

Attachment 12
Foothills Ojibway First Nation





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December 5, 2012

WITHOUT PREJUDICE

Terry Abel
Executive Manager
Oil Sands and Coal Branch
Alberta Energy Resources Conservation Board
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4

Re: Duty to consult the Foothills Ojibway First Nation with respect to the Coal Valley Resources Inc. Robb Trend Project & Coalspur Mines Ltd. Vista Coal Project

Dear Mr. Abel,

We act as legal counsel for the Foothills Ojibway First Nation (FOFN), previously referred to as the Foothills Ojibway Society. This letter is in response to CEEA President Elaine Feldman's correspondence of April 13, 2012, replying to our March 7, 2012 letter sent to a number of Federal and Provincial Government departments. Both letters are included at TAB 1 for your convenience. We were compelled to write in March in order to alert you to the negative impacts Coal Valley Resources Inc. (CVRI) mining projects are having on FOFN's traditional territory.

Specifically, the construction and operation of its Mercoal West, Yellowhead Tower, and Obed Mountain coalmines have caused great damage to the FOFN's traditional territory and consequently to their sacred sites. The proposed Robb Trend Project is threatening to do the same, should it be approved. We also expressed concern regarding Coalspur Mines Ltd.'s proposed Vista Coal Project as it is similarly located in their territory. We assert that in both cases the Government(s) must consult and accommodate the FOFN.

Ms. Feldman's April letter requested that specific information be provided to assist the Government of Canada in determining whether or not there is in fact a duty to consult and accommodate the FOFN. We determined that the Alberta Government would also benefit from this information and therefore we are also submitting our response to you. In particular, Ms. Feldman requested that we provide:



- A map of the traditional territory of the FOFN;
- An identification of communities that FOFN members consider their permanent residence;
- A history of FOFN and how they came to settle in the current area; and
- A description of asserted Aboriginal rights potentially impacted by the proposed project.

Given the long history the Federal and Alberta Governments have with FOFN, we are both surprised and alarmed by this request. The Crown cannot be ignorant of the FOFN as there has been an enduring campaign to educate both levels of government about this group for decades. It is clear, however, that since their refusal to adhere to Treaty 6, the Governments have turned a blind eye to this group.

Below we answer each of the questions posed in the hopes that the information will settle the question of the need to consult and accommodate the FOFN on their traditional territory once and for all. Note that we are sending this letter to both levels of government in order for this information to be appropriately registered. The status quo of needing to prove the existence of a duty every time a resource project is proposed is an unreasonable, unjust, financially onerous, and needlessly time consuming task. These demands are particularly egregious in light of the limited means of FOFN who do not benefit from a single Aboriginal Government funding scheme.

Given the important human, cultural, spiritual, and environmental questions at issue, we remain optimistic that the Government will find a way to overcome the inevitable bureaucratic hurdles that result from the FOFN being non-status, and non-treaty. These are Aboriginal peoples as recognized by s. 91(24) of the *Constitution Act, 1867* and s. 35 of the *Constitution Act, 1982* and their rights must be respected accordingly. It is unfathomable that because the FOFN resisted conforming to the colonizers' culture, resisted sending their children to residential school, and lived traditionally as long as physically possible, that they are somehow considered "less Aboriginal" and less entitled to being consulted than other registered First Nations. Anyone who meets this group would be struck by the absurdity of the situation.

The need to vigilantly work to protect the FOFN's traditional sites and way of life has and continues to require constant attention and could easily employ several persons full-time. In the past two decades alone they have dealt with:

- Luscar Sterco, now Sherritt International;
- Suncor Energy;
- Hinton Wood Products a division of West Fraser Mills Ltd.;
- Coalspur Mines;
- Petro Canada Oil and Gas;



- Cougar Rock Development;
- Cardinal River Coals; and
- Kinder Morgan.

With every new project comes the uphill battle of trying to convince the Government and industry they must be consulted. In fact, not only does the Alberta Government fail to respect this duty, but it has worked to undermine their efforts by adopting the policy that the FOFN should not be consulted. This is because engaging in “consultation efforts with non-status Aboriginal groups within the Province of Alberta [including FOFN] has the potential to create an expectation amongst these communities” and could “complicated future regulatory hearings and/or other government-led initiatives in their respective communities”. Alberta Justice has woefully misunderstood Canadian law on the matter of Aboriginal consultation requirements.

Briefing Note for the Deputy Ministers' Committee on Aboriginal Consultation: Alberta's Position on Non-Status Communities, Nov. 17, 2010, at TAB 2.

To have come to this conclusion with regard to an identifiable group of Aboriginal peoples is unconstitutional. Mercifully not all governmental agencies have refused to acknowledge the FOFN's right to be consulted. The National Energy Board, for example, required Kinder Morgan to take seriously the FOFN's claims, resulting in a positive working relationship between the company and the FOFN.

National Energy Board Letters, Mar. 7, 2008 & Aug. 22, 2008, at TAB 3.

The FOFN have worked hard to remain outside of the Canadian Aboriginal policy framework over the past century in order to preserve their culture, language, teachings, and religious practices. Given the Federal Government's recent apology for the forced residential school attendance and the catastrophic effects this policy had on Aboriginal peoples, the Government should respect the FOFN's foresight. Instead, they have been both ignored and punished for refusing to conform.

See for example Gordon Aalborg, “Indians Spurn White Ways”, *The Edmonton Journal* (circa 1960s) & Eric Denhoff, *The Edmonton Journal* (June 15, 1978), at TAB 4.

Over the course of the 20th Century, it has become increasingly difficult for the FOFN to exercise their traditional lifestyle due to settler encroachment and industrial development on their traditional territory. As a non-treaty, non-status Aboriginal people, both the Provincial and Federal Governments seem incapable of taking seriously their rights and ensuring that they be consulted and accommodated with regard to their traditional territory. As such, the FOFN have decided that they may have no other option but to enter the system to gain formal recognition. This has been a slow and frustrating process, starting with FOFN members having to go to great



lengths to be granted Canadian birth certificates in 2006. This involved undertaking a genealogical study with the Government of Alberta. The First Nation is currently considering its options regarding whether to pursue Band status under the *Indian Act*.

1. Map of traditional territory of the FOFN

A map of the traditional territory is included at TAB 5. The legend on the map explains the movement of the FOFN throughout the province. Below is a table providing additional information, including the dates and locations of important settlements as well as events of interest associated with certain settlements. It should be noted that the five original families whose descendants make up the FOFN, namely the O’Chiese, Whitford, Beaverbone, Big John, and Little John families, would sometimes go their separate ways for a variety of reasons.

Historically, teepee and small cabin villages were established by FOFN in locations where hunting and food gathering activities were most easily supported. In the 1800s and 1900s, in addition to locations being chosen for harvesting activities, additional factors had to be taken into consideration. Firstly, they were greatly preoccupied with keeping their children hidden from the Indian Agents to avoid the forced attendance of residential schools. Secondly, they were preoccupied with maintaining the secrecy of the spiritual ceremony sites as a result of their being outlawed. Thirdly, they were forced to move as a result of settler encroachment. On average, the FOFNs would remain at the village site for between two and ten years.

Letter to Inspector of Indian Agencies C. Schmidt from Henry Stelfox (May 14, 1941); see also Letter to Minister of Lands and Mines, N.E. Tanner from Henry Stelfox (Oct. 29, 1948); Letter to Minister of Lands and Mines, N.E. Tanner from Henry Stelfox (Nov. 11, 1948) at TAB 6.

| # on Map | Date of Settlement | Chief | Location of settlements & Events of Interest |
|----------|--------------------|--------------|--|
| 1 | Mid-1800s | Hakemasin | Jasper area |
| 2 | 1900s | Jim O’Chiese | Medicine Hat & Cyprus Hills |
| 3 | 1908 | Jim O’Chiese | Future Chief Peter O’Chiese born in Waterton area |
| 4 | 1920 | Jim O’Chiese | Medicine Lake (47 miles north of Rocky Mountain House) |
| 5 | Mid-1920s | Jim O’Chiese | Red Deer |
| 6 | 1927 | Jim O’Chiese | Rocky Mountain House Prairie Creek area |
| 7 | 1928 | Jim O’Chiese | Ram Falls |
| 8 | 1930 | Jim | Chief O’Chiese in Edmonton helping his sick brother Laboutac |



| | | | |
|----|----------|----------------|---|
| | | O'Chiese | |
| 9 | 1931 | Jim O'Chiese | Baptiste & Nordegg Rivers, Chief O'Chiese dies and is buried near Nordegg River |
| 10 | | | |
| 11 | 1932-51 | John O'Chiese | Rocky Mountain House area, 1951 living on O'Chiese Reserve but forcibly removed by RCMP on Christmas eve as O'Chiese & followers refused to sign on to treaty |
| 12 | 1952-3 | John O'Chiese | Wolf Lake to Blackstone Gap, Southesk Lake then to Pembina Forks then northwest to Malboro, then back to Pembina Forks; Whitford family stay in Pembina; Chief John O'Chiese dies and is buried near Pembina Forks |
| 13 | 1950s | Peter O'Chiese | Families agreed to separate into three groups near Malboro under the leadership of Chief O'Chiese, and headmen Little John and Big John, in order to ensure the sacred bundles were not all in one area – travel variously through Wabuman, Sangudo, Whitecourt, Swan Hills, Little Smoky, Wolf Lake, Wolf Creek area |
| 14 | 1953 | Peter O'Chiese | Future Chief Jim O'Chiese born at Pembina Forks |
| 15 | 1960s | Peter O'Chiese | Jasper area and Buffalo Prairie, although forbidden from practicing their spiritual ceremonies in the park; Band member graves dug up in Rocky Mountain House National historic Site and transported to University of Alberta, family members afraid to protest disturbance until 2007 at which point re-interred |
| 16 | 1970s | Peter O'Chiese | Families reunited at Little Berland River (see TAB 7), left after unknown parties burnt & bulldozed village |
| 17 | 1980s | Peter O'Chiese | Entrance and Niton Junction |
| 18 | 1990s | Jimmy O'Chiese | Pembina and Brazeau, then Entrance and Hinton |
| 19 | 1970-90s | Jimmy O'Chiese | After village destroyed on Little Berland, the five families settled permanently in Entrance, Hinton, Robb, Edson, and Jasper National Park. |

2. Identification of communities that FOFN members consider their permanent residence

There are just over 270 declared members of the FOFN. They are descendants of the five original Ojibway families mentioned above. These families have close ties that date back several hundred years. Jimmy O'Chiese has been their hereditary chief since 1994, taking over from his father Peter O'Chiese. The picture included at TAB 7 is an image of their last communal traditional settlement at Little Berland River in the 1970s. When it was burnt down and



bulldozed by an unknown party, the families scattered. Since then, they have remained in and around Entance, Hinton, Whitecourt, and Calgary.

3. History of FOFN and how came to settle in current area

The history of the FOFN is one that is relatively well documented, partly because their oral histories are alive and well, and partly because a settler, and former Indian Agent near Rocky Mountain House, named Henry Stelfox wrote extensively about the group. Over the past century, the FOFN have been called variously the “John O’Chase Band”, the “John O’Chiese Band”, the “Non-Treaty Chippewa”, and the “Whitecourt Non-Treaty Chippewa”. As a result of the Canadian Government’s creation of the “O’Chiese Band” in the 1950s—an obvious misnomer given that Chief O’Chiese and his followers refused to sign treaty—they now call themselves the Foothills Ojibway.

