



Kátł'odeeche First Nation Final Written Argument to the Frontier Oil Sands Mine Project Joint Review Panel

November 27th, 2018

It is Kátł'odeeche First Nation's ("KFN") position that the proposed Teck Frontier Mine (the "Project") poses unacceptable risks to the Ecological Integrity ("EI") and Outstanding Universal Value ("OUV") of Wood Buffalo National Park (the "Park"), and unacceptable risks to species at risk, and should not be approved.

In the event that the Project is approved, KFN submits that approval should be contingent on imposition of all the recommended conditions proposed by the Government of Canada ("Canada").¹

KFN is a member of the Park's Cooperative Management Committee, and as such assists the Minister responsible for the Parks Canada Agency in fulfilling her top priority of maintaining and restoring the EI of the Park by protecting natural resources and natural processes.²

KFN's position is influenced by the importance of the precautionary principle to this Project assessment.

The precautionary principle advises decision-makers to err on the side of caution when there is a lack of full scientific certainty, including a lack of baseline information and gaps in information.³ The Park's Strategic Environmental Assessment has recommended that governments apply the precautionary principle,⁴ and has stressed that "further action and restoration is urgently needed."⁵ Application of the precautionary principle is a requirement under *CEAA 2012*.⁶

Canadian courts have interpreted the precautionary principle as meaning that "the lack of complete scientific certainty should not be used as a basis for avoiding or postponing measures to protect the environment".⁷

¹ Contained in Canada's submission filing, Document 489, as amended by Documents #547 and #548 and in Canada's oral evidence.

² *Canada National Parks Act*, SC 2000, c. 32, at ss. 8(2).

³ *Strategic Environmental Assessment of Wood Buffalo National Park World Heritage Site*, Parks Canada, May 2018, Document #401, at page 7-1.

⁴ *Ibid* at page 7-2.

⁵ *Ibid* at page 7-5.

⁶ *Canadian Environmental Assessment Act*, SC 2012, c. 19, s. 52, at ss. 4(1)(b).

⁷ *Morton v. Canada (Fisheries and Oceans)*, [2015] FCJ No 566 (QL), 2015 FC 575 (CanLII), at para 43.

The measures used in the pursuit of environmental protection are not limited to imposition of mitigation conditions on an otherwise potentially damaging action or project; the precautionary principle supports the outright prohibition of harmful activities.

Prohibition was the appropriate outcome on application of the precautionary principle in one case where a town banned the use of pesticides as part of their “rubric of preventative action.”⁸

At the close of these hearings there remains uncertainty about the scope and magnitude of the Project on the EI and OUV of the Park. Given the value of the park to the Indigenous peoples, and to current and future generations of Canadians, KFN submits that proper application of the precautionary principle militates in favour of denying approvals for the Project at this time.

Concerns about the potential impacts, uncertainty in impacts due to lack of baseline information and other factors, and inadequacy of existing Alberta environmental guidelines and frameworks in protecting the Park’s EI and OUV have been raised in KFN’s written submission (Document #480) and in the submissions and evidence of other parties to this hearing.

Particularly alarming were the concerns and risks raised by Canada in its oral evidence to the Panel, some of which include the following.

The Project poses a high risk to the Ronald Lake Bison herd, and some of the mitigation measures that have been proposed by Teck are uncertain or potentially ineffective.⁹

The Project poses a high mortality risk to whooping crane, and Teck’s proposed mitigation measures are unlikely to reduce or eliminate that risk.¹⁰ Based on the available evidence, the potential impacts to whooping crane are potentially irreversible during operation of the Project.¹¹

There is uncertainty in the predicted outcomes of Teck’s modelling of acid deposition from the Project, resulting in a possible underestimation of Project impacts.¹²

Teck has not adequately considered the impact of the Project on a National Park and World Heritage Site.¹³

The impacts of migratory waterfowl being exposed to contaminants through contact with tailings ponds is potentially significant to the EI and OUV of the Park, although uncertainty exists in assessing this risk.¹⁴ There is also uncertainty in the numbers of birds that contact tailings, the number of birds oiled on oil sands mine sites, the consequences to these birds of becoming oiled, the consequences of ingesting tailings or oil sands process affected water, and the numbers of

⁸ *Canada Ltee (Spraytech, Societe d’arrosage) v. Hudson (Town)*, [2001] 2 SCR 241, at para 32.

⁹ Frontier Oil Sands Mine Project Joint Review Panel Public Hearing Transcript, October 22, 2018, Document #644, at page 3079.

¹⁰ *Ibid* at page 3080.

¹¹ *Ibid* at page 3081.

¹² *Ibid* at page 3083.

¹³ *Ibid* at page 3096.

¹⁴ *Ibid* at page 3098.

birds potentially contacting tailings or oil sands process affected water who then move on to the Park.¹⁵

Teck's proposed plan for monitoring water quality impacts to the Peace Athabasca Delta consists of deference to the Joint Oil Sands Monitoring Program ("JOSM") for execution of actual monitoring activities. This is not a sufficient commitment to water quality monitoring as Teck does not determine the activities of JOSM.¹⁶

Teck's avian risk assessment includes deficiencies that make it unreliable as an indicator of the potential risks to birds from contacting oil sands process affected water.¹⁷

The numbers of cranes that may land near the Project, and the potential effects of expected contaminants on cranes through contact exposure, is not known,¹⁸ although the evidence suggests the mortality risk to whooping cranes will be higher for the Project than for other oil sands mines.¹⁹ There is also uncertainty about the potential non-Project future impacts to whooping crane populations (e.g., impacts due to climate change), and, thus, there is uncertainty in the long-term whooping crane population trend.²⁰

KFN takes these conclusions from Canada's evidence very seriously, especially with respect to the health of whooping crane populations. Impacts to whooping cranes could have irreversible consequences.

Faced with conflicting conclusions on the risks of the Project to endangered and threatened species, and the risks to the EI and OUV of the Park, KFN agrees with the conclusions of Canada that are based in part on a robust review of the Project's risks to the Park's EI and OUV. KFN urges the Panel to do the same.

The proposed Teck Frontier Oil Sands Mine should not be approved given the risks to species at risk and to the Park's EI and OUV, and if the Panel chooses to approve the Project it should impose all the conditions that have been proposed by Canada.

Respectfully,
<Original signed by>

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¹⁵ *Ibid* at page 3099.

¹⁶ *Ibid* at page 3101.

¹⁷ *Ibid* at page 3167.

¹⁸ *Ibid* at pages 3173 and 3177.

¹⁹ *Ibid* at page 3179.

²⁰ *Ibid* at page 3179.