



**Indigenous Relations
Aboriginal Consultation Office
Consultation Operations**
108 Street Building, 8th Floor
9942 - 108 Street
Edmonton, Alberta T5K 2J5
www.alberta.ca

ACO Hearing Report

November 26, 2018

Tara Wheaton, Hearing Coordinator
Alberta Energy Regulator
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Sent via Email: <email address removed>
No original to follow

Jay Telegdi
Manager Government Relations
Athabasca Chipewyan First Nation
<contact information removed>
Via: <email address removed>
No original to follow

Dear Ms. Wheaton and Mr. Telegdi:

**RE: Joint Review Panel Hearing for Teck Resource Limited Proposed
Frontier Oil Sands Mine Project Environmental Enhancement Protection
Act Application File No. 001-00247548 and Water Act File No. 00303079.**

Background

This ACO Hearing Report was prepared in accordance with the Aboriginal Consultation Office's (ACO) role at Joint Review Panel (JRP) Hearing established through *Energy Ministerial Order 105/2014*, *Environment and Sustainable Resource Development Ministerial Order 53/2014* (October 31, 2014), and the *Joint Operating Procedures for First Nations Consultation on Energy Resource Activities* (June 10, 2015).

In the June 21, 2018 letter, the ACO informed the Joint Review Panel of its intent to attend the Frontier Oil Sands Joint Review Panel Hearing commencing September 25, 2018 in Fort McMurray. The purpose of the ACO's attendance was to observe the Hearing, consider all relevant evidence submitted during the proceedings, and address adequacy of consultation and whether actions may be required to address potential adverse impacts on Treaty rights and traditional uses from Teck Resource Limited

(Teck) proposed Frontier Oil Sands Mine Project (The Project) associated with *Environmental Enhancement Protection Act (EPEA) Application File No. 001-00247548 and Water Act (WA) File No. 00303079.*

First Nation Consultation

The Consultation Plan for the integrated application combining all information required under the EPEA and WA Application was approved on June 12, 2008 by the then Alberta Environment (AENV). Teck was directed to conduct consultation with Athabasca Chipewyan First Nation (ACFN) in line with *The Government of Alberta’s First Nations Consultation Policy on Land Management and Resource Development* (May 16, 2005) and *Alberta’s First Nations Consultation Guidelines on Land Management and Resource Development* (Updated November 14, 2007).

The August 24, 2018 ACO Report determined that consultation with ACFN for the EPEA and WA Applications was adequate pending the outcome of the Alberta Energy Regulator (AER) process (JRP Hearing). As stated in the August 24, 2018 ACO Report, ACFN raised some concerns that were suggestive of site-specific concerns. However, the August 24, 2018 ACO Report concluded that these concerns did not constitute site-specific concerns.

The ACO has subsequently reviewed the First Nation’s written hearing submission of August 31, 2018 and the First Nation’s evidence at the JRP Hearing and the ACO finds that ACFN did not identify any specific sites requiring avoidance and/or mitigation. The ACO also advises the AER that the JRP Hearing did not reveal new information or concerns regarding potential site-specific impacts of the proposed Project on the continued exercise of ACFN’s Treaty rights and traditional uses.

On August 27, 2018, ACFN advised the JRP that ACFN and Teck have reached an agreement to address ACFN’s project specific concerns.

Athabasca Chipewyan First Nation’s hearing submissions did note other concerns captured in the following Table 1 – Broad Concerns. The ACO finds that these concerns are better addressed outside of a) project-specific consultation; or (b) outside the scope of *The Government of Alberta’s Policy on Consultation with First Nations on Land and Natural Resource Management 2005 (Policy)* and *The Government of Alberta’s Guidelines on Consultation with First Nations on Land and Natural Resource Management 2007 (Guidelines)*.

Table 1 – Broad Concerns

Concerns Expressed by ACFN	Response to Concern
<p>Lower Athabasca Regional Plan (LARP)</p> <p>ACFN express that there are specific deficiencies with the Lower Athabasca Regional Plan (LARP) and its frameworks.</p>	<p>Lower Athabasca Regional Plan (LARP)</p> <p>The ACO notes that Alberta’s LARP and its implementation items are tools that can address ACFN concerns. ACFN is encouraged to continue to engage with Alberta on the LARP implementation</p>

Concerns Expressed by ACFN	Response to Concern
<p>ACFN states that the Nation has not received feedback from Alberta despite the several recommendations put forward for improving the LARP.</p> <p>ACFN states that on numerous occasions, the Government of Alberta told them that their concerns about LARP (relating to their rights and the environment) would be addressed through a biodiversity framework and wetlands management framework. ACFN states that none of their concerns has been addressed, and six years after LARP was implemented, the frameworks are still incomplete.</p> <p>ACFN states the following: <i>“Without exception all of the Crown- led table we sat on were non-effective. They failed for us.”</i></p> <p>ACFN expressed that they are concerned about the lack of Government systems or frameworks in place to manage and mitigate cumulative effects on ACFN rights. ACFN states that the JRP should not rely on LARP (or any land use planning discussions, systems the government is currently using) to address cumulative effects on ACFN’s rights because LARP is incomplete and Alberta has previously disregarded / not considered their concerns</p> <p><i>“We are still very concerned about LARP because Alberta says that LARP mitigates cumulative effects that harm our rights. It does not mitigate the cumulative effects. In its incomplete state it allows Alberta to disregard the regional and cumulative concerns that ACFN has”</i></p> <p>ACFN also expressed concerns about the non-integration of “Traditional Use Plan” now call “Cultural Framework” into the LARP.</p>	<p>items.</p> <p>ACO has considered ACFN’s hearing evidence with respect to cumulative effects concerns and the LARP and took these concerns into account in considering consultation adequacy.</p> <p>The ACO notes that these concerns are general policy proposals, which are more appropriately considered in forums other than the project specific consultation process.</p> <p>The ACO recommends that the AER consider this evidence to the extent that this may inform the AER’s regulatory decision.</p>