Approximately five centuries ago, forty families who were predominantly Ojibway as well as some Cree left the eastern region of what is now Canada in search of a new home. Their motivation in leaving was to protect sacred teachings and their way of life in response to the fact that Jesuit priests had arrived in the area with the intent to convert the Aboriginal peoples.

The Ojibway travelled west, moving between Canada and the United States before settling in Alberta around the beginning of the 17th century. Their oral histories explain that the families moved along two separate routes around the Great Lakes. One route went through Minnesota, Wisconsin, and into Montana where some families settled permanently. The other route taken was through Ontario, Manitoba, and Saskatchewan arriving at Manitou Lake (Onion Lake, Saskatchewan). There again they divided into two groups, one heading north and the other south (refer to the map at TAB 5 for visual reference).

For generations thereafter, the group led a semi-nomadic existence throughout a large territory in and near the eastern slopes of the Rocky Mountains (“Eastern Slopes”). They continued to live in accordance with traditional Ojibway teachings, resulting in the maintenance of a close connection to the land throughout the Eastern Slopes.

In the early-to-mid 1900s, there was an elaborate and lengthy attempt by the Crown to have the FOFN adhere to Treaty 6. As stated by R.A. Hoey, Superintendent of Welfare and Training, “It seems apparent that the problem confronting us with these non-treaty Indians will not diminish; in fact, their [sic] increasing in population and their tendency to move about indicates that sooner or later some definite action will require to be taken”.

Letter to C.P. Schmidt, Inspector of Indian Agencies from R.A. Hoey, (Oct. 7, 1940); see also Letter to J.L. Grew, Sur Supervisor, from C.P. Schmidt (Dec.21, 1942), at TAB 8.

Despite his apparent dislike and frustration with the “pagan fanatic” Chief O’Chiese, Superintendent D.J. Allan recognized that “all Indians recognizing John O’Chiese’s leadership



should be constituted an Indian Band under the Treaty”. The Department of Citizenship and Immigration, Indian Affairs Branch, was well aware that the O’Chiese band (i.e., FOFN) did not look favourably upon the proposition of adhering to Treaty 6. It was clear that the Government would face great difficulty in getting the majority of the band’s leadership on board—a necessary condition for the treaty signature to be valid. Allan expressed hope that the minor chiefs, or headmen, Big John and Little John could be persuaded to agree to sign on to tip the balance. They did not.

Superintendent D.J. Allan, “Memorandum Re: John O’Chiese Band, Rocky Mountain House” (March 21, 1950), at TAB 9.

Even when it became clear that this community would not sign, the Crown set aside some land, convinced that they would eventually capitulate. A large faction of the Cree adhered to Treaty 6 in 1944, forming the Sunchild Band. A few of the Ojibway formed the O’Chiese Band and adhered to Treaty 6 in 1952. The fact that the community’s leader, Chief John O’Chiese, and the two headmen, namely Big John and Little John, refused to sign did not dissuade the Crown from accepting surrender on behalf of the band. Nor did it dissuade the Crown from drafting the Adhesion to Treaty to read that “we the undersigned Chiefs and Headmen hereby for ourselves and the Indians whom we represent, in consideration of the provisions of the said treaty being extended to us and the Indians whom we present, cede, transfer, surrender and relinquish to His Majesty the King”. As the true chief and headmen refused to sign, the Commissioners had other members of the band sign, namely Joe Strawberry, Andrew Strawberry and James Daychief, who were appointed as community leaders by the Commissioners.

Adhesion to Treaty 6 (1950), O’Chiese First Nation, available online at: [http://www.ochiese.ca/History/Adhesions-to-Treaty-6-\(1950\)/](http://www.ochiese.ca/History/Adhesions-to-Treaty-6-(1950)/), at TAB 10.

Chief John O’Chiese’s refusal to sign Treaty was based on his distrust of the Crown’s intentions and the undesirable muskeg land being offered to them. When he died in 1953, the leadership passed to his son Chief Peter O’Chiese who similarly refused.

4. Description of asserted Aboriginal rights potentially impacted by the proposed project

The Eastern Slopes fall within territory that is deemed to have been surrendered pursuant to Treaties 6 and 8. The Foothills Ojibway, however, have never surrendered nor conditioned any of their constitutional interests. As such, their Aboriginal title and rights remain intact. In the words of Chief Peter O’Chiese who was concerned about mining developments on their traditional land: “Mr. Prime Minister, our people never gave up this land. It is still our traditional territory. What are you going to do about my worry about what your people are doing on our land?”

Letter by Chief Peter O’Chiese to P.M. Jean Chrétien (Jan. 10, 1996), at TAB 11.



The community has a vast network of sacred sites throughout the Eastern Slopes of the Rocky Mountains. More than 800 traditional land-use sites in and near the Eastern Slopes have been catalogued as a result of the Aboriginal Involvement Program with the Foothills Model Forest, a member of the Canadian Model Forest Network. The Program has resulted in the cataloguing of various family gravesites found in Nose Hill Park, and near Red Deer, Waterton, Cadomin, Little Berland River, Hinton, Robb, and Rocky Mountain House. Other sites have also been identified, such as fasting and other ceremonial sites, the O'Chiese Law Lodge sites, archeological sites, cultural and medicinal vegetation sites.

Despite these many efforts, the Canadian and Alberta Governments have taken the disingenuous position that the FOFN's interests in their traditional lands were surrendered. As a result, these sites continue to be devastated on a large scale in the absence of proper consultation and accommodation. These natural resource extraction projects, which are seemingly never ending, are threatening the FOFN's way of life, culture, language, and religion.

In response to this letter, we request that the FOFN's traditional territory as presented on the map at TAB 5 is entered into the relevant Governmental registries, including in particular the Aboriginal and Treaty Rights Information System (ATRIS). This will ensure that both Federal and Provincial Government departments will be aware of the existence of the duty to consult and accommodate the FOFN on their traditional territory.

In addition to this action, which will serve to prevent future oversights and injustices, we also request that consultation and accommodation be undertaken with regard to the two proposed projects mentioned at the beginning of this letter, namely Coal Valley Resources Inc.'s proposed Robb Trend project and Coalspur Mines' proposed Vista Coal project. To date there has been a complete failure by the Crown to respect their obligations towards the FOFN with respect to these applications.

We trust that this information contained in this letter will assist CEAA, along with other Federal and Provincial Government departments, in understanding their constitutional obligations towards this Aboriginal group. Their history, like so many others in this country, is a difficult one of displacement and oppression. It is time to redress this situation.

Regards, /

<original signed by>

Kathryn Tucker



cc.

Chief Jim O'Chiese, Foothills Ojibway

Keith Shepherd, Consultant, Foothills Ojibway

Elaine Feldman, President, CEAA

Michael Wernick, Deputy Minister, AAND Canada

Dana Woodworth, Deputy Minister, ESRD Alberta

Bill Werry, Deputy Minister, Aboriginal Relations Alberta

Sean Carriere, Project Manager, CEAA



Canadian Environmental
Assessment Agency

Agence canadienne
d'évaluation environnementale

President

Président

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Ottawa ON K1A 0H3

APR 13 2012

Mr. Peter W. Hutchins
Hutchins Legal Inc.
204 du Saint-Sacrement Street, Suite 300
Montreal, Quebec
H2Y 1W8

Dear Mr. Hutchins:

On behalf of my colleagues, Ms. Yaprak Baltacioğlu, Deputy Minister of Transport, Ms. Claire Dansereau, Deputy Minister of Fisheries and Oceans and Mr. Serge Dupont, Deputy Minister of Natural Resources, I would like to thank you for your letter of March 7, 2012, concerning the environmental assessment (EA) of the proposed Coal Valley Resources Inc. Robb Trend Project (the Project).

A federal screening level EA of the proposed project is required under the *Canadian Environmental Assessment Act* (the Act), as Fisheries and Oceans Canada, Transport Canada and Natural Resources Canada may have regulatory and statutory responsibilities in relation to the proposed project and subsequently are responsible authorities pursuant to the Act. The Canadian Environmental Assessment Agency (the Agency) is coordinating the EA process on behalf of the Government of Canada with the Province of Alberta, as per the *Canada-Alberta Agreement on Environmental Assessment Cooperation*.

The Government of Canada takes a 'whole of government' approach to Aboriginal consultation for major resource projects to ensure that potentially affected Aboriginal groups are consulted when it contemplates actions that may adversely impact potential or established Aboriginal or Treaty rights and interests.

.../2





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March 7, 2012

WITHOUT PREJUDICE

Elaine Feldman
President
Canadian Environmental Assessment Agency
Place Bell Canada 160 Elgin Street, 22nd Floor
Ottawa, Ontario K1A 0H3
Canada

Dear Ms. Feldman,

We act as legal counsel for the Foothills Ojibway community, whose traditional territory is located on the eastern slopes of the foothills of Alberta, including in the vicinity of Hinton, Alberta, both within and outside Jasper National Park. The Foothills Ojibway have retained their Aboriginal attachment and rights to their traditional territory. They are the descendants of Ojibway who refused to take treaty with the Crown in the 19th century and continue to refuse any arrangement that might be interpreted as a surrender of their rights.

We are contacting you regarding the negative impacts to the community's traditional territory caused by Coal Valley Resources Inc. (CVRI) in the construction and operation of its Mercoal West, Yellowhead Tower, and Obed Mountain coal mines, as well as possible negative impacts by the planned Robb Trend Project or other future projects, and their implications for the Honour of Crown.

The Crown had and continues to have a constitutional duty to meaningfully consult and accommodate the Foothills Ojibway indeed to cooperate, directly or through the company, with the First Nation with respect to its approval of decisions that affect this First Nation's traditional territory in its physical, cultural and spiritual aspects.

With regards to the Obed Mountain, Mercoal West and Yellowhead Tower mines that have already been constructed, CVRI failed to avoid any destruction of the sacred and archaeological sites that would have otherwise been identified by Chief James O'Chiese



There is potentially already reason for concern that the rights and interests of the Foothills Ojibway are not fully being taken into consideration as the regulatory process unfolds. For instance, in the document "Robb Trend Project - Summary Table and Map", published on the Alberta Environment and Water website, and enclosed here, one finds a statement that the Robb Trend project has "received sign off from all key aboriginal groups for most of the Robb Trend Area" (our emphasis). However, the Foothills Ojibway have not "signed off" on the project and *all* aboriginal groups are *key*. This statement is likely to mislead the reader into believing that the "Aboriginal question" has been satisfactorily put to rest. The inaccuracy and misleading character of such statements demonstrate the importance of regulatory vigilance in these matters. Impacts on the spiritual and physical wellbeing of First Nations are not peripheral issues; rather they engage the Chief Justice's "core precept".

In addition, the Foothills Ojibway are concerned by the possibility that CVRI may be permitted to avoid having to submit an integrated application for the Robb Trend Project. If CVRI is simply allowed to first submit its broad positive affirmations under the EIS/EIA and then to later submit the technical specifications, it will be more difficult to maintain proper regulatory surveillance of potential discrepancies between CVRI's broad affirmations and the more technical features of the Robb Trend project.

