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BY E-MAIL ONLY

February 27, 2019

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[www.aer.ca](http://www.aer.ca)

Elizabeth Metis Settlement (EMS)

**RE: Canadian Natural Resources Limited (CNRL)**  
**Applications No. 1916659, 1916661, 433530 and 433572 (the Applications)**  
**Statement of Concern No. 31384**

Dear Sir/Madam:

You are receiving this letter because you filed a statement of concern in respect of the Applications. The Alberta Energy Regulator (AER) has reviewed your statement of concern, along with the Applications and all applicable requirements and other submissions or information about the Applications. The AER has decided that a hearing is not required to consider the concerns outlined in your statement of concern.

In its review of your concerns, the AER considered the following:

- The project area is located approximately 67 km southwest of the EMS community, and is not located on EMS lands.
- The AER acknowledges that the Province of Alberta has recognized EMS as a historic and contemporary Métis community for the purposes of Métis harvesting under the *Métis Harvesting in Alberta* policy (the *Harvesting Policy*). The AER also acknowledges that the project area falls within EMS' community harvesting area, which consists of the unoccupied Crown land or other land to which an EMS harvester has a right of access within 160 km of the EMS community.<sup>1</sup>
- However, the fact that the project area is located within an area EMS members exercise traditional activities and within the EMS community harvesting area does not, without further factual connection, establish that EMS may be directly and adversely impacted by the Applications. Further information is required to establish a sufficient degree of location or connection between the Applications and the rights asserted.<sup>2</sup>
- EMS states that its members exercise their constitutionally protected rights to hunt, fish, trap, gather and harvest on the lands and waters in the project area. However, the information provided does not demonstrate a sufficient degree of location or connection

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<sup>1</sup> *Fort Chipewyan Metis Nation of Alberta, Local 125 v Alberta (Minister of Aboriginal Relations)*, 2016 ABQB 713 at para 6; *Metis Harvesting in Alberta* – July 5, 2007 – Updated June 2010 at page 3.

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

between the Applications and the rights asserted by EMS. EMS does not identify in sufficient detail how the Applications may directly and adversely affect EMS members and the lands and waters they commonly use.

- In relation to EMS' concern regarding consultation, the AER has no jurisdiction to assess the adequacy of Crown consultation associated with the rights of Aboriginal peoples.<sup>3</sup>
- With respect to EMS' concern regarding set-back waivers, the AER can confirm that CNRL submitted Applications 1916659 and 1916661 on a non-routine basis due to the fact that CNRL did not meet waterbody setback requirements. In accordance with AER requirements, CNRL has committed to constructing a clay berm to prevent contamination from reaching the surrounding waterbodies.
- EMS' concern related to *Water Act* approval is outside the scope of the AER's review of the Applications. That being said, the AER can confirm that CNRL obtained *Water Act* approval prior to submitting the Applications.
- In relation to EMS' concern regarding environmental impacts, secondary containment will be used during the operations stage of the facility to minimize spills and releases to the environment from project equipment. CNRL is also required to comply with all legislative and regulatory requirements associated with reporting and remediating spills and releases that may occur during the life of the project.<sup>4</sup>
- With respect to EMS' concern regarding reclamation strategies, the AER notes that CNRL is required to reclaim project lands in accordance with applicable Government of Alberta legislation, policy, criteria and guidelines as well as directions from the AER. If EMS has concerns with reclamation activities performed by CNRL, EMS will have the ability to file a statement of concern when CNRL applies to have the project lands reclamation certified.
- The AER acknowledges EMS' concern about the Applications contributing to the cumulative impacts of commercial development on EMS' traditional lands. However, EMS has not provided the AER with sufficient information detailing how the Applications will contribute to adverse cumulative impacts and the extent to which those cumulative impacts may impact EMS members' traditional practices. 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.<sup>5</sup> The project area falls within the Lower Athabasca Region. Accordingly, the Lower Athabasca Regional Plan is the appropriate mechanism through which to identify and manage the regional cumulative effects of resource development activities.<sup>6</sup>

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Based on the foregoing, the concerns raised by EMS have been addressed to the AER's satisfaction, relate to a matter beyond the scope of the Applications or relate to a matter outside the AER's jurisdiction, and EMS has not demonstrated that it may be directly and adversely affected by the Applications. The AER has issued the applied-for licences and this is your notice of that decision. Copies of the licences are enclosed.

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

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<sup>3</sup> *Responsible Energy Development Act*, SA 2012, c R-17.3, s 21.

<sup>4</sup> See, for example, *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, ss 110 and 112.

<sup>5</sup> See, for example, *Dover Operating Corp.*, 2013 ABAER 014 at para 43; *Prosper Petroleum Ltd.*, 2014 ABAER 013 at para 121.

<sup>6</sup> *Ibid.*

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 licences 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.

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If you have any questions, contact Brittney Goudreau at 780-641-9038 or by e-mail [Brittney.Goudreau@aer.ca](mailto:Brittney.Goudreau@aer.ca).

Sincerely,

<Original Signed By>

Rob Cruickshank  
Director, Business Process, Authorizations

**Enclosure (6): (Licences)**

cc: Vovel Gapaz, Canadian Natural Resources Limited  
Arly Castillo, Canadian Natural Resources Limited  
AER SOC Assessor  
AER Bonnyville Field Centre  
AER Indigenous Relations  
Aboriginal Consultation Office