

BY EMAIL ONLY

September 12, 2019

Maxwel Zhira

Owl River Metis Local 1949 (ORML 1949)

SUNCOR ENERGY INC. (SUNCOR)

APPLICATION NO. 1899100

STATEMENT OF CONCERN NO. 31000

Dear Maxwel Zhira:

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 Lac La Biche 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 the Owl River Métis community's specified Métis Harvesting Area, an area within

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>

which ORML 1949 members exercise Métis rights to hunt, fish and trap for subsistence (food) purposes.²

- 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 ORML 1949 may be directly and adversely impacted by the Application. Further, while you state that the MCW project is located on traditional lands used by members of the Owl River Métis community, more specific information is required to establish a sufficient degree of location or connection between the Application and the rights asserted.³ ORML 1949 does not identify in sufficient detail how the Application may directly and adversely affect ORML 1949 members and the lands and waters they commonly use.
- With respect to your concerns regarding air quality, air emissions and odours:
 - The AER has reviewed Suncor's methodology and approach with respect to acid deposition modelling and the AER deemed the Environmental Impact Assessment (EIA) complete in September 2018.
 - Your concerns regarding base cation deposition relate to future projects and are outside the scope of the Application.
 - Odour causing substances is part of the air quality review under the EIA Suncor submitted in respect of the Application. The AER deemed the EIA complete.
 - Suncor must comply with applicable legislative requirements and standard conditions in AER approvals issued under the *Environmental Protection and Enhancement Act (EPEA)* 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*.
 - Continuous improvement is a key principle supported within standard AER-issued *EPEA* approvals. Continuous improvement plans are typically addressed when *EPEA* approvals are renewed.
- In relation to your concerns regarding groundwater quality:

² *Ibid*, page 1.

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

- Standard conditions in AER-issued *EPEA* approvals require monitoring for groundwater quality impacts.⁴
- Suncor is applying for the use of groundwater from the Empress Aquifer rather than the Lower Grand Rapids Aquifer. Any new source wells from the Lower Grand Rapids Aquifer will require additional licences under the *Water Act*.
- Additionally, 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.
- Standard conditions in AER-issued *EPEA* approvals require that approval holders participate in LARP management frameworks.
- Your concerns regarding hydrology and surface water impacts are either outside the scope of the Application or have been addressed through the AER's review of information Suncor provided in, and as a supplement to, the EIA Suncor submitted as part of the Application. The AER deemed the EIA complete.

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.
- 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.
- With respect to your concerns regarding impacts to fish and fish habitat:
 - 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 is required to comply with applicable watercourse and waterbody setbacks as required in the *Master Schedule of Standards and Conditions (MSSC)*.⁶

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.

- Unnamed Lake 3 is not within the MCW project lease boundary.
- 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 for identifying fish and wildlife features to comply with the outcomes of the *MSSC* and measures to mitigate impacts to fisheries and aquatic habitat.
- Standard conditions in AER-issued *EPEA* approvals require approval holders to participate in regional biodiversity initiatives supporting the development of the Government of Alberta's Biodiversity Management Frameworks and Regional Plans.
- In relation to your concerns regarding wildlife:
 - Suncor has proposed mitigation measures to avoid or reduce potential adverse effects on the availability of traditional resources for current use.
 - As part of 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 range⁷ 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.⁸
 - The AER reviewed the wildlife section of the EIA, and the AER deemed the EIA complete and in accordance with the terms of reference, including for moose and woodland caribou impact assessment.
 - Suncor is a member of the Regional Industry Caribou Collaboration.
 - Suncor is required to comply with applicable Government of Alberta policies, guidelines and requirements relating to wildlife impacts, including moose.
 - The issuance of wildlife permits is outside of the AER's jurisdiction.

⁶ *Master Schedule of Standards and Conditions*, Government of Alberta, 2018.

⁷ The MCW project area is located in the East Side Athabasca River Caribou Range.

⁸ See for example the *Woodland Caribou Policy for Alberta*, Alberta Sustainable Resource Development, 2011.

- Standard conditions in AER-issued *EPEA* approvals require participation in LARP management frameworks.
- 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*.
- In relation to your concerns regarding project planning and engagement, standard conditions in AER-issued Integrated Decision Approach (IDA) in-situ oil sands approvals require 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. The above mentioned standard conditions also require approval holders to prepare an annual project report. Suncor has committed to providing a copy of the annual MCW project report to ORML 1949 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.
- The AER has no jurisdiction to assess the adequacy of Crown consultation associated with the rights of Aboriginal peoples.⁹
- The AER acknowledges your concerns about the MCW project contributing to the cumulative impacts of commercial development. However, ORML 1949 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 ORML 1949 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.¹⁰ The MCW project area falls within the Lower Athabasca Region. Accordingly, the LARP is the appropriate mechanism through which to identify and manage the regional cumulative effects of resource development activities.¹¹ Concerns regarding the lack of progress with the LARP

⁹ *Responsible Energy Development Act*, SA 2012, c R-17.3, s 21.

¹⁰ See, for example, *Dover Operating Corp.*, 2013 ABAER 014 at para 43; *Prosper Petroleum Ltd.*, 2014 ABAER 013 at para 121.

¹¹ *Ibid.*

and the development of the Biodiversity Management Framework are outside of the AER's jurisdiction.

- 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.

Whether a decision of the AER may directly and adversely affect a statement of concern filer, such as ORML 1949, is to be considered by the AER in light of the evidence properly adduced before it.¹² Based on the foregoing, ORML 1949 has not demonstrated that it may be directly and adversely affected by the Application, and a number of ORML 1949'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.

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

¹² *O'Chiese First Nation v Alberta Energy Regulator*, 2015 ABCA 348 at para 43.

cc: Mike Morden, Suncor Energy Inc.
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