For the above reasons, to ensure a faithful representation of the Nation's position and to ensure the utmost protection of the Nation's rights and interests in its traditional territory, the Foothills Ojibway are providing notice of their intent to fully engage in all the regulatory approval processes required of the Robb Trend Project and the Vista Coal Project including, but not limited to, those processes established by the *Canadian Environmental Assessment Act*, and Alberta's *Environmental Protection and Enhancement Act (EPEA)*, *Water Act*, and *Energy Resources Conservation Act*, all regulations established under these acts, and any other relevant acts or regulations.

For the moment, the Foothills Ojibway expect:

- that a close regulatory surveillance will be kept by the CEA Agency on CVRI and Coalspur;
- to be permitted to make representations to the CEA Agency, including providing comments on CVRI's draft EIS/EIA and technical information, as well as to continue to report on the usefulness of the discussions with CVRI with similar conditions applying in the case of Coalspur;



Corrine Kristensen, Acting Team Leader, Environmental Assessment, Environmental Assessment Group, Environment and Water

Terry Abel, Executive Manager, Oil Sands and Coal Branch, Alberta Energy Resources Conservation Board

Shauna Sigurdson, Regional Director, Alberta & NWT Regional Office, Canadian Environmental Assessment Agency

Sean Carriere, Project Manager, Canadian Environmental Assessment Agency

Stephen Bodley, Director, Coal Valley Resources Inc.

Dean R. Chambers, Director, Coal Valley Resources Inc.

David V. Pathe, Director, Coal Valley Resources Inc.

Mark Plamondon, Director, Coal Valley Resources Inc.

Dave Rutland, General Manager, Coal Valley Mine, Coal Valley Resources Inc.

Les Lafleur, Engineering Manager, Coal Valley Resources Inc.

Colin Steyn, Chairman, Board of Directors, Coalspur Ltd.

Eugene Wusaty, Managing Director and CEO, Coalspur Ltd.

Dermot Lane, Vice President, Development, Coalspur Ltd.

**DEPUTY MINISTERS' COMMITTEE ON
ABORIGINAL CONSULTATION
AGENDA**

**November 17, 2010
9:00 - 11:00**

**TAWAW BOARDROOM
19th Floor Commerce Place
10155 - 102 Street
Edmonton AB**

- | | | |
|----------------------|---|------------------------------------|
| 9:00 - 9:05 | 1. Approval of May 12, 2010 Minutes | |
| 9:05 - 9:30 | 2. Business Arising from the May 12, 2010 Minutes <ul style="list-style-type: none">a) Non Status Communities<ul style="list-style-type: none">• Legal Opinion - Nakcowinewak Nation of Canada• Legal Opinion - Foothills Ojibway and Asenwuche Winewak Nation | Information Decision |
| 9:30 - 9:45 | 3. Updates <ul style="list-style-type: none">a) Consultation Training Strategyb) Canada - Alberta MOU<ul style="list-style-type: none">• Draft Canada - Alberta Memorandum of Understanding | Information Information |
| 9:45 - 10:00 | 4. Consultation Policy Review <ul style="list-style-type: none">a) Critical Paths List of Policy Guidelines Review Processb) First Nations and Industry Consultation Position Papers - Comparative Analysis Matrices | Information |
| 10:00 - 10:30 | 5. Aboriginal Framework Policy Paper <ul style="list-style-type: none">a) The Government of Alberta's Aboriginal Framework Key Policy Decisionsb) The Government of Alberta's Aboriginal Framework Paper | Discussion |
| 10:30 - 11:00 | 6. SREM Consultation Coordination <ul style="list-style-type: none">a) Workshop Summary | Discussion |
- Next Meeting: To Be Determined**

**Government of Alberta ■
Aboriginal Relations**

Premier Meeting, June 14, 2010.

- South Saskatchewan River Basin
 - Bev Yee provided an update on the case between Tsuu T'ina, Samson and the Alberta Government.

Bev Yee

Action Item: Justice to provide a summary of the SSRB Alberta Court of Appeal decision/analysis and "lessons learned" to be prepared for each consulting Ministry. Environment to invite the cross-ministry group to participate in "Lessons Learned" session from this case to be held in late June 2010.

4. Internal Audit

Don Kruk

- Internal Audit presented by Don Kruk with recommendations for cross ministry training, clearer documentation and records management. A central repository for housing training information that can be used by all cross-ministry consultation staff needs to be endorsed at the Deputy Minister level.

Action Item: ACCG to formulate a comprehensive training outline, led by Aboriginal Relations, to be brought back to the Deputy Minister's Committee for approval. Training to be included in Performance Agreements for all staff involved in Consultation. Justice to provide legal advice for the cross-ministry consultation training & coordination of records management initiatives.

5. Nakowinewak Nation of Canada

Don Kruk

- Don Kruk provided an update on the legal opinion.

Action Item: Any department dealing with Nakowinewak, A/WN and Foothills Ojibway to contact with Stan Rutwind for advice on a general approach for consultation across all departments. Justice to provide a legal opinion and recommendations for consulting ministries regarding the unrecognized aboriginal groups of Foothills Ojibway, Nakowinewak Nation and Assenwuche Winewak Nation (AWN). Justice (Tom Rothwell) will also provide assistance with letters to the associations.

6. Peerless Trout First Nation Update

Steven Andres

- Steven Andres provided an update on the Bigstone Land Claim which encompasses Peerless Trout First Nation. The Nation will have a band in place in the next few weeks.

Action: Report to go to Cabinet in June, information still to come from Sustainable Resource Development.

BRIEFING NOTE FOR THE DEPUTY MINISTERS' COMMITTEE
ON ABORIGINAL CONSULTATION

ALBERTA'S POSITION ON NON-STATUS COMMUNITIES

DATE: November 17, 2010

ISSUE:

Alberta Justice has provided legal opinions on a proposed Government of Alberta position regarding consultation with the three non-status communities of Nackowinewak Nation of Canada (NNC), Foothills Ojibway (FO) and Aseniwuche Winewak Nation (AWN).

RECOMMENDATION / DECISION REQUESTED:

- The Deputy Ministers responsible for First Nations consultation accept the recommendations of Alberta Justice not to consult with NNC and FO, but to continue consultation efforts with AWN.
- The Deputy Ministers Committee approve the drafting of letters by Aboriginal Relations, advising NNC and FO of Alberta's position in this regard.

BACKGROUND:

- Alberta Justice has concluded that consultation efforts with non-status Aboriginal groups within the Province of Alberta has the potential to create an expectation amongst these communities that they are entitled to be consulted on decisions concerning land management and resource development activities in their respective areas.
- On March 11, 2010, Alberta Justice provided Aboriginal Relations with a legal opinion on consultation with NNC (attached). On June 14, 2010, another legal opinion on consultation with FO and AWN was provided (also attached).
- With respect to NNC and FO, Alberta Justice has recommended that in the absence of a legal duty to consult with these groups, ongoing consultation by Alberta may complicate future regulatory hearings and/or other government-led initiatives in their respective communities.
- Regarding AWN, Alberta Justice has recommended that Alberta continue to engage in lower level consultation with this non-status community, given the rights claimed by AWN, while weak, can be viewed as sufficiently credible and may trigger Alberta's duty to consult.
- Aboriginal Relations agrees with Justice's legal opinion in that continued consultation with NNC and FO has the potential to create an expectation that consultation is legally required.
- Along with Alberta Justice's legal opinions, cross-ministry Aboriginal Consultation Coordination Group (ACCG) representatives have also undertaken an analysis of their current consultation practices with the three non-status communities.

Memorandum

From: Thomas G. Rothwell
Barrister and Solicitor
Aboriginal Law

Our File Reference: 7018-1
Nakcowinewak Nation
of Canada

Your File Reference:

To: Stan Rutwind, Q.C.
Assistant Deputy Minister
Consultation and Land Claims
Aboriginal Relations
19th Floor, Commerce Place
10155 - 102 Street
Edmonton, AB

Date: March 11, 2010

Phone: (780) 422-9388

Fax: (780) 843-0852

Email: Tom.Rothwell@gov.ab.ca

This legal opinion is for internal reference only and is not to be released to any outside party without prior clearance from the Deputy Attorney General or the Assistant Deputy Minister (Legal Services).

Subject: NAKOWINEWAK NATION OF CANADA

I. BACKGROUND

On February 1, 2010 we met to discuss the above noted group. You requested a written legal opinion respecting the status of this group and whether Alberta is legally required to consult with them. My opinion is set out below. My conclusions and recommendations are set out on pages 8 and 9 of this memorandum.

The Nakcowinewak Nation of Canada, a fellowship of aboriginal people ("NNC") is a provincially incorporated society composed of individuals residing in and around Hinton, Alberta. NNC advised that it first incorporated in May of 1998.¹ NNC indicates that as a result of genealogical studies undertaken with the assistance of the Government of Alberta, it has been established that its members are aboriginal. However, the membership requirements of the NNC do not require a member to be an Indian, Inuit, Métis, or have any aboriginal ancestry.² NNC advises that it has approximately 250 members, but does not have a membership list as a result of "human and financial constraints".

¹ The Certificate of Incorporation provided by NNC confirms that the society was formed on May 28, 1998.
² Section 35(2) of the Constitution Act, 1982 defines Aboriginal as "Indian, Inuit or Métis".

Alberta ■

Freedom To Create. Spirit To Achieve.

My opinion regarding whether a duty of consultation is owed to the NNC is based upon the factual information provided by the NNC, Mr. Reddekopp, and verbal briefings from Mr. Andres. Based upon my review of the information, and reputations of Mr. Reddekopp and Mr. Andres, I suspect the information is correct. However, no independent historical documentation or analysis regarding the NNC has been provided to me.

II. ANALYSIS

Duty to Consult

There are three lines of Supreme Court of Canada authority that discuss the Crown's duty to consult.⁶ The three lines of authority have some features in common, such as being premised on the honour of the Crown; however, they apply in different contexts. The three categories are:

a) Justifying Infringement of Proven Rights

Legal Test: Aboriginal and treaty rights are not absolute. Legislation that constitutes a *prima facie* infringement of an aboriginal right will be applicable if it meets the test for justifying an interference with a right recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.⁶

b) Potential Infringement of Claimed Rights

Legal Test: Unlike the situation in Alberta, much of the land in British Columbia has never been surrendered to the Crown by treaty. In British Columbia, there are many unproven claims for aboriginal title and other aboriginal rights to Crown lands. Proving such claims is onerous and time consuming. An issue arose in relation to what protections, if any, would be afforded to aboriginal groups with outstanding rights and title claims prior to those claims being proven in court or dealt with through the British Columbia Treaty Commission process. While treaty negotiations or litigation is ongoing, the aboriginal interest must be preserved pending the resolution of a claim. Consultation is necessary because of the potential for infringement of aboriginal rights and title.

