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BY E-MAIL ONLY

October 28, 2019

Adi Isaac Adiele
Fort McKay Métis Community Association (FMMCA)

CANADIAN NATURAL RESOURCES LIMITED (CNRL)
APPLICATIONS 1920658 AND 009-00224816
STATEMENT OF CONCERN NO. 31528

Dear Sir/Madam:

You are receiving this letter because you filed a statement of concern (SOC 31528) regarding Applications 1920658 and 009-00224816 (the Applications) on behalf of FMMCA, representing Fort McKay Métis Nation (FMMN). On October 3, 2019, counsel for FMMN also requested that the AER abstain from rendering a decision on the Applications until November 29, 2019, to allow FMMN to file a traditional land use (TLU) study prior to that date (the Extension Request). CNRL filed a response to the Extension Request on October 10, 2019, and FMMN filed a further reply to CNRL's response on October 16, 2019.

The Alberta Energy Regulator (AER) has considered (1) SOC 31528; (2) the Extension Request and the further submissions filed in relation to the Extension Request; (3) the Applications; and (4) all applicable requirements and other submissions or information about the Applications. For the reasons outlined below, the AER has decided to deny the Extension Request. The AER has also decided that a hearing is not required to consider the concerns outlined in SOC 31528. The AER has issued the applied-for approvals and this is your notice of that decision.

The Extension Request is Denied

In the Extension Request, FMMN states that it met with representatives from Devon Canada Corporation (Devon) on May 8, 2019, to share information regarding the impacts of the proposed

Jackfish West Expansion project (the Expansion Project) and Pike 2 project¹, and FMMN members' land use in the area. FMMN states that the minutes from this meeting reflect that Devon acknowledged FMMN members' land use in the area. FMMN also states that it decided to self-fund a TLU study following the sale of Devon's assets to CNRL and out of a concern that the Applications could be approved in the absence of an accurate understanding of the Expansion Project's potential impacts on the exercise of FMMN's harvesting rights. FMMN states that the Expansion Project lands are included in the TLU study, and submits that it would be premature and unfair to dismiss SOC 31528 before FMMN has provided the TLU study to the AER sometime in the second half of November, 2019. To that end, FMMN requests that the AER abstain from rendering a decision on the Applications prior to November 29, 2019, and that the AER permit FMMN to file the TLU study before that date.

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In its October 10, 2019, response, CNRL states that it opposes the Extension Request because of the nature of the Expansion Project and because further delays in processing the Applications are not warranted. CNRL acknowledges that FMMN recently submitted a similar request to the AER in respect of CNRL's Pike 2 project² and states that the Expansion Project is a different activity because the Applications are not subject to a requirement to provide project-specific TLU. CNRL also disagrees that FMMN's minutes from the May 8, 2019, meeting accurately reflect Devon's positions and statements at the meeting. CNRL states that despite having shape files showing the proposed footprint of the Expansion Project area, the affidavits filed by FMMN members in support of SOC 31528 show no use of the Expansion Project area. CNRL submits that FMMN has had sufficient opportunity to provide evidence demonstrating how FMMN may be directly and adversely affected by the Applications and has not done so. Accordingly, CNRL states that the AER has all the information it requires to make a decision on the Applications, and submits that the AER should not delay its decision to await the filing of a general TLU study that is not specific to the Applications or the Expansion Project area.

In FMMN's reply to CNRL's response, FMMN provides additional information related to the process required to collect TLU information. FMMN also states that the AER has an obligation to ensure procedural fairness and that potential impacts on Constitutional rights are understood in advance of making a decision.

The AER acknowledges that it recently granted FMMN's request for additional time to file the TLU study in respect of the Pike 2 project. However, the AER must exercise its discretion having regard to the particular circumstances of the Extension Request and the nature of the Expansion Project.

As noted by CNRL, the Expansion Project is different from the Pike 2 project. While the terms of reference for the Pike 2 project environmental impact assessment (EIA) required a study of affected Indigenous communities' TLU areas, an EIA was not required for the Expansion Project. Accordingly, CNRL was not required to collect TLU information for the Applications.

