

BY EMAIL ONLY

September 12, 2019

David Berrade

Conklin Métis Local 193 (CML 193)

SUNCOR ENERGY INC. (SUNCOR)

APPLICATION NO. 1899100

STATEMENT OF CONCERN NO. 30997

Dear David Berrade:

You are receiving this letter because you filed a statement of concern about Application No. 1899100 (the Application). The Alberta Energy Regulator (AER) has reviewed your statement of concern, along with the Application, and all applicable requirements and other submissions or information about the Application, and the AER has decided to disregard your statement of concern.

In our review of your concerns, we considered the following:

- The AER acknowledges that the Government of Alberta has recognized Conklin as a historic and contemporary Métis community for the purposes of Métis harvesting under the *Métis Harvesting in Alberta Policy (2018)*.¹ The AER also acknowledges that the Meadow Creek West (MCW) project area falls within Conklin's specified Métis Harvesting Area, an area within which CML 193 members exercise Métis rights to hunt, fish and trap for subsistence (food) purposes.²

¹ *Metis Harvesting in Alberta Policy (2018)*, Government of Alberta, September 1, 2019 <http://albertametis.com/wp-content/uploads/2019/03/M%C3%A9tis-Harvesting-in-Alberta-Policy-2019.pdf>

² *Ibid*, page 1.

- However, the mere fact that the MCW project area is located within a specified Métis Harvesting Area does not, without further factual connection, establish that CML 193 may be directly and adversely impacted by the Application. Further, while you state that MCW project activities fall within key use areas for the community including ancestral traplines, medicinal harvesting areas, hunting areas, and travel corridors between Highway 63 and 881, more specific information is required to establish a sufficient degree of location or connection between the Application and the rights asserted.³ CML 193 does not identify in sufficient detail how the Application may directly and adversely affect CML 193 members and the lands and waters they commonly use.
- With respect to your concerns regarding ground water:
 - Standard conditions in AER approvals issued under the *Environmental Protection and Enhancement Act (EPEA)* require monitoring for groundwater quality impacts.⁴
 - Standard conditions in AER approvals issued under the *Water Act* contain water diversion and drawdown limits⁵ as well as requirements to monitor and record the amounts of water diverted.
- Concerns regarding impacts to surface water and watersheds have been addressed through the AER's review of information Suncor provided in, and as a supplement to, the Environmental Impact Assessment (EIA) submitted as part of the Application. The AER deemed the EIA complete in September 2018.

Additionally:

- Suncor has indicated that impacts to localized waterbodies as a result of ponding and water use as well as impacts to watersheds in locations of high disturbance density will likely be low.
- Suncor has committed to implementing site controls such as containment and diversion barriers, as well as spill response, reporting and clean up standard operating procedures. Approval holders are required to comply with all legislative and regulatory requirements associated with reporting and remediating spills and releases that may occur during the life of a project.⁶

³ *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68 at paras 10, 14 and 18.

⁴ Including as prescribed in the *Directive for the Assessment of Thermally-Mobilized Constituents in Groundwater for Thermal In Situ Operations*, Alberta Environment and Parks, Water Quality, 2018, No. 1.

⁵ See the *Water Conservation and Allocation Guideline for Oilfield Injection*, Alberta Environment, 2006.

⁶ See, for example, *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, ss 110 and 112.

- Standard conditions in AER-issued *EPEA* approvals require storm water pond management at central processing facilities and at well pads to control run-off. Approval holders must test collected storm water to ensure it meets regulatory guidelines before releasing it into the surrounding environment.
- Standard conditions in AER-issued *Water Act* approvals require approval holders to develop and implement a siltation and erosion control plan which includes, among other things, measures for the management of surface and subsurface water flow to minimize siltation and erosion of water bodies.
- Suncor is required to comply with applicable watercourse and waterbody setbacks as required in the *Master Schedule of Standards and Conditions (MSSC)*.⁷
- In relation to your concerns regarding caprock integrity:
 - In-situ oil sands approval holders are required to develop and implement a caprock assessment and monitoring plan prior to drilling the first well on a thermal pad.
 - Suncor has committed to installing caprock monitoring wells before the commencement of steam-assisted gravity drainage (SAGD) operations.
- With respect to your concerns regarding consultation, the AER has no jurisdiction to assess the adequacy of Crown consultation associated with the rights of Aboriginal peoples.⁸
- With respect to your concerns regarding the socio-economic impacts of industrial activity:
 - Suncor included an assessment of socio-economic impacts in the MCW project EIA. Applicable portions of the EIA were referred to Alberta Health and Alberta Transportation for additional review to assess health and safety concerns. Alberta Health and Alberta Transportation completed their review of the applicable portions of the EIA and the AER deemed the EIA complete.
 - Potential socio-economic effects from the MCW project can be managed through standard conditions in AER-issued Integrated Decision Approach (IDA) in-situ oil sands approvals requiring approval holders to

⁷ *Master Schedule of Standards and Conditions*, Government of Alberta, 2018.

⁸ *Responsible Energy Development Act*, SA 2012, c R-17.3, s 21.

develop and implement an ongoing engagement plan with input from Indigenous communities and other stakeholders. An ongoing engagement plan ensures that stakeholders, including the residents of Conklin and CML 193, are provided with regular project updates and an opportunity to share concerns related to the applicable development throughout the project's life-cycle.