In order to trigger a duty to consult in the unproven claims context, the claimants must outline their claims with clarity, focusing on the scope and nature of the aboriginal rights they assert and on the alleged infringements.⁷ The scope of the duty to consult will vary with the strength of the claim being asserted and the seriousness of the claim being asserted. Where a claim is weak, the right is limited or the infringement is minor, the only duty on the Crown may be to give notice, disclose information and discuss any issue raised in response to the

⁶ *R. v. Sparrow*, (1991) 3 S.C.R. 1076, *Halda Nation v. British Columbia*, [2004] 3 S.C.R. 511, *Taku River Tlingit First Nation v. British Columbia*, [2004] 3 S.C.R. 550 and *Mikisew Cree First Nation v. Canada*, 2005 SCC 69.

⁸ *R. v. Sparrow*, *supra*.

⁷ *Halda Nation v. British Columbia*, *supra* and *Taku River Tlingit First Nation v. British Columbia*, *supra*.

aboriginal and treaty rights that other First Nations receive' is problematic as First Nations' aboriginal and treaty rights across Canada are not homogenous.

Based on the foregoing, it is my opinion that neither the NNC, nor its members, have any known aboriginal or treaty rights recognized by Canadian law. Even if some of their members are eligible to be registered as Indians, this does not mean that they are members of a band that would attract a potential duty of consultation. Aboriginal rights are communal rights, not individual rights. Individuals who are status Indians are able to exercise rights to hunt, fish and trap for food in Alberta under paragraph 12 of the *Natural Resources Transfer Agreement (NRTA), 1930*¹⁰. I was advised in 2006 that the Hinton District Fish and Wildlife Office maintains a list of names, some of whom are members of the NNC, of individuals that they treat like status Indians for the purposes of hunting for food. This decision was made sometime in the 1980's on the basis of advice from Neil Reddekopp and the local Chief Crown Prosecutor. Neil Reddekopp advised me that it was based, in part, on the *Ferguson* case¹¹ and research which indicated that many of these individuals were eligible for registration as Indians under the *Indian Act*. I spoke to Mr. Deryl Empson, Acting Assistant Deputy Minister of Fish and Wildlife for Alberta Sustainable Resource Development (ASRD) who essentially confirmed Mr. Reddekopp's recitation of why these individuals are allowed to, in essence, exercise paragraph 12 NRTA rights.

I am unaware of any Canadian case that recognizes that the existence of an individual right (i.e. paragraph 12 of NRTA) triggers a duty of consultation. Aboriginal Law has previously advised Alberta Sustainable Resource Development that consultation was not required with individuals who were exercising only NRTA rights. For example, Indians from Ontario will travel to southern Alberta to hunt elk. While these individuals are hunting pursuant to paragraph 12 of the NRTA, it is Alberta's position that Alberta is not obligated to consult with these individuals or their Indian Bands. The NNC members may argue that they reside in Alberta, unlike the "tourist" Indians from Ontario. However, they still, in my opinion, face two stumbling blocks:

- (a) They are not members of an Indian Band that adhered to treaty, and/or
- (b) They do not possess any recognized aboriginal rights.

An obligation to consult flows from an aboriginal group possessing treaty or aboriginal rights. NNC possesses neither.

I also note that Alberta has taken the position that it will not consult with breakaway groups from recognized First Nations. For example, a subset of

¹⁰ The Supreme Court of Canada decision *R. v. Frank*, (1978) 1 S.C.R. 95 has been interpreted to allow any status Indian to hunt for food in Alberta pursuant to paragraph 12 of the NRTA notwithstanding they do not live in Alberta.

¹¹ *R. v. Ferguson*, [1983] C.N.L.R. 148. Mr. Ferguson was acquitted on the basis that he "followed the Indian mode of life" and was a "non-treaty" Indian.

The test for aboriginal title was discussed in the *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010. Chief Justice Lamer, at paragraph 143, outlined the test for aboriginal title as follows:

In order to make out a claim for aboriginal title, the aboriginal group asserting title must satisfy the following criteria: (i) the land must have been occupied prior to sovereignty; (ii) if present occupation is relied on as proof of occupation pre-sovereignty, there must be a continuity between present and pre-sovereignty occupation, and (iii) at sovereignty, that occupation must have been exclusive.

The Supreme Court of Canada indicates that assertion of sovereignty is likely preferable to the date of contact as it is often difficult to establish when particular aboriginal groups first made contact. In the present case, based upon the historical information that has been supplied, the members of the NNC did not arrive in the Hinton/Edson area of Alberta until after the 1920's or 1930's. I am not sure what date a court would accept that sovereignty was asserted in the Hinton/Jasper region of Alberta; however, it is clearly well before the arrival of the NNC group. If all members of the NNC in fact are Indians, and have any claim to aboriginal title or perhaps to adhere to treaty, they may possibly have a claim in Saskatchewan, or whatever region they initially inhabited prior to contact with Europeans.

The Supreme Court of Canada, in *Delgamuukw*, at paragraph 152-154, recognizes that First Nations may encounter difficulties proving pre-sovereignty occupation of an area and cautions that flexibility may be required. In the present case the information supplied by the NNC itself indicates that the NNC have not historically resided within the Hinton/Jasper region during anytime period prior to the assertion of sovereignty.

The final requirement to prove aboriginal title requires the First Nation to demonstrate that their occupation of the lands was exclusive flows from the definition of aboriginal title conferring a right to exclusive use and occupation of the lands. Given the inability, in my view, of NNC to satisfy the first two requirements of the test for aboriginal title, it is not necessary to consider this portion of the test. I note that if a claim were filed asserting aboriginal title additional research would have to be undertaken regarding the presence/absence of other groups in this area. Research that will be undertaken in furtherance of defending the claim initiated by the Aseniwuche Winewak Nation (Grande Cache group) may be of some assistance in this regard.

R v. Van der Peet, [1996] 2 S.C.R. 507 is one of the leading cases on the recognition of aboriginal rights and sets out the test for recognition of an aboriginal right. In short, in order for a right to be an aboriginal right it must be a custom, practice or tradition of an aboriginal group that is integral to the

to aboriginal rights and self government however it is my recommendation that Alberta advance the position that all aboriginal rights of Indians in Alberta were extinguished by the treaty if necessary.

receipt of such correspondence, it should be forwarded by registered mail. We previously provided a draft letter for your review and comment that sought to diplomatically convey Alberta's position to the NNC. I attach a copy for your ease of reference (Attachment #3).

Should you have any questions, or wish to discuss this matter, please feel free to contact me.

<original signed by>

Thomas G. Rothwell
Barrister and Solicitor

TGR:te
Attachments

National Energy Board



Office national de l'énergie

File OF-Fac-Oil-T099-2006-01 02
7 March 2008

Mr. Ian Anderson
President
Kinder Morgan Canada Inc.
Suite 2700, 300 - 5th Avenue SW
Calgary, AB T2P 5J2
Facsimile 403-514-6401

Mr. Peter W. Hutchins
Hutchins Caron & Associés
485 McGill, suite 700
Montréal, Québec H2Y 2H4
Facsimile 514-849-4907

Dear Messrs. Anderson and Hutchins:

Complaint of the Foothills Ojibway Re Construction of the TMX Anchor Loop Project being constructed by Kinder Morgan Canada (KMC).

On 25 February 2008, the Foothills Ojibway informed the National Energy Board through their counsel about damage to several of their sacred and archaeological sites, which they say was caused by KMC in the construction of the TMX Anchor Loop Project and requested specific relief from the Board.

On 14 February 2008, the Board authorized Dr. John S. Bulger to meet with KMC and report to the Board on aspects of safety and pipeline integrity during Project construction. The Board has expanded Dr. Bulger's authorization to include:

- KMC's approach to protection of the environment and cultural and heritage resources during Project construction; and
- reporting and making recommendations to the Board on the relief requested by the Foothills Ojibway and on any decision or order of the Board to be made on the matter.

Yours truly,

<original signed by>

Claudine Dutil-Berry
Secretary of the Board

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-2-

Dr. Bulger is authorized to conduct meetings between the Board and the Parties.

Dr. Bulger has all the powers of the Board for the purpose of taking evidence and acquiring the necessary information for the purpose of making the report and possible recommendations to the Board.

NATIONAL ENERGY BOARD

<original signed by>

Claudine Dutil-Berry
Secretary of the Board

AO-1-MO-04-2008

National Energy
BoardOffice national
de l'énergie

File OF-Fac-Oil-T099-2006-01 02
22 August 2008

Mr. Ian Anderson
President
Kinder Morgan Canada Inc.
Suite 2700, 300 5th Avenue SW
Calgary, AB, T2P 5J2
Facsimile: 403-514-6401

Dear Mr. Anderson:

**Trans Mountain Pipeline Inc. (TMPI)
TMX Anchor Loop Project OC-49**

The National Energy Board authorized Dr. John Bulger to report to the Board on, among other things, "the complaints made by the Foothills Ojibway First Nation regarding alleged destruction during Project construction of sacred and ceremonial sites". Pursuant to this authorization, Dr. Bulger recently met with Chief O'Chiese, his assistant Mr. Pat Witmore and Elder Littlejohn of the Foothills Ojibway. The meeting included a visit to the Project right of way at Km 2 + 600 and extending to approximately Km 4 + 000 to examine disturbed Foothills Ojibway ceremonial sites. Chief O'Chiese identified areas where plant communities of special significance to the Foothills Ojibway have been disturbed by construction.

Dr. Bulger was advised that Kinder Morgan is aware of these concerns and has taken some steps to identify and restore these disturbed herb-gathering sites and that the Foothills Ojibway have been involved in monitoring this work.

Before making any recommendation to the Board, Dr. Bulger would like to understand the measures that have and will be taken, how the success of these measures have and will be evaluated, and how the Foothills Ojibway have and will be involved in the process. Specifically, he is considering whether it would be appropriate to recommend to the Board that Kinder Morgan be requested to file a report with the Board describing:

- how Kinder Morgan's Restoration Plan will be modified in order to restore the plant communities of special significance to the Foothills Ojibway,
- how Kinder Morgan intends to measure the success of this reclamation, and
- how the Foothills Ojibway will be involved in the reclamation process.

.../2

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National Energy Board



Office national de l'énergie

OUTGOING FACSIMILE - MESSAGE À EXPÉDIER

Date : 22 August 2008

**Message to/
Destinataire :** Mr. Ian Anderson
Kinder Morgan Canada Inc.
Facsimile 403-514-6401

c.c. Mr. Peter W. Hutchins
Counsel for Foothills Ojibway First Nation
Facsimile 514-849-4907

**Message From/
Expéditeur :** Louise Niro
Regulatory Officer/Agente de réglementation
Tel : 403-299-3987 or 1-800-899-1265
Fax: 403- 299-3919

**Number of pages (including cover page)/
Nombre de pages (incluant la page couverture) :** 3 pages

Mr. Anderson:

Please find attached Board letter dated 22 August 2008 regarding TMX Anchor Loop Project OC-49.
The original of the letter will follow in the mail.

Regards,

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Calgary, Alberta T2P 0X8
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TEEPLE INDICATES TIME FOR INDIAN WAY OF LIFE
The tribe has adopted modern conveniences but clings to old ways.

Indians Spurn White Ways

Tribe In Cool Branch Area Clings To Ancient Customs

By GORDON AALBERT
of The Journal

MERCAD — Here in the Rocky Mountain foothills a unique type of Canadian Indian has evolved.