¹ Application 1917507

² FMMN requested that the AER grant FMMN an extension to file the TLU study in respect of CNRL's Pike 2 project before November 30, 2019. The AER granted FMMN's request on September 30, 2019.

In the Extension Request, FMMN provided a copy of correspondence it sent to the AER on June 1, 2019, stating that FMMN would work with Devon or the new owner of its oil sands properties to conduct a TLU study and would provide that study to the AER upon completion. However, while this letter references the Expansion Project, FMMN submitted it as a supplement to the statement of concern FMMN filed in respect of the Pike 2 project. Further, while FMMN states in the Extension Request that its decision to self-fund the TLU study was made following the sale of Devon's assets to CNRL, FMMN did not notify the AER of this decision or request the ability to specifically submit the TLU study in support of SOC 31528 until FMMN filed the Extension Request more than four months after the deadline for filing a statement of concern in respect of the Applications.³ During this time, the AER largely completed its review of the Applications and SOC 31528, and had proceeded to the decision stage of the AER's statement of concern review process.

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The AER also notes (1) that FMMN was aware of the location and boundaries of the Expansion Project area prior to submitting SOC 31528 and the accompanying affidavits; and (2) that the hunting, trapping, camping and fishing locations, as well as gathering areas and berry picking sites identified in the affidavits are not in or immediately near the Expansion Project area. Accordingly, and as outlined in further detail below, the AER is of the view that SOC 31528 and the attached affidavits do not sufficiently detail how the Applications may directly and adversely affect FMMN members and their traditional use activities. The AER acknowledges that collecting information regarding community members' land use is not an instantaneous process. However, FMMN has had several months to request that the AER grant FMMN an extension to file the TLU study and did not do so until October 3, 2019. FMMN has thus had ample opportunity to file a statement of concern in respect of the Applications and submit further affidavit or other evidence indicating how the Applications may directly and adversely affect FMMN members and their traditional use activities.

The AER endeavours to assess submitted applications and statements of concern in an efficient manner. In doing so, the AER must strike a fair balance between making timely decisions on applications and allowing concerned parties the opportunity to participate in the regulatory process. FMMN had information regarding the Expansion Project area and has had a fair opportunity to file a statement of concern and any additional supporting information in respect of the Applications. In light of the foregoing, the AER denies the Extension Request because allowing FMMN to file a TLU study this late in the process is not justified and would create unwarranted delays and unfairness to CNRL.

A Hearing is Not Required to Consider the Concerns Outlined in SOC 31528

The AER has determined that a hearing is not required to consider the concerns outlined in SOC 31528. In our review of SOC 31528, we considered the following:

- You state that FMMN members have unextinguished Aboriginal rights to hunt, fish, trap and gather, as well as exercise activities necessarily incidental to these activities on lands

³ <https://www.aer.ca/regulating-development/project-application/notices/application-1920658>

overlapping the Expansion Project area. You also state that construction of the Expansion Project will directly and adversely impact the exercise of current and future FMMN members' rights in the Expansion Project area. To this end, FMMN provided several affidavits with high-level maps identifying hunting, trapping, camping and fishing locations, as well as gathering areas and berry picking sites.

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- However, the highlighted locations or sites are not in or in the immediate vicinity of the Expansion Project area. Accordingly, these locations or sites, as well as the aforementioned general concerns, do not establish that FMMN may be directly and adversely impacted by the Applications. Further information is required to establish a sufficient degree of location or connection between the Expansion Project and the rights asserted.⁴ FMMN does not identify in sufficient detail how the Expansion Project may directly and adversely affect FMMN members and their traditional activities.
- Your raise general concerns regarding the negative consequences of development in the Expansion Project area on traditional land use activities. You also state that FMMN members are concerned that development in the area will restrict access to lands previously available to FMMN members to practice their Aboriginal rights to hunt, gather and trap, and scare away wildlife. However, these concerns are vague and FMMN has not provided the AER with sufficient information outlining how the Applications will negatively affect traditional land use activities and the practice of FMMN members' Aboriginal rights. That being said:
 - CNRL has committed to locating well pads and associated steam-assisted gravity drainage (SAGD) infrastructure on existing clearings and corridors and in areas of low environmental sensitivity where practicable.
 - CNRL will have to apply to the AER for the appropriate *Public Lands Act (PLA)* dispositions in order to carry out the activities outlined in the enclosed approvals. FMMN will have the opportunity file a statement of concern outlining more specific concerns regarding access to lands for the practice of Aboriginal rights when that occurs.
 - CNRL is required to comply with applicable Government of Alberta policies, guidelines and requirements relating to wildlife impacts.
 - CNRL is required to comply with the requirements set out in *Directive 038: Noise Control*.
- In relation to your concerns regarding decreased water levels and water contamination:
 - CNRL has not applied to divert surface water or for any additional source water wells as part of the Applications.

