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By email only
November 19, 2026

Chipewyan Prairie Industry Relations LP

Attention: Tim Coutney
Chris Heavy Shield

Bennett Jones LLP

Attention: Logan Lazurko
Martin Ignasiak

Dear Parties:

RE: Stay Request - Request for Regulatory Appeal by Chipewyan Prairie Industry Relations LP on behalf of Chipewyan Prairie First Nation (CPFN)
Athabasca Oil Corporation (Athabasca)
Application No.: 33974285
Approval Nos.: MSL260239 and MSL260240 (the Approvals)
Locations: 07-081-08-W4M, 06-081-08-W4M and 05-081-08-W4M
Request for Regulatory Appeal No.: 1962668 (Appeal Request)

The Alberta Energy Regulator (AER) has considered CPFN's request for a stay under section 39(2) of the *Responsible Energy Development Act* (*REDA*) of the above noted Approvals pending the AER's consideration of CPFN's Appeal Request (Stay Request).

For the reasons that follow, the AER denies CPFN's Stay Request.

In reaching our decision, we considered all relevant materials properly before us, including submissions and supporting documents submitted by CPFN and Athabasca. Accordingly, references in this decision to specific portions of the submissions and documents are intended to assist the reader in understanding our reasoning on a particular matter, and do not mean that we did not consider all relevant portions of the submissions and supporting documents.

Background

On September 8, 2026, CPFN filed the Appeal Request under section 38 of *REDA* with the AER in relation to the AER's August 10, 2026 decision to issue the Approvals under the *Public Lands Act* for two Mineral Surface Leases to Athabasca. The approved leases are for Athabasca's construction of the C1 Pad Site and associated corridor for Steam Assisted Gravity Drainage (SAGD) bitumen production (the Project).

The Appeal Request included the Stay Request, specifically requesting that the AER "stay the approval(s), including clearing and construction authorized by them, pending final disposition of the regulatory appeal".

On September 9, 2026, the AER issued correspondence to the parties requesting that Athabasca provide preliminary information regarding the status and timing of construction and to confirm whether Athabasca

Security Classification: Public

would voluntarily stay commencement of activities permitted by the Approvals pending the AER's consideration of the Appeal Request.

On September 11, 2026, Athabasca responded advising that clearing, construction and other activities permitted by the Approval had not yet commenced but are expected to commence in Q4 2026 when frozen conditions permit, and that Athabasca would not agree to voluntarily stay these activities.

On September 14, 2026, the AER requested submissions from the parties in relation to the Stay Request (Stay Process Letter). In accordance with the Stay Process Letter, CPFN filed its submissions in support of the Stay Request on September 21, 2026.

CPFN's September 21, 2026, submissions included shape files in a compressed folder titled "25-04122-001-FNC_R0-NAD83.zip". On September 21, 2026 the AER issued correspondence to CPFN advising that AER Regulatory Appeals is unable to open or view the shape files provided, and requesting that, if CPFN wishes to include these documents in the record of the Stay Request, that CPFN provide them in an alternate format at their earliest convenience with a copy to Athabasca. To date CPFN has not responded to the AER's September 21 correspondence.

On October 5, 2026, the AER received correspondence from Athabasca advising that they had inadvertently misplaced the Stay Process Letter, and as a result Athabasca had missed its response timeline of September 28, 2026. Athabasca advised that it intended to file its response submission that same day, and asked that the AER consider its submission in deciding the Stay Request (Extension Request).

Also on October 5, 2026, Athabasca sent to the AER, copying CPFN, its response submission to the Stay Request for which the Extension Request was sought (Late Stay Response).

On October 6, 2026, the AER received correspondence from CPFN indicating that they opposed the Extension Request.

On October 16, 2026, the AER issued its decision granting the Extension Request, allowing Athabasca's Late Stay Response, and extending the time previously set in the Stay Process Letter for CPFN to file a reply.