It's a people with pride in their Indian heritage — a people with no need for liking for the whiteman's welfare, or social assistance, or government, or way of life.

A people who never signed a treaty and never will, who have managed to cling to the old ways, the old religion which to them is a way of life.

It's a good way of life, according to their headman, Peter O'Chese, who asks nothing more for his people than that they be left alone to live their ways.

BEST REPUTATION

He leads a group. He won't say how large it is, or people who have consistently rejected the life of the whiteman. They speak little or no English, have little need to, and don't want to be assimilated into white society, yet have the best reputation of any single group of Indian people in Alberta.

In Hinton, or along the Cool Branch, or in Rocky Mountain House, these people are known to be good workers,

honest workers and generally good people.

BRAID HAIR

Many wear their hair braided — because this is the Indian way — and from this has come the nickname "Landlarks", which the white people here have given them.

Bussins is their traditional nickname — it is read with respect.

Because it is almost impossible not to respect their people.

They have a pride — well deserved — which must be respected. They don't accept welfare. They don't need it. Because their children don't go to school in accordance with provincial regulations they don't get family allowances. Only a few of the old people feel the white version and this after much persuasion.

FROM THE PAST

The people are a band of Caribwags from the highway tribes that originated in Eastern Canada. How they got to the western mountains, even Peter O'Chese doesn't know. More than four generations of his people have wandered the foothills from Montana to central Alberta.

Their religion, which governs their entire way of life,

is a complex thing, a personal thing which they will not describe in detail, yet which appears to be essentially the same in pattern as most Christian religions.

Peter O'Chese explains it this way:

IN MY HEART

"I believe in my heart, it is some kind of great power."

The whiteman has forgotten his religion, many times. Perhaps that's why Christ was sent to him to remind him. Perhaps that's why he must have his religion on paper, the Bible, to remind him of it.

The white man does not have his religion, it is not the same as the Indian's.

It is for this reason Peter's people avoid the white man since on their lips. They make good workers on trucks, they wear the white man's clothes, but there is no reason for this.

LOOK THE GOOD

Generally they have examined the white way of life, taken what they thought was good and rejected the rest. The white man's schools of for their children, they feel the influences are bad, they feel their children can learn the right ways of doing, where all things are taught.

Their teachings equip them, necessary demanded to live in the most extreme independence of the whiteman. Yet they work for him, and work well, because this is his part of their life.

"Always we have helped the whiteman even in the beginning. We cut the brush, clear the land, white men he can plant his crops and raise his cattle," says Peter O'Chese. **NOT IN SERVITUDE**

But these are not a people in servitude, they do not feel down-trodden or exploited. They do honest work for an honest dollar and are proud of their ability.

They lead a moral way of life that prohibits idleness, to white standards, yet have history that began long before the white man came to North America.

The basic difference between the people and the whiteman, Peter O'Chese says, is that the Indian in Alberta is one young man out of a million. We are the real Indians, few are white Indians, trying to be white men.

"An Indian can't be a whiteman no matter how hard he tries."

KEEP RESERVES

This young man is among those who have left the same

reserves, at Hobbema and other places, to join Peter O'Chese and his people. They have lived on the reserves, liked it, and have returned to the simple life of their forefathers.

They have given up some modern conveniences, admittedly, but in return they have gained a measure of respect that never could exist while they were the "reserves" Indian of Alberta.

And obviously more important, they have gained a self respect that no amount of governmental influence or welfare could ever hope to provide.

NOT THEIR AIM

Integration into white society is not their aim, they have no wish ever to conform to any standards of white society. They will not speak English any more than is necessary to do the jobs they are set for.

They seem unsure whether they ever could integrate with the white man and yet maintain the morals, religion and way of life of their ancestors.

At the moment they don't have to, and with the same courage, they will remain efficient, self-sufficient and proud.

The Edmonton Sun, Thursday June 15, 1978



ERIC DENHOFF

HINTON—You won't find an O'Chiese signature on any of the Treaties. You won't find it, either, on the 1950 adhesion to the original treaty which laid the basis for the Sunchild-O'Chiese Reserve near Rocky Mountain House.

The government calls it the Sunchild-O'Chiese Reserve and to be fair there are about 300 Ojibway Indians gathered on the O'Chiese side of the divided reserve, the Sunchilds being Cree.

You won't find the name O'Chiese on the treaty because no O'Chiese has ever had anything to do with treaties and reserves, including the present-day leader of the breakaway Ojibways strangely settled in the Hinton area of this province, a thousand miles from home.

There are perhaps an equal number—roughly 300—Ojibways living in the bush and on ranches in this area, refusing a reserve or federal services, refusing to be assimilated, refusing to participate.

They are led by the most amazing man in Indian society in Alberta, Chief Peter O'Chiese, a spiritual and philosophical leader to a much larger circle than the Ojibways of Hinton.

For 100 years, he says, the O'Chiese family has spurned treaty and reserve. Despised both, in fact.

And while the Crees at Enoch and Hobbema plan huge developments and the Blackfoot look into coal development, Chief Peter O'Chiese leads ceremonies and preaches a basic back-to-the-earth message around the province.

He is perhaps 60, maybe older. He always has a different birthdate.

"I was born near Waterton," is about all he will tell of his roots, except to say the Ojibway constantly were on the move in the late 1800s, first from east to west, then from the south into the isolated mountain regions.

All of his life, Peter O'Chiese has been riding into those mountains, practising his original religion and casting aside Christianity, travelling the entire world to see what is happening and how it relates to his people.

"There aren't many old men around like me. I think why I am here is to tell the younger people, to teach the people the way they are supposed to go."

He has travelled to England and France, to Switzerland and Israel, to Guatemala during the earthquake, to Australia and across the U.S. from tribe to tribe and nation to nation.

And the more he travels and the more he sees, the more Peter O'Chiese believes he is right and the rest of the Indians in Alberta are not wrong, but certainly misguided.

He does not believe in the treaties because he does not believe the white man.

And why should he?

He tells of the last treaties signed in the North, up where the Beaver, the Chipewyan and the Cree signed away the northlands with Commissioner Laird promising the Indians could fish and hunt forever as if the treaty had never taken place.

"You know, I've never actually seen the treaty. I wonder if it says what they say it says."

The treaties promised fishing and hunting, education without interference with Indian religion, unrestricted hunting and fishing, the paternal care of Her Majesty.

But what happened?

The Sunchild-O'Chiese reserve, formed nearly a century after treaty signing started in the west, has no phone, no store, no doctor and no civilization by normal standards. The government has provided nothing.

The chief is not literate in English, but he is certainly well-informed.

He can point out that 84 per cent of Indian people don't have running water, that the average life expectancy for an Albertan Indian is under 40 years compared to 63 years for the white, and that Indians have a tuberculosis rate 12 times the white population.

He is the most stubborn Indian in Alberta—even the many Indian acquaintances of his will admit.

"I am not a Canadian. I am an Indian," he proudly told the government officials while trying to obtain a passport a few years ago.

He does not believe in schools, so his followers simply don't attend and don't allow their children to attend.

He doesn't believe in Christianity, and instead practises a cyclical Ojibway religion requiring enormous amounts of time and energy for ceremonial events.

And he does not believe in the treaties.

COPY

Rocky Mountain House, Alta.,
May 14th, 1941.

C. Pant. Schmidt, Esq.,
Inspector of Indian Agencies,
Calgary, Alberta.

Dear Mr. Schmidt:

Another spring is now drawing to a close, without anything of a material nature being done by the Dept. of Indian Affairs to assist these Non Treaty Cree and Chippewa Indians to engage in the pursuit of agriculture and stock raising on that territory in the vicinity of the Babilste and Nordegg rivers, which I understand, the Provincial Government is prepared to set aside for use for these Non Treaty Chippewa and Crees. I had hoped that something of a definite nature would be done by the Dept. of Indian Affairs before now, so that the Indians could make a start on the above mentioned land, by cultivating some of it and raising produce to provide part of the necessities of life.

The very meagre supplies which I receive each year for these Indians, are sufficient for five of six families, but are not enough for all those who are in dire need of help. There are many widows and orphans who are absolutely dependent on what I give them for a living. There are many old people who have passed their usefulness. The other Crees when out of work, are at my office every day asking for help. I have helped them in the past out of my own pocket in a very material manner with mowers, rakes, wagons, food, sleighs, harness, horses, seed potatoes, &c. This spring I have supplied out of my own pocket to the following, viz., Wm. Bremner, 2 horses, Tom Bremner, 1 horse, Joe Lagrelle, 2 horses, Mike Frenchetter, 1 horse, Mac Frenchetter, 2 horses, Frank Yellowface, 1 horse, Jim Yelloweyes, 1 horse. And all the money they were able to pay me on the ten head of horses is \$35.00. I have also let them have wagons and potatoes. Their children are dying off at an alarming rate with T.B. through lack of suitable food. It is not at all reasonable to expect a band of Non Treaty Indians (who are very poor) to be self-supporting in a territory which is overrun by white hunters and trappers, where fur bearing animals have been killed off almost to the point of extinction.

hope I will appreciate it, if you will kindly let me know by return mail, if the Dept. of Indian Affairs intends to do anything of a material nature this year for these Non Treaty Indians.

The members of the Rocky Mountain House Board of Trade have again discussed with me the plight of the Non Treaty Chippewa and Cree Indians, and they are desirous of knowing if any provision of a material nature has been made for them.

Surely these Non Treaty Indians (who have been crowded from the good farming districts back to the poorer farming areas, shuffled hither and yon, and forced by the advance of white settlements, to the foothills, that land of muskegs and jackpine ridges at the foot of the Rocky Mountains) are entitled to some consideration other than just interring them in mother earth after they have died through lack of proper food and broken hearts.

Minister of Indian Affairs
Edmonton, Alberta

Dear Mr. Tamm: - Re: Non-Treaty Chippewa Indians of Alberta
John O'Chiese band

The matter on which I am about to write to you, is pertaining to the Non-Treaty Chippewa Indians of the John O'Chiese band who are scattered hither and yon between Rocky Mountain House and the Athabasca river. I hope that what this letter contains will give you a lot of food for thought for I want to discuss this matter more fully with you the next time I get to Edmonton when I hope you will give me a few minutes of your time, by then you may have a proposition or suggestion to make which will mean alleviating the suffering and hardships which these unfortunate native sons have experienced and are still experiencing.

They are Non-Treaty Chippewa Indians ~~descendants~~ descendants from that little band of Chippewas who occupied this Foothills area when Henry Kelsie visited this part in 1692. They lived, hunted and trapped in the vicinity of the North Saskatchewan, Babbiste, Nordegg, Brazeau and Pembina rivers long before the white traders of the North West Trading Co and the Hudsons Bay Company came to Rocky Mountain House.

About eighteen years ago, on the advice of Mr. Graham who was at that time Indian Agent at Regina, Chief Sunchild and the members of his Cree band from Battleford came to the Rocky Mountain House district in search of suitable land for a reservation and home, they established themselves on both sides of the Babbiste river where many of the Chippewas had for years made their home. Since that time the Chippewas have been scattered all through the foothills area between Rocky Mountain House and the Athabasca.

