

VIA E-MAIL ONLY

July 27, 2016

Bob Plowman and Donna Dahm

**APPLICATION No. MSL160320 from Penn West Petroleum Ltd.  
STATEMENT OF CONCERN NO. 30296**

Dear Mr. Plowman and Ms. Dahm;

You are receiving this letter because you filed a statement of concern about Application No. MSL160320. The Alberta Energy Regulator (AER) has reviewed your statement of concern, along with the application, the applicable requirements, and other submissions or information about the application and has decided that a hearing is not required under an enactment or otherwise necessary to consider the concerns outlined in your statement of concern.

You have asserted that you may be directly and adversely affected by the AER's decisions on the application. The factual part of the test set out in *Dene Tha' First Nation v Alberta (Energy and Utilities Board)* provides guidance on what information indicates that a party may be directly and adversely affected. It states that "some degree of location or connection between the work proposed and the right asserted is reasonable."<sup>1</sup> This statement is also consistent with decisions of Alberta courts and the Alberta Environmental Appeals Board (EAB) that describe the "directly affected" test applied by the EAB. One recent EAB decision summarized the test:

[28] What the Board looks at when assessing the directly affected status of an appellant is how the appellant will be individually and personally affected. The more ways in which the appellant is affected, the greater the likelihood of finding that person directly affected. The Board also looks at how the person uses the area, how the project will affect the environment, and how the effect on the environment will affect the person's use of the area. The closer these elements are connected (their proximity), the more likely the

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<sup>1</sup> *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*, 2005 ABCA 68, at para 14.

person is directly affected. The onus is on the appellant to present a *prima facie* case that he or she is directly affected.<sup>2</sup>

In your statement of concern, you outlined general concerns related to the impact of oil sands development on wetlands and ecosystems in your area; cumulative effects of the project; adverse effects of emissions on human health, animal health and the environment; and a lack of consultation with stakeholders and affected people.

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

- The proposed project (well centre) is located approximately 27 kilometres northeast of lands that are owned by Ms. Dahm and 28 kilometres northeast of lands that are owned by Mr. Plowman;
- You have not provided information that demonstrates that the kinds of impacts you are concerned with may result from approval of the application. Your concerns appear to be general in nature and are not directly related to the application;
- You have not provided information that demonstrates you may actually use lands or other resources in the project area or other locations that may be affected by the project;

Based on the above, you have not demonstrated that you may be directly and adversely impacted by 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. Under the *Responsible Energy Development Act* an eligible person may file a request for a regulatory appeal on an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. You can find filing requirements and forms on the AER website [www.aer.ca](http://www.aer.ca) under Applications & Notices: Appeals.

Sincerely,

Acting Director, Land Use Authorizations

Enclosure (1): PLA Disposition

cc:

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<sup>2</sup> *Tomlinson v Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission* (03 April 2013), Appeal No. 12-033-ID1 (AEAB).

