

BY EMAIL ONLY

December 19, 2018

Adi Isaac Adiele, Senior Environmental & Regulatory Coordinator
McKay Metis Sustainability Centre

DEVON CANADA CORPORATION

APPLICATIONS NO. 1904200 and 008-00224816

STATEMENT OF CONCERN NO. 31008

Dear Mr. Adiele:

You are receiving this letter because you filed a statement of concern on behalf of the Fort McKay Metis Community Association (FMMCA) about Applications No. 1904200 and 008-00224816. The Alberta Energy Regulator (AER) has reviewed your statement of concern, along with the company's application, and all applicable requirements and other submissions or information about the applications, including the technical report you submitted on August 30, 2018. In its SOC, FMMCA sought the following:

- o Consideration of adverse impacts on traditional territory and to work with FMMA to minimize the impacts prior to commencement of the project
- o Devon conduct a TLU study and address the results through mitigation
- o Capacity funding for a technical review
- o Refrain from approving until FMMCA's concerns are addressed and impacts are mitigated to their satisfaction

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

- Fort McKay is located approximately 180 km by air and 300 km by road north of the proposed project.
- FMMCA provided high level maps to Devon which contained arrows labelled as FMMCA's hunting locations, trapping sites, fishing sites, gathering areas, berry

picking locations and cabin locations. The maps do not provide sufficient detail to reference exact locations and all locations are outside the project area.

- Concerns in relation to funding a Traditional Land Use (TLU) study are in relation to compensation which is outside the jurisdiction of the AER. The AER also notes that fishing, hunting and berry picking sites are within close proximity to the lease boundary but not within the lease boundary.
- FMMCA expressed concerns around inadequate consultation. The AER has no jurisdiction to assess the adequacy of Crown consultation associated with the rights of aboriginal peoples; the Aboriginal Consultation Office (ACO) determines if consultation is required and adequate.
- The AER makes note of the concerns raised regarding adverse impacts and for waterways and groundwater, noise, dust and disturbance during construction and operations, increased risk of spills into waterbodies/groundwater, increased human activity in the area, increased access to the projects area, industrial vehicles within the project area, the loss of old growth habitat, habitat loss impacting wildlife, diminishing furbearers and loss of wetlands. At request of the AER, Devon submitted a detailed Environmental Assessment as part of the application. This Environmental Assessment informed the EPEA approval conditions which include, but are not limited to, addressing matters related to wildlife, ground water, surface water and soil monitoring. Furthermore, Devon is committed to providing stakeholders with information regarding its ongoing activities and environmental programs.
- The AER reviewed your technical report and had found the following:
 - Hydrogeology: Your concerns regarding non-saline groundwater are out of scope because no additional groundwater is needed for the expansion, in addition to what has already been licenced and approved. Your concerns regarding thermal plumes are addressed by the thermal monitor directive released June 2018. A groundwater monitoring program addresses monitoring of groundwater impacts close to ground surface.
 - Surface water quality, fisheries, and aquatic resources: Hunting and fishing restrictions placed on Devon personnel are outside of AER jurisdiction. Your recommendation to GOA regarding regional aquatic monitoring is outside of AER's jurisdiction. With regards to your concern related to cumulative effects the AER did not require an EIA for this expansion but Devon completed an environmental assessment as part of the application which the AER finds satisfactory. With regards to wetland monitoring, watery quality monitoring is included under wetlands and waterbody monitoring conditions. With regards to disturbances to riparian zones, Devon has committed to utilizing clear span water course crossings as well as clear span pipeline bridges in

- stream work at these crossing locations will be avoided. Devon has committed to avoid impacts within the ordinary high water mark. Mitigation plans will be addressed through WA codes of practice and the MSSC.
- Vegetation and wetlands: Your concerns regarding vegetation and wetlands are addressed. The TLU concerns related to rare plants and traditional plants are out of scope of this application; however Devon has committed to work with stakeholders across the lifecycle of the project including reclamation stages. A detailed vegetation plan is required as part of the standard EPEA approval requirements. Your recommendation to the GOA on consultation regarding criteria to minimize disturbance is outside of the jurisdiction of the AER. Your concerns regarding dust mitigation is outside of the jurisdiction of the AER. With regards to your concern related to cumulative effects the AER did not require an EIA for this expansion but Devon completed an environmental assessment as part of the application which the AER finds satisfactory. With regards to weeds Devon will be required to control weeds in addition to the development of a detailed vegetation management plan as per standard EPEA approval conditions. With regards to wetlands Devon is required to develop a wetlands and waterbody monitoring program as a condition to the EPEA approval. With regards to peatland Devon will be required to reclaim project disturbances to equivalent landscape ability as per their EPA approval. Devon will also be required to complete a wetland research trial as per their EPEA approval. Devon will be required to submit a PLCRCP for Authorization as per SED001 under EPEA which will include a detailed revegetation strategy for reclaimed areas. Research in the field of peatland reclamation is ongoing and the adaptive manage discussion is a required component of the PLCRCP. With regards to rare species as per SED001 of EPEA approval Devon must conduct a predisturbance assessment prior to site construction.
 - Wildlife: Devon must do a WMMP under EPEA. There are no regulatory requirements with respect to what species are included as VECs. Moose responsibility and management is the responsibility of AEP. The project aligns with current GOA caribou policy and requirements. EPEA does not have specific requirements for constraints planning but the AER is satisfied Devon addressed many of the risks through their constraints planning and additional ones will be captured through WMMP as well as public lands wildlife sweep requirements. Concerns around noise are addressed through directive 038 and public lands timing restrictions. With regards to concerns around moose and caribou mortality, the WMMP covers monitoring of direct mortalities

and requires adaptive management measures to improve mitigation if impacts are identified. Hunting and fishing restrictions placed on Devon personnel are outside of AER jurisdiction. Your concerns around a potential pipeline will be addressed when public lands are applied for and the WMMP, Public Lands conditions, and AEP wildlife crossing guide will address these. The Public Lands approval process requires Devon to adhere to the MSSC and the WMMP also has linkages to the MSSC.

- Historical Resources: The recommendation related to ACT and HRIAs are outside of AER jurisdiction.

Based on the above, the AER is satisfied that the concerns outlined in your SOC's have been addressed to the satisfaction of the AER through Devon's responses and proposed mitigation measures, and through standard conditions included in the approvals. The AER has decided that a hearing is not required to consider the concerns outlined in your statement of concern, and has issued the applied-for approvals and this is your notice of that decision. Copies of the approvals are attached.

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 here: <https://aer.ca/regulating-development/compliance/compliance-assurance-program>.

You may file a regulatory appeal on the AER's decision to issue the approvals if you meet the criteria within section 36 of the *Responsible Energy Development Act*. Filing instructions and forms are on our website under Regulatory Appeal Process.

If you have any questions, contact _____.

Sincerely,

<original signed by>

Paul Ferenowicz
Senior Advisor, Corporate Planning & Enterprise Projects

Attached (2): **(Approvals)**

cc: Maude Ramsay, Devon Canada Corporation
AER SOC Assessor
AER Bonnyville Field Centre
AER Indigenous Relations
Aboriginal Consultation Office

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