It would appear that their old hunting and trapping grounds have been (during recent years) possessed by white men and Cree Indians until the Non-Treaty Chippewa Indians now find that there is no place on which they are allowed to build homes, without they come in treaty (which they refuse to do). They contend that they never relinquished their right to this land which they claim is their God given heritage, that they will not sign treaty and that they wish their old hunting and trapping rights to be respected and that they be allowed to carry on their own natural avocation of making a living in that area on which they made their home years ago and which is where they were born and raised and is also where their parents were born and raised.

There is something wrong, very much wrong in the manner in which these Chippewa Indians have been persecuted, God never meant that we should rob our red brothers of all which they hold dear and then drive them over the brink of the precipice of despair. We appropriated their country, killed off their means of sustenance (the buffalo) polluted their bodies with every known disease to white men and their minds with the evil and lustful thought so noticeable in many white people.

?How are they going to exist if there is no place left for them on which they can build their homes and eke out an existence, they absolutely refuse to accept treaty, I have an idea that many of us white men would feel just as they do if we were of their band.

The question now arises, ?What are we going to do about it, They will not come in treaty, they are absolutely honest they help white farmers during the seeding and harvest seasons and expect to follow their natural avocation (trapping) of making a living during the winter months, and their wish is, that the Provincial Government will set aside a suitable area for them to hunt

HENRY STELFOX

FURS AND REAL ESTATE

ROCKY MOUNTAIN HOUSE,
ALBERTA

November 11th 1948

Hon H E Tanner M. P. C.

Minister of Lands & Mines

Edmonton, Alberta.

Dear Mr Tanner: Re. Cheppewa Indians, John O'Chiese band

Many thanks for your letter dated Nov 9th

which is a reply to my letter dated October 29th in connection with the plight of the John O'Chiese Non Treaty Cheppewa Indian band.

I would not have taken the trouble to write to you on this matter had I not known that yourself and members of Premier Manning's Cabinet would not tolerate persecution of any band of Indians who we English speaking people wrested this country from.

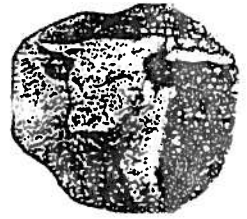
It is quite likely that in my letter to you dated October 29th 1948 I did not make quite clear the position which the John O'Chiese band of Non-

Treaty Cheppewa Indians find themselves in today. So now in my own blunt way I am going to try to not only clearly outline the most unfortunate plight I see these Non Treaty Cheppewa's in ^{but I am going to explain in such a manner that} you will thoroughly

realize that if you and the other members of Premier Manning's Cabinet make suitable provision for the John O'Chiese band of Indians you will not be interfering with the Indians in making use of the lands that have been set aside in their interests as a reserve. And I am not suggesting that the Province of Alberta turn over to the Indian Affairs Branch of the Department of Mines & Resources, Ottawa the 33000 acres of land from the height of land north of the Rabbit river to

HENRY STELFOX

FURS AND REAL ESTATE



ROCKY MOUNTAIN HOUSE,
ALBERTA

3

At the time when they sign a contract with the Federal Government and become wards of the Federal Government they are Albertans. They are native sons of Alberta who have never relinquished or bartered their rights. And as that territory which has already mentioned between the Badleto & Pembina rivers has been their recognized home for generations surely they are entitled to have ^{some} their squatters rights respected.

May I stress the fact that this matter needs prompt attention. You cannot imagine the plight of these Cheppewa Indians. Will you be kind enough to reply to this letter by return mail authorizing me to inform these Cheppewa Indians that they can reside on that ~~territory~~ ^{territory} mentioned 33000 acres of land in the neighbourhood of the ~~Rocky~~ ^{Rocky} river which is unoccupied Crown Land and keep in that ~~condition~~ ^{condition} until something of a more concrete nature is done for them.

Matters pertaining to these Cheppewa Indians have got to such a pitch that public sentiment is now demanding that the nature of their plight be published in the newspapers.

Yours Sincerely

<original signature removed>

Representative for Alberta Indians
on Game Advisory Council

Ottawa, October 7, 1940.

Dear Sir:

EXD:
A.

RE: Non-Treaty Indians -
Rocky Mountain House District -
Alberta.

I have received your letter of the 27th ultimo outlining at some length your interview with Mr. Henry Stalfex relative to his continuing to act in the capacity of Supervisor, and have noted his willingness to do so. His further remarks have also been noted and these may be summed up as strongly recommending the setting aside of a block of land where these non-treaty Indians, Chippewas and Crees, may become established.

It seems apparent that the problem confronting us with these non-treaty Indians will not diminish; in fact, their increasing in population and their tendency to move about indicates that sooner or later some definite action will require to be taken. Before considering Mr. Stalfex's recommendation, however, it would be appreciated if the following information could be supplied:

- 1 -- How many Indians are involved?
- 2 -- What is the acreage of the land suggested as a Reserve? A. 300
- 3 -- What do the resources of this land comprise? 7680 ac
Would they be sufficient to sustain the Band? } ?
- 4 -- Could the suggested area of land be purchased outright and for what price? - ?
- 5 -- If available for rent, on what basis and for how long a duration? - ?
- 6 -- What do you consider would be a fair estimate of the cost of establishment of the Band on this Reserve, having in mind the necessary housing, etc.?
- 7 -- What is the legal description of the area under consideration? See plan

Handwritten initials/signature

G. P. Schmidt, Esq.,
Inspector of Indian Agencies,
CALGARY,
Alberta.

..... In asking for

In asking for this information and any further relative particulars you may have which might be of assistance in considering the matter, as well as an expression of your own opinion and recommendation, you will realize that it is on the understanding that it be obtained without in any way committing the Department.

I will be glad to hear from you in due course.

Yours very truly,

E. A. Hoey,
Supt. of Welfare & Training.

Calgary, December 21, 1942.

Dear Mr. Crew:

I returned to Calgary on Saturday evening from Rocky Mountain House, where I had a long talk with Mr. Henry Stelfox, re registered trap lines for the Non-Treaty Indians living North and West of Rocky Mountain House, in the Baptiste River, Nordegg River and Brazeau River districts.

Mr. Stelfox informs me that these Non-Treaty Indians are said to be wintering in three or more groups, in the following locations:

At the Baptiste River Cree Indian Camp, near the confluence of the Baptiste River and Squaw Creek. This place was formerly known as the Chalmers Ranch Headquarters. There are approximately twenty-eight (28) heads of household here.

At the Nordegg River Chippewa Indian Camp, formerly known as the Brown Ranch Headquarters, located at a point where the base line between Townships 44 and 45, Range 10, W. 5, crosses the Nordegg River, there are approximately twenty-nine (29) heads of households.

Another group of approximately twenty-two (22) heads of households are said to be camping somewhere between the Brazeau and the Pembina Rivers. These Indians are referred to as the John O'Chase Group. They are very nomadic and sometimes travel as far as White Court, Alberta, in Tp. 50, R. 12, W. 5. Their exact camp site at the present time is not known.

Mr. Stelfox says he has been suggesting and advising these non-Treaty Indians to register trap-lines near their winter camp sites, but that he finds them very indifferent and in some cases more or less obstinate, more so the John O'Chase Group. He (Mr. Stelfox) seems to think that it might be a good idea for the Department to take steps and register trap-lines for these Non-Treaty Indians; otherwise other people may register on the lands nearest their camps. Whether the provincial authorities will permit this being done, I do not know, as their regulations demand that each individual make application on his own behalf. Would it be possible for you to take this point up with the Game Commissioner?

As regards these Indians coming into Treaty: I can only report slow progress. Mr. Stelfox, who met a number of them again this summer and autumn, says that some of the Cree appear to be willing to take Treaty. The larger number of the Chippewas still say that they will be guided by John O'Chase; but it still seems that he is not favourable to the idea, as he does not accept invitations to come to Rocky Mountain House to talk the matter over.

I had hoped to be able to visit these Indians in their camps in the autumn, after the work in the harvest fields had been completed, but owing to continuous rains, which made roads impassable, and retarded harvesting, which is still not completed, and an early fall of snow, Mr. Stelfox could not very well leave his own farm work to accompany me. I am therefore deferring this trip until early summer, when I hope to find the Indians in groups at the time of their ceremonial Sun Dance.



CANADA

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION
INDIAN AFFAIRS BRANCH

Ottawa
March 21, 1950.

MEMORANDUM

THE DIRECTOR

Re: John O'Chiese Band,
Rocky Mountain House

In Mr. Gooderham's letter of March 9th here-
under, addressed to the writer, he reports that some 25
adherents of the John O'Chiese Band of Indians at Rocky
Mountain House have indicated a desire to come into
Treaty. He also assumes that Mr. McCrimmon, who present-
ly holds a commission for Treaty purposes, will attend at
Rocky Mountain House on May 12, 1950, to conduct further
negotiations with the Band.

If it is, in your judgment, the practical course
to pursue, Mr. McCrimmon would be available to make the
trip and should be advised to make his plans accordingly.

There is, however, an alternative course of
action which you might wish to consider. Mr. McCrimmon's
commission could be cancelled and Mr. Gooderham appointed
by Order in Council in his place to conduct the negotiations
himself.

You may feel that Mr. Gooderham as Regional
Supervisor could personally assume the responsibility with
equal chances of a successful outcome, which he could do
at much less cost than sending a man from here. It might
further be that a local officer of the Branch would be more
acceptable and less subject to criticism.

While Mr. McCrimmon is more experienced, he has
already made the attempt on two previous occasions without
success and a new approach might, therefore, be considered
advisable.

It is the writer's understanding that if a
majority of the recognized headmen of the group express
willingness to take Treaty, the group are bound by the
decision of their leaders and that a majority of the
group is not necessary for a valid adherence to the Treaty.

.....

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WHEREAS we the undersigned Chiefs and Headmen have had communication of the treaty commonly known as Treaty Number Six made between Her Majesty Queen Victoria and certain tribes of Indians at Carlton and Fort Pitt, in the year of Our Lord one thousand eight hundred and seventy-six, and of the intention of His Most Gracious Majesty King George VI, by the Grace of God of Great Britain, Ireland and the British Dominions beyond Seas, King, Defender of the Faith, Emperor of India, to extend its provisions to us through His Commissioners, Malcolm McCrimmon and John Lothrop Grew, both of the City of Ottawa;

NOW THEREFORE we the said Chiefs and Headmen hereby for ourselves and the Indians whom we represent, in consideration of the provisions of the said treaty being extended to us and the Indians whom we represent, cede, transfer, surrender and relinquish to His Majesty the King, His heirs and successors, forever, all our right, title and privileges whatsoever to all lands in His Majesty's Dominions;

AND we hereby agree to accept the several provisions, payments and reserves of the said treaty as therein stated, and solemnly promise and engage to abide by and carry out all the stipulations and obligations therein contained, to be observed and performed by the Chiefs and Indians therein named, and in all things to conform to the articles of the said treaty, as if we ourselves and the Indians whom we represent had originally been contracting parties thereto;

AND His Majesty, the King, by His representatives, aforesaid, agrees that all the payments and provisions named in the said treaty to be made to each Chief and his Band shall be faithfully made and fulfilled to the aforesaid Chiefs and Headmen and the Indians whom they represent;

IN WITNESS WHEREOF, His Majesty's Commissioners and the said Chiefs and Headmen have set their hands as hereinafter set forth.