CPFN did not provide any reply to Athabasca's Late Stay Response.

REASONS FOR DECISION

Under section 38(2) of *REDA*, the filing of a request for regulatory appeal does not operate to stay an appealable decision. Under section 39(2) of *REDA*, the AER may stay all or part of an appealable decision on any terms and conditions it determines, if requested by a party to a regulatory appeal.

The AER's test for a stay is adopted from the Supreme Court of Canada's decision in *RJR MacDonald*.[1] The onus is on the applicant for the stay to demonstrate that they meet each of the following criteria:

[1] *RJR MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 (*RJR MacDonald*).

1. **Serious question to be heard** – Based on a preliminary assessment of the merits of the case, there is an arguable issue to be decided at the requested appeal.
2. **Irreparable harm** – The stay requester will suffer irreparable harm if the stay is not granted.
3. **Balance of convenience** – The balance of convenience favours granting a stay.[2]

Each element of the test for a stay is discussed further below.

1 Serious Question

The first element of the test requires the stay requester to establish that there is a serious issue to be heard. The requester must demonstrate that there is some basis on which to present an argument on the requested appeal. This is a low threshold. The stay requester need only show that the requested appeal is not frivolous or vexatious.

CPFN submits that its Appeal Request raises serious, and non-frivolous questions. CPFN submits that the record shows an arguable connection between the Approvals, the authorized disturbance, and CPFN's direct and adversely affected interests.

The basis of CPFN's Appeal Request includes that CPFN had identified concerns around the Project's impacts to caribou and caribou habitat, rare and medicinal plants, culturally important animal species (including moose), water and water course impacts, and CPFN's ability to exercise its traditional activities. CPFN states that the AER did not adequately address those concerns. In particular, CPFN's Appeal Request raises the following grounds:

- The AER erred or acted unreasonably in concluding that CPFN's watershed and wildlife concerns were outside the scope of the *Public Lands Act* Application;
- The AER improperly relied on other approvals, standard conditions, and regional frameworks without adequately determining whether they address the project-specific pathways of effects and effects on CPFN's use of the area;
- The AER's conclusions that frozen-ground construction and the modified caribou restricted activity period would minimize effects do not address other concerns raised by CPFN including access, habitat fragmentation, displacement, water, rare and medicinal plants, moose, cumulative effects, and interference with traditional activities;
- The AER did not adequately consider cumulative effects of the Project;
- The Project's location within the previously approved Kai Kos Dehseh Project area does not establish that its effects have been assessed or mitigated. CPFN withdrew its objection to the original Kai Kos Dehseh Project in reliance on an agreement with that project's proponent, Statoil, providing specific

[2] *RJR MacDonald* at 334.

engagement and mitigation measures. CPFN submits that Athabasca refuses to honour those commitments from Statoil. CPFN objects to further Kai Kos Dehseh development unless equivalent engagement and enforceable mitigations are established; and

- The AER should not have issued the Approvals without a hearing to test the evidence, the adequacy of the proposed mitigation, and the basis for the AER's conclusions.

CPFN's Appeal Request also argues that CPFN is directly and adversely affected by the Approvals, based on CPFN's high density of use and occupation of the Project area and larger watershed and region. CPFN submits that the White Muskeg and Christina River areas are particularly important for CPFN traditional land and resource use. CPFN submits that additional development may directly and adversely affect CPFN through physical disturbance, noise, odour, visual disturbance, access restrictions, safety concerns, increased competition and conflict, reduced confidence in water and traditional foods, and displacement from harvesting and occupancy areas. CPFN also raises consultation issues with respect to Athabasca's *Environmental Protection and Enhancement Act* (*EPEA*) Approval 00241311, although we note the *EPEA* Approval is not the subject of the Appeal Request.