⁴ *Ibid* at paras 10, 14, and 18.

- CNRL is required to comply with the industrial wastewater and industrial runoff requirements set out in Schedule V of *Environmental Protection and Enhancement Act (EPEA)* Approval 224816-01-00, as amended.
- CNRL is required to comply with the groundwater monitoring and remediation requirements set out in Schedule VI of *EPEA* Approval 224816-01-00, as amended.
- With respect to your concerns regarding habitat loss, CNRL is required to progressively reclaim project lands in accordance with applicable Government of Alberta legislation, policy, criteria and guidelines as well as directions from the AER.⁵
- In relation to your concern regarding diminishing furbearers, CNRL is required to comply with applicable Government of Alberta policies, guidelines and requirements relating to wildlife impacts. CNRL must also comply with the requirements of Schedule VIII of *EPEA* Approval 224816-01-00, as amended, which requires, among other things, that CNRL conduct wildlife mitigation in accordance with the *Master Schedule of Standards and Conditions (MSSC)*⁶ and implement a Wildlife Mitigation and Monitoring Program as authorized in writing by the AER.
- With respect to your concerns regarding the risk of leaks or spills and other impacts into nearby waterways and groundwater:
 - Standard conditions in AER-issued *PLA* dispositions require that CNRL comply with applicable watercourse and waterbody setbacks as required in the *MSSC*. FMMN will have an opportunity to file a statement of concern outlining specific concerns regarding impacts to waterways when CNRL applies for the applicable *PLA* dispositions.
 - CNRL is required to comply with applicable laws and regulations as well as the conditions of the attached approvals, including with respect to the reporting and remediation of spills and releases that may occur during the life of the project,⁷ and the management of industrial wastewater and industrial runoff.⁸
- Concerns regarding sport hunting and fishing and safety concerns that arise from increased human and industrial vehicle activity are outside of the AER's jurisdiction. CNRL is required to comply with applicable legislative and regulatory requirements related to safety and the operation of industrial vehicles.

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Based on the foregoing, FMMN has not demonstrated that it may be directly and adversely affected by the Applications, and a number of its concerns are vague or relate to matters outside of

⁵ See for example *Specified Enactment Direction 001: Direction for Conservation and Reclamation Submissions*, Alberta Energy Regulator, February 2016.

⁶ *Master Schedule of Standards and Conditions*, Government of Alberta, 2018.

⁷ See, for example, *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, ss 110 and 112 [*EPEA*].

⁸ See, for example, Schedule V, *EPEA* Approval 224816-01-00, as amended.

the AER's jurisdiction. As stated, the AER has issued the applied-for approvals, copies of which 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 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>.

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Under the *Responsible Energy Development Act (REDA)*, an eligible person may request a regulatory appeal of an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *REDA* 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. Filing instructions and forms are on our website under Regulatory Appeal Process.

If you have any questions, contact Brittney Goudreau at 780-641-9038 or by e-mail Brittney.Goudreau@aer.ca.

Sincerely,

<Original Signed By>

Rob Cruickshank
Director, Business Process, Authorizations

Enclosure (2): (Approval)

cc: Meaghan Conroy
Canadian Natural Resources Limited, Maude Ramsay
Canadian Natural Resources Limited, Greg Brady
AER SOC Assessor
AER Fort McMurray Field Centre
AER Indigenous Relations
Aboriginal Consultation Office