Signed at Bechy Mountain House on the 12th day of May, 1950, by His Majesty's Commissioners and the Indian of the Band or group of Chipewyan Indians located at Rocky Mountain House in the Province of Alberta, in the presence of the undersigned witnesses after having been first interpreted and explained.

Witnesses: _____

<original signatures removed>

For more information visit the website: www.ainc-inac.gc.ca

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Peter O'Chiese

<contact information removed>

January 10, 1996

The Right Honourable Jean Chrétien, P.C., M.P.
Prime Minister of Canada
Langevin Block
80 Wellington Street
Ottawa, Ontario
K1A 0A6

Dear Prime Minister:

I am Peter O'Chiese. My grandfather, Chief Jim O'Chiese, was the leader of a lot of people. My father, Chief John O'Chiese, cared a great deal about the burial grounds of our people. Before he died, he told me to take care of them.

My people were and still are very attached to the land and the mountains. We are part of the natural life and are dependent on the land. The survival of our spiritual ways also depends on the survival of our sacred places. We must always be thoughtful about the Creator, the land and the people. We are all related as our Creator placed us here to live in a good way. Therefore we have to try to speak in a good way. I really want to speak to you in a truthful and correct way. In this Earth, we are all equal, no one is higher or greeter than the next. We all have equal rights to life.

I wish to speak of our burial grounds. These are the graves of our people that we have always kept in our own way. Where we place our dead relatives, that place is sacred. We have never been worried about them before. We always felt secure because everyone respects the graves of their ancestors. This we know to be true of your people too.

We should talk about the Earth first before we talk about forests and mining.

Please let me know as soon as you can, to come and meet with me and my people to talk about what we are worried about. I hope that after we meet we will have no further cause to worry.

Ekosi

Peter O'Chiese

cc: The Honourable Sergio Marchi, Minister of the Environment
National Chief Ovide Mercredi
The Honourable Ralph Klein, Premier of Alberta
The Right Honourable Joe Clark
Gregg Smith, AFN Alberta Vice-Chief
Treaty 6 Tribal Council
Treaty 7 Tribal Council
Treaty 8 Tribal Council



HUTCHINS LEGAL INC.
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March 7, 2012

WITHOUT PREJUDICE

Terry Abel
Executive Manager
Oil Sands and Coal Branch,
Alberta Energy Resources Conservation Board
Suite 1000, 250 – 5 Street SW
Calgary, Alberta
Canada T2P 0R4

Dear Mr. Abel,

We act as legal counsel for the Foothills Ojibway community, whose traditional territory is located on the eastern slopes of the foothills of Alberta, including in the vicinity of Hinton, Alberta, both within and outside Jasper National Park. The Foothills Ojibway have retained their Aboriginal attachment and rights to their traditional territory. They are the descendants of Ojibway who refused to take treaty with the Crown in the 19th century and continue to refuse any arrangement that might be interpreted as a surrender of their rights.

We are contacting you regarding the negative impacts to the community's traditional territory caused by Coal Valley Resources Inc. (CVRI) in the construction and operation of its Mercoal West, Yellowhead Tower, and Obed Mountain coal mines, as well as possible negative impacts by the planned Robb Trend Project or other future projects, and their implications for the Honour of Crown.

The Crown had and continues to have a constitutional duty to meaningfully consult and accommodate the Foothills Ojibway indeed to cooperate, directly or through the company, with the First Nation with respect to its approval of decisions that affect this First Nation's traditional territory in its physical, cultural and spiritual aspects.

With regards to the Obed Mountain, Mercoal West and Yellowhead Tower mines that have already been constructed, CVRI failed to avoid any destruction of the sacred and



archaeological sites that would have otherwise been identified by Chief Jimmy O'Chiese had the appropriate consultation, cooperation, and accommodation been undertaken by the Crown prior to project authorization. Any significant damage caused to those sacred and archaeological sites by the projects is the result of the failure of the Crown to consult and cooperate with the Foothills Ojibway prior to issuing the permits for those projects. Only meaningful consultation and cooperation that compels future protection of remaining sacred sites can satisfactorily protect the territory of the Foothills Ojibway.

Loss of hunting, fishing, and medicinal plant gathering areas, as well as the destruction of a great number of sacred and historic sites of the Foothills Ojibway is one of the most serious impacts of past and present development in Foothills Ojibway territories. As a result, their spirituality, cultural affinity, burial sites and history have been seriously compromised. In 2008 similar features were the object of an agreement with Kinder Morgan Canada Inc. in regard to its pipeline construction through Foothills Ojibway territory. That process was facilitated by firm intervention by the National Energy Board. The result benefitted both the Foothills Ojibway and the company. Relations remain very good.

Currently, the Foothills Ojibway, as represented by their leader Chief James O'Chiese, are in discussions with representatives of CVRI for the purpose of concluding a Memorandum of Understanding, and eventually an Impact Benefit Agreement. The intention is for these agreements to satisfactorily compensate the Foothills Ojibway for use and enjoyment of their lands by CVRI and for all damages to traditional territory resulting from the actions of CVRI. In addition, the Foothills Ojibway are in very preliminary discussions with Coalspur Ltd. (Coalspur), concerning their Vista Coal Project, whereby the goal of these discussions is also to conclude a Memorandum of Understanding and Impact Benefit Agreement. These agreements with CVRI and Coalspur will also aim to assist in protecting the Foothills Ojibway aboriginal interests into the future through cooperation and to provide much needed economic support for the community.

The Robb Trend Project and Vista Coal Project represent a new opportunity for the Crown to ensure through regulatory oversight and appropriate conditions attached to permits and authorizations for this project that there will be effective protection and compensation for the Foothills Ojibway. The Honour of the Crown is "always at stake" (*Haida*) but surely this is particularly true when sensitive spiritual, cultural and memorial (gravesites) values are at risk. To recall the Chief Justice in *Haida*, the Honour of the Crown "is not a mere incantation, but rather a core precept that finds its application in concrete practices" (para. 17).



There is potentially already reason for concern that the rights and interests of the Foothills Ojibway are not fully being taken into consideration as the regulatory process unfolds. For instance, in the document “Robb Trend Project - Summary Table and Map”, published on the Environment Alberta website, and enclosed here, one finds a statement that the Robb Trend project has “received sign off from all key aboriginal groups for most of the Robb Trend Area” (our emphasis). However, the Foothills Ojibway have not “signed off” on the project and *all* aboriginal groups are *key*. This statement is likely to mislead the reader into believing that the “Aboriginal question” has been satisfactorily put to rest. The inaccuracy and misleading character of such statements demonstrate the importance of regulatory vigilance in these matters. Impacts on the spiritual and physical wellbeing of First Nations are not peripheral issues; rather they engage the Chief Justice’s “core precept”.

In addition, the Foothills Ojibway are concerned by the possibility that CVRI may be permitted to avoid having to submit an integrated application for the Robb Trend Project. If CVRI is simply allowed to first submit its broad positive affirmations under the EIA and then to later submit the technical specifications, it will be more difficult to maintain proper regulatory surveillance of potential discrepancies between CVRI’s broad affirmations and the more technical features of the Robb Trend project.

For the above reasons, to ensure a faithful representation of the Nation’s position and to ensure the utmost protection of the Nation’s rights and interests in its traditional territory, the Foothills Ojibway are providing notice of their intent to fully engage in all the regulatory approval processes required of the Robb Trend Project and the Vista Coal Project including, but not limited to, those processes established by the *Canadian Environmental Assessment Act*, and Alberta’s *Environmental Protection and Enhancement Act (EPEA)*, *Water Act*, and *Energy Resources Conservation Act*, all regulations established under these acts, and any other relevant acts or regulations.

For the moment, the Foothills Ojibway expect:

- that close regulatory surveillance will be kept by the Energy Resources Conservation Board on CVRI and Coalspur;
- to be permitted to make representations to the Energy Resources Conservation Board, as well as to continue to report on the usefulness of the discussions with CVRI with similar conditions applying in the case of Coalspur;



- that the Environmental Assessment Group obtain clarification from CVRI on the statement “sign off from all key Aboriginal groups in most of the Robb trend area” in the Robb Trend Project Summary Table;
- that CVRI be directed to include those clarifications in the Robb Trend Project Summary Table and to relay this clarification to the Foothills Ojibway.

Please let us know if you require any specific clarification on the expectations of our clients, the Foothills Ojibway, in regard to the required protection of their community’s lands, sacred sites, including burial sites, and social, cultural, and economic well-being through the regulatory process.

Sincerely Yours,

HUTCHINS LEGAL INC.

<original signed by>

Peter W. Hutchins

Encl.

cc.

Chief James O’Chiese, Foothills Ojibway

Keith Shepherd, Consultant, Foothills Ojibway

Claire Dansereau, Deputy Minister, Fisheries and Oceans Canada

Yaprak Baltacioğlu, Deputy Minister, Transport Canada

Serge P. DuPont, Deputy Minister, Natural Resources Canada

Paul Boothe, Deputy Minister, Environment Canada

Michael Wernick, Deputy Minister, Aboriginal Affairs and Northern Development Canada

Ernie Hui, Deputy Minister, Alberta Ministry of Environment and Water

Elaine Feldman, President, Canadian Environmental Assessment Agency



Corinne Kristensen, Acting Team Leader, Environmental Assessment, Environmental Assessment Group, Environment and Water

Andrea Larson, Manager, Oil Sands and Coal Mining, Oil Sands and Coal Branch, Alberta Energy Resources Conservation Board

Fares Haddad, Application Coordinator, Coal and Oil Sands Branch, Coal and Major Applications, Alberta Energy Resources Conservation Board

Stephen Bodley, Director, Coal Valley Resources Inc.

Dean R. Chambers, Director, Coal Valley Resources Inc.

David V. Pathe, Director, Coal Valley Resources Inc.

Mark Plamondon, Director, Coal Valley Resources Inc.

Dave Rutland, General Manager, Coal Valley Mine, Coal Valley Resources Inc.

Les Lafleur, Engineering Manager, Coal Valley Resources Inc.

Colin Steyn, Chairman, Board of Directors, Coalspur Ltd.

Eugene Wusaty, Managing Director and CEO, Coalspur Ltd.

Dermot Lane, Vice President, Development, Coalspur Ltd.



Foothills Ojibway Community
Box 6395
Hinton, Alberta
T7V 1X7
Phone: (780)865-1865
Fax: (780)865-7540
Email: fos1865@gmail.com

March 19, 2012

WITHOUT PREJUDICE

David V. Pathe
President and Chief Executive Officer
Sherritt International Corporation
1133 Yonge Street
Toronto ON M4T 2Y7
Canada

Re: Long term agreement negotiations between Foothills Ojibway and Coal Valley Resources Inc.

Dear Mr. Pathe,

I am writing on behalf of the Foothills Ojibway people, as represented by myself Chief Jim O'Chiese, with whom Coal Valley Resources Inc. (hereinafter, "CVRI") is already well acquainted.