CPFN's Stay Request points to its Statement of Concern No. 33087 (SOC), with respect to the Application, and the 2014 Traditional Land and Resource Use Study Update (2014 TLU Update) as identifying project-specific risks, including risks to water, woodland caribou, Arctic grayling, moose, access to lands, harvesting, traditional land use, and cumulative effects.

The 2014 TLU Update was prepared for a different proceeding, concerning the Statoil Kai Kos Dehseh Project which was a SAGD hydrocarbon extraction project that included the Corner and Leismer lease areas. The Kai Kos Dehseh Project area overlaps the area subject to the Approvals. CPFN submits that constraints on budget, time, and transportation meant the 2014 TLU Update could only cover a small portion of the larger Corner lease area, and that the absence of a mapped site at a particular point within the Project footprint cannot be treated as proof that no traditional use or cultural value is present.

In addition to the 2014 TLU Update, CPFN submits that its March 2026 pre-assessment of the Project provided further site-specific information, consistent with the 2014 TLU Update.

CPFN also submits that the size of the Project footprint raises serious questions about incremental habitat loss/fragmentation, wetland and drainage disturbance, altered access, displacement from harvesting areas and effects on wildlife and culturally important uses. CPFN submits that the broader Corner project will reduce land available for harvesting, disturb core caribou habitat, contribute to already severe cumulative effects, cause loss of historic trails, restrict access and contribute to displacement from harvesting and occupancy areas.

In Athabasca's response, Athabasca submits that there cannot be a serious issue to be heard because CPFN has not met the threshold for eligibility for a regulatory appeal. Athabasca submits that CPFN has not demonstrated that they are directly and adversely affected by the Approvals, as CPFN has not provided

evidence of specific uses at the precise location of the Project, and CPFN relies on the 2014 TLU Update that was not prepared for the Project location.

Athabasca submits that during consultation, Athabasca sought site-specific evidence from CPFN, and that CPFN did not provide site-specific concerns requiring Project modifications or additional mitigation. Athabasca further submits that the findings in CPFN's March 2026 pre-assessment of the Project only contain general statements, and do not identify specific traditional use activities, specific sites, or specific practices at the Project site that would be directly and adversely affected by the Approvals.

With respect to CPFN's submissions that Athabasca refuses to honour the previous commitments made to CPFN by Statoil, the previous owner of the Project, Athabasca submits these are private commercial arrangements that are outside the AER's jurisdiction. Athabasca submits that the Approvals were properly issued by the AER after having considered the Application, regulatory requirements, and CPFN's SOC. Athabasca further notes that the Aboriginal Consultation Office (ACO) issued an Adequacy Decision confirming that consultation was deemed to be adequate, and any concerns raised by CPFN with respect to the adequacy of Crown consultation are outside of the AER's jurisdiction.

AER's Findings on Serious Issue

The AER has reviewed the submissions of both CPFN and Athabasca with respect to whether there is a serious issue to be heard. However, in light of the AER's findings below with respect to the second and third elements of the test, the AER comes to no conclusion on this issue. The AER's comments on this element of the stay test in no way predetermine the disposition of the Appeal Request, including any relevant elements of sections 38 and 39 of *REDA*, or the issues that would be the subject of a hearing on the regulatory appeal should it be granted.

2 Irreparable Harm

The second element of the test requires the stay requester to establish that they will suffer irreparable harm if the stay is not granted. Irreparable harm will occur if the stay requester will be adversely affected by the conduct the stay would prevent if the requester ultimately prevails on the regulatory appeal. It is the nature of the harm and not its magnitude that is considered. The harm must be of the sort that cannot be remedied through damages (i.e., monetary terms) or otherwise cured.[3] As noted by the Alberta Court of Appeal, irreparable harm is "of such a nature that no fair and reasonable redress may be had in a court of law and that to refuse the [stay] would be a denial of justice."[4]

The Federal Court of Canada has described the onus that rests upon the stay requester to meet the irreparable harm test as follows:

[3] *RJR MacDonald* at 341.
[4] *Lubicon Lake Indian Band v Norcen Energy Resources Ltd.*, 1985 ABCA 12 at para 31, citing *High on The Law of Injunction*, 4th ed, vol 1 at 36.