- The AER acknowledges your concerns about the MCW project contributing to the cumulative impacts of commercial development. However, CML 193 has not provided the AER with sufficient information detailing how the MCW project will contribute to adverse cumulative impacts and the extent to which those cumulative impacts may impact CML 193 members' activities. Further, 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.⁹ The MCW project area falls within the Lower Athabasca Region. Accordingly, the Lower Athabasca Regional Plan (LARP) is the appropriate mechanism through which to identify and manage the regional cumulative effects of resource development activities.¹⁰ Standard conditions in AER-issued *EPEA* approvals require that approval holders participate in LARP management frameworks.
- Your concern regarding foreign ownership of oil sands projects is vague and outside the scope of the Application.
- Your concern regarding the use of chemicals in the extraction process is vague and outside the scope of the Application. Suncor has not applied to use chemicals in the extraction process.
- Your concern regarding disposal wells is vague and outside the scope of the Application. Suncor has not applied for any disposal as part of the Application.
- With respect to your concern regarding impacts to health in the MCW project area:
 - Suncor included a human health risk assessment in the MCW project EIA. The human health risk assessment was referred to Alberta Health

⁹ See, for example, *Dover Operating Corp.*, 2013 ABAER 014 at para 43; *Prosper Petroleum Ltd.*, 2014 ABAER 013 at para 121.

¹⁰ *Ibid.*

for review. Alberta Health has completed its review of the human health risk assessment and the AER deemed the EIA complete.

- In relation to your concerns regarding impacts to Aboriginal harvesting activities, Suncor has committed to only restricting access to operating areas of the MCW project, which includes well pads and the central processing facility, and will not restrict access to non-operating areas such as access roads and undeveloped space.
- With respect to your concerns regarding the environment, forest fragmentation, wildlife and the impacts of the MCW project on the movement of caribou, moose, deer and other fur-bearing animals and their habitats:
 - Development and implementation of a wildlife mitigation and monitoring program (WMMP) is a standard condition in AER-issued *EPEA* approvals. In a WMMP, approval holders are required to implement strategies and actions (adhering to the mitigation hierarchy of avoid, minimize, restore, and offset) to mitigate project and site-specific effects on fish and wildlife species at risk and of cultural significance throughout the life of the project.
 - Approval holders for projects that are located within any caribou range¹¹ must implement measures to mitigate the effects of the project on woodland caribou and comply with applicable Government of Alberta policies regarding protection of woodland caribou.¹²
 - Suncor is required to comply with applicable Government of Alberta policies, guidelines and requirements relating to wildlife impacts.
 - The AER deemed Suncor's EIA to be complete and in accordance with the terms of reference, including for wildlife impact assessment.
 - Standard *MSSC* conditions in applicable dispositions issued under the *Public Lands Act* require compliance with the Government of Alberta's *Above Ground Pipeline Wildlife Crossing Directive 2014-07*.
- The AER acknowledges your concern with respect to Suncor's future reclamation plans. Standard conditions in AER-issued *EPEA* approvals require approval holders to progressively reclaim disturbed land. Approval holders are required to reclaim project lands in accordance with applicable Government of Alberta legislation, policy, criteria and guidelines as well as directions from the

¹¹ The MCW project area is located in the East Side Athabasca River Caribou Range.

¹² See for example the *Woodland Caribou Policy for Alberta*, Alberta Sustainable Resource Development, 2011.

AER.¹³ Concerns regarding reclamation can be managed through the above-mentioned standard approval conditions requiring approval holders to develop and implement an ongoing engagement plan with input from Indigenous communities and other stakeholders.

- With respect to your concern regarding air pollution:
 - Suncor must comply with applicable legislative requirements and standard conditions in AER-issued *EPEA* approvals addressing odour management, air and fugitive emissions, vapour recovery and volatile organic compound controls. Suncor must also comply with the requirements in *Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting*.
- With respect to your request regarding engagement and collaboration with Suncor:
 - Suncor has committed to discussing MCW project-related impacts with Indigenous groups and stakeholders, including the residents of Conklin and CML 193, as part of Suncor's ongoing engagement plan. Suncor has also stated that its ongoing engagement plan will include mechanisms for sharing traditional land use information and information on potential business and employment opportunities with the residents of Conklin and CML 193.
 - While the AER acknowledges the basis for your request for capacity funding, the AER does not have the authority to direct applicants to provide capacity funding.

Whether a decision of the AER may directly and adversely affect a statement of concern filer, such as CML 193, is to be considered by the AER in light of the evidence properly adduced before it.¹⁴ Based on the foregoing, CML 193 has not demonstrated that it may be directly and adversely affected by the Application, and a number of CML 193's concerns relate to matters beyond the scope of the Application or are outside of the AER's jurisdiction. The AER has therefore decided to disregard your statement of concern. The AER has not yet made a decision on the Application. If a hearing is to be held for another reason, a notice of hearing will be published.

¹³ See for example *Specified Enactment Direction 001: Direction for Conservation and Reclamation Submissions*, Alberta Energy Regulator, February 2016.

¹⁴ *O'Chiese First Nation v Alberta Energy Regulator*, 2015 ABCA 348 at para 43.

All AER- regulated parties must comply not only with the conditions of their authorizations, but with all of the AER's regulatory requirements. To ensure industry compliance the AER has developed its *Integrated Compliance Assurance Framework*, which embodies the three main components of all effective compliance assurance programs, those being education, prevention, and enforcement. You can find out more about how the AER verifies industry compliance and responds to noncompliance on our [Compliance Assurance Program](#) web page.

If you have any questions, contact Winnie Chan at 780- 642 9232 or Winnie.Chan@aer.ca.

Sincerely,

<Original signed by>

Paul Ferensowicz

Senior Advisor, Strategic Delivery

cc: Mike Morden, Suncor Energy Inc.
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