

October 24, 2022

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By Email Only

Nicole Nicholls
Cold Lake First Nations (CLFN)**Statement of Concern No. 32126
Strathcona Resources Ltd. (Strathcona)
Application No. 31649179**

Dear Nicole Nicholls:

You are receiving this letter because you filed a statement of concern (SOC) on behalf of CLFN about Application No. 31649179. On July 4, 2022, an approval for this application was issued prior to your SOC being considered. On July 6, 2022, in accordance with section 26(1)(c) of the *Public Lands Act*, you and Strathcona were notified by email that the approval was issued in error to Strathcona and Strathcona was directed “not to act on the approval in any way until further notice from the AER is issued, and the review of the SOC is complete, and a decision has been made.”

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 under the *Public Lands Act* for a pipeline agreement for the purpose of a freshwater pipeline.
- 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 proposed project adversely impacting its members’ aboriginal rights and traditional land use activities. Specifically, CLFN states the project conflicts

with its members' land use and harvesting of resources, impacts culturally significant plants, disrupts the CLFN's continuity of land use and harvesting and contributes to the cumulative, long-term degradation of the CLFN members' rights and shrinks the total area available for the CLFN members to practice their Indigenous Rights. The information provided by the CLFN is general in nature and does not identify direct and adverse impacts that may result from the proposed project, including how its members' rights or traditional land use activities may be negatively impacted.

- Regarding the concerns about impacts on culturally significant plants, the SOC does not provide sufficient information on how the plants the CLFN have identified are currently being used by its members in their traditional use activities. You provided a general map of the location where the CLFN submits the plants can be found, but your submission does not provide sufficient detail explaining what types of activities are undertaken by CLFN members within the general area, the specific locations within that general area where traditional land use activities are conducted or the frequency of those activities.
- Regarding the concerns about impacts on land use and harvesting of resources, your SOC does not provide information about these land use activities undertaken by members or how such activities may be impacted by the proposed project. Regarding CLFN's concerns about the project contributing to the cumulative, long-term degradation of its members' rights and shrinking the total area available to the 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 within the Lower Athabasca Regional Plan (LARP) region. Accordingly, the LARP is the appropriate mechanism to identify and manage the cumulative regional effects of resource development activities. The activities proposed in the area of the applications are permitted under LARP.
- The CLFN also notes that the proposed project is near a creek of concern due to the presence of medicinal and rare plants. Strathcona must adhere to all Approval conditions set out in the Public Lands Act approval. Additionally, AER staff note the proposed pipeline crosses a watercourse that only contains water for part of the year. The proposed pipeline will be drilled horizontally and should not result in any permanent damage to the creek.
- 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 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. The AER previously issued the applied-for approval and no longer considers there to be further reason to continue with the suspension of the approval under section 26(1)(c) of the *Public Lands Act*. Further correspondence regarding the suspension will be issued separately. A copy of the approval, which is notice of the decision, 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

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

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 202250866-001