> The burden is on the party seeking the stay to adduce clear and non-speculative evidence that irreparable harm will follow if their motion is denied.
>
> That is, it will not be enough for a party seeking a stay to show that irreparable harm *may arguably result* if the stay is not granted, and allegations of harm that are merely hypothetical will not suffice. Rather, the burden is on the party seeking the stay to show that irreparable harm *will result*.[5]

CPFN submits that irreparable harm will occur if clearing and construction begin before the Appeal Request has been decided, and that this harm cannot be cured through damages if the land is cleared and the Appeal Request is granted. CPFN submits that clearing will change the land before the Appeal Request can provide effective relief as the clearing of sites removes vegetation and disturbs soils and wetlands. Construction will fragment habitat and introduce noise, traffic, visual disturbance and controlled access. CPFN submits that once clearing occurs, a rescission or variance of the Approvals cannot recreate the pre-disturbance conditions that the stay is intended to preserve. CPFN submits that the project area is a high-density land use area that CPFN uses for its traditional activities including harvesting locations, ancestral traplines, travel routes, camps, cabins, medicinal-plant areas and culturally important waters and places. Construction can displace members and wildlife, impede access, reduce confidence in harvested foods and water, and interrupt the use and transmission of site-specific knowledge. CPFN submits that this harm is imminent, not speculative, as Athabasca intends to clear and construct once frozen conditions are favourable in Q4 2026.

In response, Athabasca submits that CPFN has not identified specific, ongoing traditional use activities at the precise Project locations that would be irreparably harmed by the Approvals if the Stay is refused. Athabasca submits that:

- The harms alleged are general and speculative in nature, and that CPFN's assertions of harms are related to potential effects of oil sands development generally.
- The alleged harms would be addressed by Athabasca's regulatory compliance and mitigation measures. These include the reduction of planned well pads from 13 to 9, construction planned for frozen ground conditions where feasible, pausing work from March 31 – July 15 to reduce impacts in Caribou Range, and ongoing Wildlife Monitoring during construction to ensure activities will be suspended if Caribou are observed. Athabasca submits that its plans for manned checkpoints to control access to the Project area are standard industry practices, and are intended for safety and traffic management in active construction zones. Athabasca submits that it has already engaged with CPFN in this regard and confirmed that it does not intend to restrict public access beyond what is necessary and will continue to engage with CPFN where access controls are needed.
- The Project area is located within the previously approved area for the Kai Kos Dehseh Project, which has already been subject to extensive environmental assessments and approvals. Athabasca submits

[5] *Canada (Attorney General) v Amnesty International Canada*, 2009 FC 426 at paras 29 and 30 [citations omitted] [emphasis in the original].

that it is difficult to see how construction of the Project within this already-approved area will irreparably harm CPFN's asserted rights beyond what the previous approvals already contemplated.

- Much of the Project area has existing disturbances, including from the 2018 wildfire which affected a substantial portion of the development area, and multiple existing dispositions that overlap with the proposed site. A significant portion of the Project area has already been approved and, in some cases, constructed or disturbed, including cleared dispositions and legacy Statoil pads and corridors.
- Project reclamation at the end of the lifecycle will return the lands to equivalent land capability at closure. Therefore any harm will not be permanent, and can be cured if the Appeal Request is ultimately successful.

AER's Findings on Irreparable Harm

The AER finds that CPFN has not provided sufficiently clear and non-speculative evidence to demonstrate that CPFN will suffer irreparable harm if the stay is not granted.

