

October 26, 2022

www.aer.ca

By Email Only

Nicole Nicholls
Cold Lake First Nations (CLFN)**Statement of Concern No. 32125
Strathcona Resources Ltd. (Strathcona)
Application No. 31533936**

Dear Nicole Nicholls:

You are receiving this letter because you filed a statement of concern (SOC) on behalf of CLFN about Application No. 31533936. The Alberta Energy Regulator (AER) has reviewed your SOC, along with the application, and all applicable requirements and other submissions or information about the application. The AER has decided that a hearing is not required to consider the concerns outlined in your SOC.

In our review of CLFN's concerns, we considered the following:

- Strathcona has applied for a *Water Act* approval and approval for a Mineral Surface Lease to construct an observation well and a Licence of Occupation to access Class IV – Frozen/Dry conditions at 6-16-064-03W4M.
- The proposed project is located on Crown land, approximately 5.3 km from the west boundary of the CLFN's reserve lands and the project is located within land that the CLFN members consider to be part of their traditional territory.
- The CLFN raised concerns regarding the project adversely impacting its members' aboriginal rights, as well as traditional land use activities. Specifically, the CLFN states the project conflicts with members' land use and harvesting of resources, impacts culturally significant plants and culturally sensitive sites (culturally modified trees), disrupts the CLFN's continuity of land use and harvesting and contributes to the cumulative, long-term degradation of the CLFN's rights and shrinks the total area available for the CLFN to practice their Indigenous Rights.

- The CLFN submits that there are two sites of cultural concern, porcupine chewed pine tree on proposed new cut access to the observation well and numerous old, harvested pine tree stumps (culturally modified trees) within the proposed well site boundaries. The SOC does not provide sufficient information on how the pine trees and harvested tree stumps are currently being used by CLFN members in their traditional use activities. You provided a general map of the location where CLFN submits the tree stumps can be found, but the map does not provide sufficient detail explaining what types of activities CLFN members conduct within the general area, the specific locations within that general area where traditional land use activities are conducted or the frequency of those activities.
- Although the SOC states the CLFN has concerns about land use and harvesting of resources, including culturally sensitive plants, the SOC does not provide information about these land use activities undertaken by members or provide information about where the activities are located or how the activities may be impacted by the proposed project.
- The SOC contains information that Strathcona will use low-impact disturbance construction methods to minimize disturbance so that natural vegetation will grow back once construction is complete.
- Regarding CLFN's concerns about the proposed project contributing to the cumulative, long-term degradation of its members' rights and shrinking the total area available to CLFN to practice their Indigenous Rights, the Government of Alberta's environmental frameworks under its delineated Regional Plans are the appropriate mechanisms for identifying and managing regional cumulative effects of resource development activities..
- This application relates to lands that fall within the Lower Athabasca Regional Plan (LARP) region. Accordingly, the LARP is the appropriate mechanism through which to identify and manage the regional cumulative effects of resource development activities. The activities proposed in the area of the application are permitted under LARP.
- The concerns regarding Aboriginal consultation are outside the jurisdiction of the AER and should be directed to the Aboriginal Consultation Office (ACO). However, in correspondence dated July 7, 2022, Strathcona stated its commitment to continue engaging with stakeholders and indigenous communities and provide yearly meetings to understand concerns. Additionally, the ACO issued an adequacy decision to Strathcona dated June 13, 2022.

Whether a decision of the AER may directly and adversely affect a statement of concern filer, such as the CLFN, is to be considered by the AER in light of the evidence properly adduced before it.¹ Based on the

¹ *O'Chiese First Nation v Alberta Energy Regulator*, 2015 ABCA 348, paragraph 43.

above, the CLFN has not demonstrated that it may be directly and adversely affected by the application. As a result, the AER has concluded that it is not necessary to hold a hearing before making a decision on the application. The AER has issued the applied-for approval, and this is your notice of that decision. A copy of the approval is 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 approval if you meet the criteria within section 36 of the *Responsible Energy Development Act*. Filing instructions and forms are located here: <https://www.aer.ca/regulating-development/project-application/regulatory-appeal-process>.

If you have any questions, please contact SOC@aer.ca.

Sincerely,

<Original signed by>

Andrew MacPherson
Director, InSitu
Regulatory Applications

/mc

Attachments (1): Approval

cc: Len Moriarity, Strathcona Resources Ltd.
Derek Rosso-Peck, AER
SOC Inbox, AER
Field Operations East, AER
Public Lands Regional Office, AER
Environmental Protection & Enhancement and Water, AER
Aboriginal Consultation Office – FNC 202109457-001