far resisted supporting our efforts to gather relevant information to this

application.

At this time, given GML 55's outstanding and unaddressed concerns with the Project, we object to approval of this Project and request that the Regulator deny Application Number 1725257, as well as any associated applications made in connection with the Project, or at a minimum, to deem any such application(s) to be incomplete and decline to consider same, if they do not contain detailed information regarding the Project's potential impacts upon GML 55.

5. Closure

We believe that this correspondence meets all of the criteria of a Statement of Concern and we trust that you will be able to register this correspondence and its enclosures as a Statement of Concern regarding Coal Valley's proposed Project.

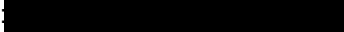
Should you require further information, including community member testimonials in areas at or nearby the Project, we can arrange to provide that. We thank you in advance for your sensitive consideration of our views in this matter. We ask you to respond in writing to this letter at your earliest convenience.


Sincerely,


<original signed by>

Tracy L .Friedel, PhD
Gunn Métis Local Council 55 Member
Community and Industry Relations Committee Member



Cc Murleen Crossen
President, Gunn Métis Local Council 55
Email: 

Jenny Biem
Woodward & Company, Barristers & Solicitors
Email: 

Les Lafleur
Coal Valley
Email: LLafleur@westmoreland.com

Encl 1. Map of "Deemed Territory" of Lac Ste. Anne Métis
2. Robb Trend Project Map

July 10, 2014

Tracy Friedel
Gunn Metis Local No. 55

<contact information removed>

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canada

www.aer.ca

Dear Ms. Friedel:

**STATEMENT OF CONCERN NO. 29117
COAL VALLEY RESOURCES INC.
MINING APPLICATION FOR PROPOSED ROBB TREND PROJECT
APPLICATION NO. 1725257
LOCATION: 08-049-21W5M**

The Alberta Energy Regulator (AER) acknowledges receipt of your letter on July 9, 2014, indicating your statement of concern to the subject application. Please be advised that an application was submitted to the AER on April 17, 2014, and was assigned Application No. 1725257.

The application is currently under review and the concerns outlined in your letter will be taken into consideration by the AER in its review of the application. The AER expects parties to discuss outstanding concerns whenever possible. By way of copy of this letter to Coal Valley Resources Inc. (Coal Valley), we are requesting Coal Valley contact you to attempt to address your concerns, as provided under AER requirements.

Please note that the AER has no jurisdiction over matters of compensation for land usage. The Alberta Surface Rights Board is the regulatory agency that deals with these issues. Further the AER has no jurisdiction with respect to assessing the adequacy of Crown consultation with the rights of aboriginal peoples.

The AER offers and strongly recommends you make use of our Alternative Dispute Resolution (ADR) program which features either staff or third party mediation arranged through an AER mediator. Please contact Krista Waters at 403-755-1422 for more information on this process. Further information about this program is available through *EnerFAQs: All About Alternative Dispute Resolution* and *Manual 004: ADR Alternative Dispute Resolution Program and Guidelines for Energy Industry Disputes* on the AER web site, (<http://www.aer.ca>), under Applications & Notices, Alternative Dispute Resolution (ADR) Process.

Please note that Section 49 of the *Alberta Energy Regulator Rules of Practice* (Rules) requires that all documents filed with the AER be placed on the public record. However, any party may file a request for confidentiality of information under Section 49 prior to filing the information with the AER. Any request under Section 49 must be copied to the other parties to the proceeding. Section 49 of the Rules is available at the AER website at www.aer.ca.

Please direct questions regarding your statement of concern to Amanda Black at 780-743-7473 who will manage the application through to completion. If you have any questions regarding AER process please contact the undersigned through our Customer Contact Centre, toll free, at 1-855-297-8311, or collect at 403-297-5749.

inquiries 1-855-297-8311
24-hour
emergency 1-800-222-6514

Yours truly,



Jennifer Richards
Review & Coordination Team
Authorizations Branch

cc: Les Lafleur, Coal Valley Resources Inc., llafleur@westmoreland.com
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Gabriel Potter, Aboriginal Consultation Office, Gabriel.Potter@gov.ab.ca

From: [Kurt Borzel](#)
To: [REDACTED]
Cc: [REDACTED]; [Jennifer Richards](#); lfleur@westmoreland.ca; [Linnea Mowat](#)
Subject: ACO response to your SOC dated July 9, 2014
Date: Wednesday, July 30, 2014 8:20:58 AM
Attachments: [2014 07 20 ACO response to GML55 SOC.pdf](#)

Good morning Tracy.

Please find attached correspondence from the Aboriginal Consultation Office (Alberta Aboriginal Relations) responding to your Statement of Concern dated July 9, 2014 regarding Coal Valley Resources Inc – Robb Trend Project.

Warm Regards,

Kurt.

Kurt A Borzel RPFT

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