The alleged harms that CPFN has set out in their Appeal Request, Stay Request, 2014 TLU Update, and March 2026 pre-assessment, are not specific enough to the nature and location of the Approvals to meet the test for a stay. While CPFN has alleged that harms could occur, the AER finds that there is also a potential that the harms may not occur, or may be mitigated through conditions of the Approvals and the AER's regulatory framework. CPFN submitted in its Stay Request that capacity constraints limited the extent and detail of the 2014 TLU Update. Even with that being so, in order to grant a stay the AER requires specific evidence of harms tied to the location and activities approved. The March 2026 pre-assessment similarly does not include specific evidence of non-compensable, non-speculative harm if the activities permitted by the Approvals are not stayed.

Both parties appear to proceed on the basis that the area subject to the Approvals is within the larger, previously approved Kai Kos Dehseh Project area. Regulatory Applications, in issuing the Approvals without a hearing, accepted that the Approvals are within the larger, previously approved area. The evidence before us does not include a map clearly overlaying the boundaries of the larger project area with the area subject to the Approvals. Attachment 4 to Athabasca's submission does, however, identify the planned SAGD pad sites in relation to existing pads and the central processing facility, demonstrating pre-existing development in the surrounding area. Given the manner in which the parties have framed their submissions, and in the absence of evidence or submissions to the contrary, we are prepared to proceed, for the purposes of this Stay Request only, on the basis that the Approval area falls within the previously approved Kai Kos Dehseh Project area that contemplated the very type of SAGD development at issue in the Approvals. The 2014 TLU Update describes the Kai Kos Dehseh Project as "…a SAGD hydrocarbon extraction project, located in northeastern Alberta. Two of the four development areas for this Project include the Corner and Leismer leases…"

It appears from Attachment 4 to Athabasca's submission that multiple existing dispositions overlap the site that is the subject of the Approvals, which also shows that some portion of the Approval site has already

been constructed or disturbed. Given this existing disturbance and that the area of the Approvals are within the existing Kai Kos Dehseh SAGD Project area, it is unlikely that the Approvals, including construction of the C1 Pad Site, will cause irreparable harm of the nature alleged by CPFN.

We also note that the ACO issued an Adequacy Decision on FNC202650356 on April 14, 2026, indicating that consultation was adequate and that there were no site-specific concerns in respect of the Project. In deciding the Stay Request, we are not in a position to question the ACO's findings on CPFN's lack of site-specific concerns. As well, Athabasca's submissions describe a February 18, 2026 virtual site visit attended by Athabasca and CPFN of the Project area. CPFN's attendees included a representative and two CPFN Elders. Athabasca submits, and CPFN does not dispute, that no additional site-specific concerns requiring Project modifications or additional mitigation measures were identified during the site visit. We put weight on the fact that CPFN had opportunities during engagement, including the site visit, to raise site-specific concerns with the Project, and that they did not do so.

An applicant for a stay must satisfy each element of the three-part test for the stay to be granted. Having decided that CPFN has not demonstrated irreparable harm, it is not necessary to continue the analysis. However, the AER provides its findings on the third element of the test below.

3 Balance of Convenience

Weighing the balance of convenience involves examining which party will suffer more harm from granting or refusing the stay. The AER must weigh the burden the stay would impose on Athabasca against the harm to CPFN if the stay is refused. This requires the AER to consider significant factors, and not just perform a cost-benefit analysis.

CPFN submits that a stay will preserve the status quo and the AER's ability to grant meaningful relief. CPFN submits that refusing the stay will risk permanent or long-duration changes to land, habitat, access and CPFN's exercise of Treaty rights before the merits of the Appeal Request are determined. CPFN submits that the potential prejudice to Athabasca is a delay in the work planned for Q4 2026, whereas the prejudice to CPFN includes loss or alteration of habitat and harvesting areas, interference with access and cultural practices, and impairment of the practical value of the requested appeal. CPFN submits that the comparative prejudice therefore favours protection of the land through a stay. Further, CPFN submits that the public interest favours maintaining the effectiveness of the statutory appeal process and avoiding unnecessary disturbance while serious, site-specific issues remain unresolved.

