

BY E-MAIL ONLY

August 29, 2016

Kennedy A. Bear Robe
Miller Thomson LLP

ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT APPLICATION
No. 004-269241 from CENOVUS ENERGY INC.
STATEMENT OF CONCERN NO. 30022

Dear Kennedy A. Bear Robe:

You are receiving this letter because you filed a statement of concern on behalf of Bigstone Cree First Nation (Bigstone) about Application No. 004-269241. The Alberta Energy Regulator (AER) has reviewed Bigstone's statement of concern, along with the application, the applicable requirements, and other submissions or information about the application and has decided that a hearing is not required under an enactment or otherwise necessary to consider the concerns outlined in Bigstone's statement of concern.

In its review of Bigstone's concerns, the AER considered the following:

- The existing Pelican Lake Grand Rapids Thermal Pilot (Project) is located about 19 km from the nearest of Bigstone's reserve lands.
- The application is a renewal to extend the term of the approval of the existing Project until 2026 to allow for continued operation, decommissioning and land reclamation. The Project has been operational since 2010.
- Approval of the application will not increase the Project's physical footprint or result in any additional surface disturbances.
- The Alberta Court of Appeal recently rejected the argument that when a project is within a designated 'consultation area' of a First Nation, adverse effect is established and there is no requirement upon the First Nation to provide any specific evidence to

show how AER approvals affect it.¹ Similarly, in the present case, the fact that the application area is located within Bigstone's traditional territory does not, without further factual connection, establish that Bigstone may be directly and adversely impacted by the application. Some degree of location or connection between Cenovus' application and the rights asserted is required.²

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

- Bigstone states that its members exercise their Treaty rights to fish, hunt, harvest and trap and further their cultural and spiritual practices on the lands and waters within the Bigstone traditional territory, including in and around the Project area. Although the Project is located on lands identified by Bigstone as within its traditional territory, the information provided does not demonstrate a sufficient degree of connection between Cenovus' application and the rights asserted by Bigstone. Bigstone does not identify in sufficient detail how the application may directly and adversely affect Bigstone members and the lands and natural resources they commonly use.
- In relation to Bigstone's concerns about the Project contributing to the cumulative impacts of commercial development in the Project area, the AER has previously held that the Government of Alberta's environmental management frameworks under its delineated Regional Plans are the appropriate mechanisms for identifying and managing the regional cumulative effects of resource development activities.³ The area of Cenovus' application is within the Lower Peace Region. While the Lower Peace Regional Plan (LPRP) has not yet been started, the LPRP is the appropriate mechanism through which to identify and manage cumulative impacts on a regional basis.
- With respect to Bigstone's concern regarding lack of notification of the application, the AER notes that application has since been provided to Bigstone.
- In relation to Bigstone's concern regarding consultation, the AER has no jurisdiction to assess the adequacy of Crown consultation associated with the rights of aboriginal peoples,⁴ and the Aboriginal Consultation Office has determined that no consultation is required.

Based on the foregoing, the concerns raised by Bigstone have been addressed to the AER's satisfaction, relate to a matter beyond the scope of Cenovus' application or relate to a matter outside the AER's jurisdiction, and Bigstone has not demonstrated that it may be directly and adversely affected by Cenovus' application.

The AER has issued the applied-for approval, and this is your notice of that decision. A copy of the approval is attached. Under the *Responsible Energy Development Act* an eligible person may file a request for a regulatory appeal on an appealable decision.

¹ *O'Chiese First Nation v Alberta Energy Regulator*, 2015 ABCA 348, at para 44 (leave to appeal to Supreme Court of Canada refused June 2, 2016).

² *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68 at paras 10, 14, 18.

³ See, for example, *Dover Operating Corp.*, 2013 ABAER 014; *Prosper Petroleum Ltd.*, 2014 ABAER 013.

⁴ Section 21, *Responsible Energy Development Act*, SA 2012, c R-17.3.

Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. You can find filing requirements and forms on the AER website www.aer.ca under Applications & Notices: Appeals.

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

If you have any questions, contact Shirin Modami at XXX-XXX-XXXX or e-mail XXXXX.

Sincerely,

<original signed by>

Andrew MacPherson
Director, In Situ Authorizations

Enclosure (1): **(Renewal approval)**

cc: Greg Demchuk, Cenovus Energy
Authorizations Branch Support
AER Bonnyville Field Centre AER
Aboriginal Relations
Aboriginal Consultation Office