Concerns Expressed by ACFN	Response to Concern
<p data-bbox="188 205 747 298">Lower Athabasca Region Surface Water Quantity Management Framework (SWQMF)</p> <p data-bbox="188 336 740 466">ACFN is concerned that Alberta refuses to modify the <i>Surface Water Quantity Management Framework (SWQMF)</i> to protect ACFN rights.</p> <p data-bbox="188 504 773 735">ACFN is concerned that the SWQMF gives no protection to Aboriginal Navigation. ACFN expressed concerns that the aboriginal base flow is not considered and the navigability index needs revision to maintain environmental flow requirements for Indigenous navigability.</p> <p data-bbox="188 772 779 966">ACFN states the following: “<i>Mitigation needed in the makeup of the framework; new weekly triggers; newly configured navigability index; effective application of the index; revised monitoring; verification and reporting outcomes.</i>”</p> <p data-bbox="188 1003 743 1100">“<i>We need a full open water cut off of oil sands withdrawals at 500 metres cube per second with no exemption...</i>”</p> <p data-bbox="188 1138 753 1234">“<i>The Navigability Index needs revision. The zero value should just be moved to AXF (Aboriginal extreme flow) 500....</i>”</p> <p data-bbox="188 1306 740 1402">ACFN is also concerned that community base monitoring data is not included in the framework.</p>	<p data-bbox="805 205 1490 264">Lower Athabasca Region Surface Water Quantity Management Framework (SWQMF)</p> <p data-bbox="805 336 1494 466">ACO has considered ACFN’s hearing evidence with respect to cumulative effects concerns and the LARP and took these concerns into account in considering consultation adequacy.</p> <p data-bbox="805 504 1471 634">The ACO notes that these concerns are general policy proposals, which are more appropriately considered in forums other than the project specific consultation process.</p> <p data-bbox="805 672 1497 768">The ACO recommends that the AER consider this evidence to the extent that this may inform the AER’s regulatory decision.</p>
<p data-bbox="188 1474 545 1507">Biodiversity Management</p> <p data-bbox="188 1545 737 1675">ACFN states that the Crown needs to be involved in protecting ACFN’s interests for the establishment of the Biodiversity Stewardship Area.</p> <p data-bbox="188 1713 711 1772">“<i>We also need the Crown’s involvement in this stewardship area</i>”</p>	<p data-bbox="805 1474 1162 1507">Biodiversity Management</p> <p data-bbox="805 1545 1471 1675">The ACO notes that these concerns are general policy proposals, which are more appropriately considered in forums other than the project specific consultation process.</p>

Concerns Expressed by ACFN	Response to Concern
<p data-bbox="185 205 782 264">Non-implementation of Joint Review Panel Recommendation</p> <p data-bbox="185 336 782 466">ACFN is concerned that the recommendations issued to Alberta in the Jackpine Mine Expansion Hearing Report has not been implemented.</p>	<p data-bbox="808 205 1508 264">Non-implementation of Joint Review Panel Recommendation</p> <p data-bbox="808 336 1502 533">The recommendations issued by the JRP in the Jackpine Mine Expansion Project are part of separate process and represent separate issues from the issues in this Project. In the context of the Teck Frontier JRP. ACFN must raise site-specific concerns about the Teck Frontier Project.</p>
<p data-bbox="185 638 782 672">Ronald Lake Bison Herd (RLBH)</p> <p data-bbox="185 705 782 802">ACFN states that members will no longer hunt the Ronald Lake Bison Herd until the herd has recovered.</p> <p data-bbox="185 840 782 1205">In response to a JRP question about this statement, ACFN replied <i>“we want the Alberta Government to step in and do its proper analysis of what we’re saying, so this way we could all sit down at the table and talk to each other instead of the Alberta government running away from everything that they’re obligations to take under the regulatory system of Alberta when it comes to major development of traditional territories of First Nations.”</i></p> <p data-bbox="185 1243 782 1440">ACFN’s Chief Allan expressed: ACFN’s concerns that Alberta has not engaged in discussions with ACFN about adequately protect the bison herd and that ACFN has been lobbying Alberta on this issue since 2011.</p>	<p data-bbox="808 638 1508 672">Ronald Lake Bison Herd (RLBH)</p> <p data-bbox="808 705 1502 802">The ACO notes that GOA’s initiatives addressing ACFN concerns regarding the RLBH were considered in the ACO’s Report dated August 24, 2018.</p> <p data-bbox="808 840 1502 978">The ACO notes that these concerns are general policy proposals, which are more appropriately considered in forums other than the project specific consultation process.</p>

Based on the above the ACO concludes that consultation is adequate.

This ACO Hearing Report concludes the ACO’s involvement with proposed Project Integrated application regarding the EPEA No. 001-00247548 and WA No .00303079. As per the Alberta consultation policy, guidelines and procedures, Alberta relies on project proponents and regulatory tribunals to assist in meeting consultation obligations should they arise.

Sincerely,

<Original signed by>

Vince Biamonte
Aboriginal Consultation Office

cc: Yvonne Walsh, Teck Resources Ltd
Alex Bolton, Joint Review Panel
Sarabpreet Singh, ACO
Robert Kopecky, ACO
Charlene Richards, ACO