Athabasca's response submits that the balance of convenience favours denying the Stay Request. Athabasca submits that it will suffer concrete and quantifiable harm if the stay is granted as it will lose its Q4 2026 frozen ground construction window, delaying the project by at least a year. In contrast, Athabasca submits that CPFN has not demonstrated that it will suffer any harm if the Stay Request is refused. Athabasca further submits that it has obtained land withdrawal consent from Alberta Pacific Forest Industries, that it has contractual commitments and operational timelines tied to the Project, and a stay pending the outcome of the regulatory appeal could potentially create a prolonged delay and create significant financial harm to

Athabasca. Athabasca further submits that the public interest does not favour granting the Stay Request, as *REDA* itself provides that the filing of a regulatory appeal does not operate to stay the appealable decision; the public interest favours certainty in AER issued Approvals.

AER's Findings on Balance of Convenience

Similar to our findings on the second element, we find that CPFN has not provided sufficiently specific evidence of the harms it will suffer should the stay be denied. While CPFN characterizes the requested stay as preserving the status quo and protecting against disturbance pending determination of the Appeal Request, the balance of convenience requires more than identifying the possibility that activities authorized by the Approvals may occur before the Appeal Request is determined. The AER must assess the comparative prejudice that would result from granting or refusing the stay on the evidence before it.

In this case, the harms relied upon by CPFN are substantially the same harms considered under the irreparable harm element of the test. As discussed above, CPFN has not provided sufficiently specific evidence connecting those alleged harms to the lands and activities authorized by the Approvals, or demonstrating that those harms will occur if the stay is refused. As stated above, the ACO determined that consultation with respect to the Project was adequate, and that CPFN had no site-specific concerns. The evidence before us is that CPFN had opportunities to raise such concerns, including at a virtual site visit of the Project site. Further, the activities will occur within a previously approved SAGD project area in which there is existing development and disturbance, and the activities remain subject to the conditions of the Approvals and the AER's regulatory requirements. In these circumstances, we are not satisfied that the potential prejudice identified by CPFN carries sufficient weight to favour a stay.

In contrast, the evidence establishes that granting the stay will delay Athabasca's ability to proceed with activities that are presently authorized by the Approvals. In particular, Athabasca submits that a stay would cause it to lose the Q4 2026 frozen-ground construction window and delay the Project by at least one year. Although the financial or commercial consequences of delay have not been quantified in detail, the evidence establishes a concrete timing consequence from granting the stay that is not present to the same degree in CPFN's evidence of prejudice from refusing it.

We do note that to the extent Athabasca has contractual commitments and operational timelines tied to the Project, entering those arrangements was a business risk that Athabasca took on and we have therefore placed no weight on those commitments in determining the balance of convenience. However, that does not negate the Project delay that would result from loss of the planned construction window.

We have also considered CPFN's submission that the public interest favours preserving the effectiveness of the regulatory appeal process. However, *REDA* expressly provides that the filing of a regulatory appeal does not itself stay an appealable decision. The availability of a stay under section 39(2) protects the appeal process where the applicable test is met, but does not create a presumption that approved activities should be suspended while an appeal request is outstanding.

Considering the evidence as a whole, including the nature and degree of prejudice demonstrated by each party, we are not satisfied that CPFN has established that the balance of convenience favours granting the Stay Request.

CONCLUSION

The Stay Request is dismissed because CPFN has failed to demonstrate irreparable harm and that the balance of convenience favours granting the stay.

The AER will provide further correspondence in due course with respect to the submission process for the request for regulatory appeal.

Sincerely,

<Original signed by>

Michael Bevan
Senior Advisor, Water

<Original signed by>

Paul Ferensowicz
Principal, Regulatory Advisor

<Original signed by>

Tamsin Henry
Director, Law, Strategy & Operations

cc: Jody Butt, Aboriginal Consultation Office