

BY EMAIL ONLY

September 12, 2019

Melina Scoville

The Métis Nation of Alberta, Local 1909 (ML 1909)

SUNCOR ENERGY INC. (SUNCOR)

APPLICATION NO. 1899100

STATEMENT OF CONCERN NO. 30890

Dear Melina Scoville:

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:

- You state that the Métis people of Lac La Biche hunt, fish, gather and trap for subsistence and traditional commercial purposes, and that these practices are protected Aboriginal rights integral to the customs and traditions of your community. To that end, you state that you have concerns about the Meadow Creek West (MCW) project's potentially adverse effects on these activities and protected rights. For example, you state that the MCW project threatens to disturb fish habitat and interfere with ML 1909 members' traditional fish harvest. You also state that project activities, noise, and deforestation threaten to disrupt

wildlife populations, impede hunting opportunities for ML 1909 members, and reduce the availability of crown land available for hunting.

- However, these concerns, without further factual connection, do not establish that ML 1909 may be directly and adversely impacted by the Application. Further information is required to establish a sufficient degree of location or connection between the project and the rights asserted.¹ ML 1909 does not identify in sufficient detail how the project may directly and adversely affect ML 1909 members and their traditional harvesting activities.
- With respect to your concerns regarding impacts to fish habitat and interference with ML 1909 members' traditional fish harvest:
 - Suncor included a fisheries assessment in the Application that predicted that the effects of the MCW project on fisheries during construction, operation and reclamation will be low in magnitude, short term in duration and reversible.
 - 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.
 - 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)*.²
 - Development and implementation of a wildlife mitigation and monitoring program (WMMP) is a standard condition in AER-issued *Environmental Protection and Enhancement Act (EPEA)* approvals. In a WMMP, approval holders are required to implement strategies for identifying fish and wildlife features to comply with the outcomes of the *MSSC* and implement measures to mitigate impacts to fisheries and aquatic habitat.

¹ *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68 at paras 10, 14, and 18.

² *Master Schedule of Standards and Conditions*, Government of Alberta, 2018.

- The AER has reviewed the information regarding surface water impacts 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.
- 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.³
- In relation to your concerns regarding noise, Suncor is required to comply with *Directive 038: Noise Control*.
- With regard to your concerns regarding impacts to wildlife, deforestation, land disturbance and access to land for hunting:
 - Suncor has proposed mitigation measures to avoid or reduce potential adverse effects on the availability of traditional resources for current use.
 - 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 range⁴ 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.⁵
 - The AER deemed the EIA 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*.
 - Suncor is required to comply with applicable Government of Alberta policies, guidelines and requirements relating to wildlife impacts.
 - 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

³ See, for example, *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, ss 110 and 112.

⁴ The MCW project area is located in the East Side Athabasca River Caribou Range.

⁵ See for example the *Woodland Caribou Policy for Alberta*, Alberta Sustainable Resource Development, 2011.

Government of Alberta legislation, policy, criteria and guidelines as well as directions from the AER.⁶ Concerns regarding reclamation can be managed through standard conditions in AER-issued Integrated Decision Approach (IDA) in-situ oil sands approvals requiring approval holders to develop and implement an ongoing engagement plan with input from Indigenous communities and other stakeholders. An ongoing engagement plan ensures that impacted stakeholders are provided with regular project updates and an opportunity to share concerns related to the applicable development throughout the project's life-cycle.

- 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. As such, the MCW project would only impede access to limited portions of the MCW project area.
- With respect to your concerns regarding disturbances to historic resources, applicable portions of the EIA were referred to Alberta Culture and Tourism for additional review to assess impacts to historic resources. Alberta Culture and Tourism completed its review of the applicable portions of the EIA and the AER deemed the EIA complete. The AER acknowledges your concerns about the MCW project contributing to the cumulative impacts of commercial development. However, ML 1909 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 ML 1909 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.⁷ 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.⁸ Standard conditions in AER approvals issued under

⁶ See for example *Specified Enactment Direction 001: Direction for Conservation and Reclamation Submissions*, Alberta Energy Regulator, February 2016.

⁷ See, for example, *Dover Operating Corp.*, 2013 ABAER 014 at para 43; *Prosper Petroleum Ltd.*, 2014 ABAER 013 at para 121.

⁸ *Ibid.*

EPEA require that approval holders participate in LARP management frameworks.

- 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 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 request regarding consultation and mitigation measures, Suncor has committed to discussing MCW project-related impacts with Indigenous groups and stakeholders as part of the development and implementation of the above-mentioned ongoing engagement plan. Additionally, standard conditions in IDA in-situ oil sands approvals require approval holders to prepare an annual project report. Suncor has committed to providing a copy of the annual MCW project report to ML 1909 upon request. 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 ML 1909, is to be considered by the AER in light of the evidence properly adduced before it.⁹ Based on the foregoing, ML 1909 has not demonstrated that it may be directly and adversely affected by the Application, and a number of your concerns relate to matters 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.

⁹ *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.
Michael McClay, Suncor Energy Inc.
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