Myself and my people are pleased for CVRI that Asia's insatiable appetite for coal has spurred an exciting business opportunity which will be shortly realized through the Robb Trend Project ("Robb Trend") expansion. It is not lost on us that, once in operation, Robb Trend will contribute to Canada's economy, through generating employment opportunities, revenue, and stimulating business for related industries.

It is also a good sign that CVRI demonstrated an initial sensitivity to the Foothills Ojibway sacred sites within our traditional territory as well as to the whole of the traditional territory on which the Robb Trend Project is planned to be constructed. No doubt this sensitivity has contributed to a positive relationship

with the Foothills Ojibway over the past few years in the context of consultation efforts notwithstanding that there are serious questions related to the Preliminary Agreement concluded December 4, 2009 (hereinafter, "Preliminary Agreement"). I would however like to acknowledge the strong personal rapport that I have developed with Les Lafleur, of CVRI, and Dr. Dan Meyer, of Lifeways of Canada Ltd.

In the spirit of maximizing the benefits of the consultation and accommodation efforts for all parties, I would like to highlight a few matters.

I was recently informed that I will be shortly receiving the Environmental Impact Assessment (hereinafter, "EIA") prepared by CVRI for Robb Trend. According to the Robb Trend Project Agreement, which governs the assessment of the Robb Trend expansion, my community will have twelve weeks to provide comments on issues with the EIA. However, I must emphasize that the Foothills Ojibway will not be in a position to comment on the EIA before the long term agreement is finalized, and may well be obliged to inform the appropriate regulators of the situation.

The Preliminary Agreement indicates that a long term agreement governing the relationship between CVRI and the Foothills Ojibway during the impact assessment of the Robb trend Project, and beyond, was targeted for completion by 2010. It is understandable that often it is difficult to meet target dates given that unforeseen circumstances may arise. However, you are likely to agree that now that the EIA is ready for commentary, the need to conclude the long term agreement has become more pressing for all involved and it is important that all parties remain focused on the task at hand. We must work together in good faith with a view to concluding the long term agreement in a timely manner and in way that is suitable to all our interests.

Second, on the topic of good faith and regarding any concerns you may have respecting the terms requested by the Foothills Ojibway for the long term agreement, recall that my signature of the Preliminary Agreement was a good faith gesture with the specific purpose of accommodating the desire of CVRI to move forward quickly in the first phases of its expansion projects. It was in a sense a leap of faith based upon my understanding of the company's intentions regarding compliance with the applicable regulatory regimes. I still welcome CVRI as a responsible guest in the Foothills Ojibway traditional territory. Now, that we find ourselves in a mutual effort to conclude a long term agreement, I ask that CVRI reciprocate when the Foothills Ojibway in turn present their own requirements for the long term agreement. In fact, I am sure it is unnecessary to remind you that CVRI is bound to continue on in good faith, just as the Foothills

Ojibway are bound and that the Crown is obliged to ensure First Nations obtain a fair and just settlement.

Without this continuing openness on the part of both parties in attempting to conclude the long-term agreement, the spirit and intent of the Preliminary Agreement will be compromised. Consequently, I would no longer be in a position to stand by my statement in the Preliminary Agreement that I support continued regulatory approval of the Robb Trend Project. I am confident though that both parties can and will succeed in pursuing our mutual efforts in good faith.

Third, we acknowledge efforts by CVRI to contribute financially and otherwise to my community's capacity to participate in the ongoing traditional land use studies, as well as annual funding for monitoring of mining operations. However, the Foothills Ojibway, being a people of limited means, lack internal resources both financial and otherwise and thus have limited capacity for participating meaningfully in the consultation process so as to ensure that our interests in our territory and our spiritual attachment to that territory manifested by the presence of sacred sites throughout the territory are protected and secured. It is important that you are aware of this because consultation and accommodation efforts on the part of CVRI may be judged inadequate unless the community can itself participate meaningfully in those efforts.

For example, the Foothills Ojibway are experiencing significant difficulties in keeping pace with the consultation process from an administrative perspective. With current funding levels, we do not have the capacity to employ even one individual on a full time basis to manage the in-flow of documentation relating to consultation efforts. Nor do we have the appropriate administrative tools to process and store that documentation in an orderly fashion or conduct other related tasks.

In short, it does neither CVRI nor the Foothills Ojibway any good if the community can barely keep track of the correspondence they receive from CVRI.

Finally, I take the further position that it is vital to the conclusion of a valid long term agreement which would hold up well against the scrutiny of the Courts that the Foothills Ojibway retain legal counsel with appropriate experience in Aboriginal rights matters to advise them on their rights and obligations. This has proved essential in similar situations. However, currently the Foothills Ojibway have a severely limited capacity to retain counsel. Incidentally, it is unfortunate that I did not benefit from legal counsel at the time of the negotiation and conclusion of the Preliminary Agreement. This limitation alone leaves the

Preliminary Agreement vulnerable to a finding of invalidity by the Courts, should that point ever have to be raised.

For a fair and balanced consultation and accommodation process to occur a "level playing field", as referred to by the courts, must exist between the Foothills Ojibway and CVRI. This entails concrete measures such as an appropriate amount of funding to counteract some of the imbalance in capacity between my community and CVRI.

In light of the foregoing, at the advice of the Foothills Ojibway legal counsel Hutchins Legal Inc., I believe it would be in everyone's interest - our interest and yours - if CVRI would agree to provide adequate negotiation funding to the Foothills Ojibway, as has been the case in other contexts involving the Foothills Ojibway.

Sincerely Yours,
FOOTHILLS OJIBWAY

<original signed by>
Chief Jim O'Chiese

cc.

Peter W. Hutchins, Hutchins Legal Inc.

Keith Shepherd, Foothills Ojibway Consultant

Stephen Bodley, Director, Coal Valley Resources Inc.

Chambers R. Dean, Director, Coal Valley Resources Inc.

Mark Plamondon, Director, Coal Valley Resources Inc.

Dave Rutland, General Manager, Coal Valley Mine, Coal Valley Resources Inc.

Les Lafleur, Senior Manager, Technical Services, Mountain Operations

Dr. Dan Meyer, Lifeways of Canada Ltd.

Claire Dansereau, Deputy Minister, Fisheries and Oceans Canada

Yaprak Baltacioğlu, Deputy Minister, Transport Canada

Serge P. DuPont, Deputy Minister, Natural Resources Canada

Paul Boothe, Deputy Minister, Environment Canada

Michael Wernick, Deputy Minister, Aboriginal Affairs and Northern
Development Canada

Ernie Hui, Deputy Minister, Alberta Ministry of Environment and Water

Elaine Feldman, President, Canadian Environmental Assessment Agency

Corrine Kristensen, Acting Team Leader, Environmental Assessment,
Environmental Assessment Group, Alberta Environment and Water

Terry Abel, Executive Manager, Oil Sands and Coal Branch, Alberta Energy
Resources Conservation Board

March 20, 2012

Peter W. Hutchins
204 Rue Du Saint-Sacrement
Bureau 300
Montreal, Quebec
H2Y 1W8

Sent via email to dlaallee@hutchinslegal.ca

Dear Mr. Hutchins:

**RECEIPT OF PRE-APPLICATION OBJECTIONS TO
COAL VALLEY RESOURCES INC. (CVRI) ROBB TREND MINE PROJECT AND
COALSPUR MINES LTD. (COALSPUR) VISTA COAL PROJECT**

The Energy Resources Conservation Board (ERCB/Board) acknowledges receipt of your letter dated March 7, 2011, on behalf of the Foothills Ojibway community, indicating your objections to CVRI's proposed Robb Trend Mine Project and Coalspur's proposed Vista Mine Project. Please be advised that applications for the proposed projects have not been received by the ERCB to date. As such, your objection will be filed for one year from the date of receipt and registered when an application is received. If no application is received during this period, the objection will be removed from the ERCB records without prejudice to any further correspondence.

If in the future you wish to re-file your objection to the Robb Trend Mine Project, you may do so by email to fares.haddad@ercb.ca, or by mail to:

Energy Resources Conservation Board
Coal and Major Applications
Attention: Mr. Fares Haddad
Suite 1000, 250 – 5th Street S.W.
Calgary, AB T2P 0R4

If you wish to re-file your objection to the Vista Coal Project, you may do so by email to curtis.evans@ercb.ca, or by mail to:

Energy Resources Conservation Board
Coal and Major Applications
Attention: Mr. Curtis Evans
Suite 1000, 250 – 5th Street S.W.
Calgary, AB T2P 0R4

In accordance with Section 13 of the Energy Resources Conservation board Rules of Practice, all documents filed in respect of a proceeding must be placed on the public record. However, any party may apply for confidentiality of information under Section 13(2). Any application under Section 13(2) that is to be considered during a public hearing of the application must be copied to the other parties to the proceeding. The Board may grant a request for confidentiality on any

terms it considers appropriate, subject to the Freedom of Information and Protection of Privacy Act.

If you have any questions regarding the ERCB's procedures, please contact the undersigned by calling the toll free Government Rite Number 403-310-0000, and entering the direct dial number of 403-355-5133.

Yours truly,

<original signed by>

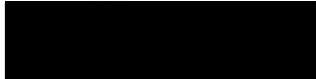
Rod Godwaldt
Section Lead - Coal and Major Applications
Oil Sands and Coal Branch

cc: Dermot Lane, Coalspur
Les Lafleur, CVRI
Margot Trembath, AEW
Fares Haddad, ERCB
Curtis Evans, ERCB



May 2, 2012

Chief Jimmy O'Chiese
Foothills Ojibway Society



Dear Jimmy,

RE: Coal Valley Resources Inc. ongoing consultation with Foothills Ojibway Society

Thank you for your letter of March 19, 2012 in respect of the Robb Trend Project. We also appreciate our most recent meeting on March 30, 2012, to discuss our ongoing consultation process with the Foothills Ojibway in relation to our ongoing mining operations, including the Robb Trend Project. We look forward to the opportunity to continue our long-standing relationship of open consultation with the Foothills Ojibway community.

In response to your letters, and our subsequent meeting I would like to confirm in writing several important matters.

Commitment to open and meaningful consultation

Coal Valley Resources Inc. ("CVRI") remains, as always, committed to timely, open and meaningful consultation with the Foothills Ojibway, and other First Nations, where our mining projects may impact traditional land use. We agree with you that our relationship has been an enduring, and respectful one, and are committed to continuing that relationship of open and meaningful consultation.

We agree that it is important that the Foothills Ojibway has the ability to meaningfully participate in the consultation process in respect of the Robb Trend Project. We confirm that we will continue to provide the resources that we have in the past to allow you to obtain assistance with the process, as discussed at our most recent meeting.

We wish to confirm our advice to you that the period of time available to the Foothills Ojibway to examine and respond to CVRI's Environmental Impact Assessment is approximately 9 months from the time the application is filed, rather than the 12 weeks indicated in your letter. As the application was filed on April 11, 2012, the period during which you may examine and respond to the application extends until approximately December 11, 2012.

Consultation process and relationship to a benefit agreement

In order to fulfill our regulatory obligations, we need to be able to provide documentation on all our consultation communications to the ERCB. This means that any communication related to the regulatory process for the Robb Trend Project cannot be without prejudice. Further, the regulatory consultation process does not require or contemplate a benefit agreement or payment to parties consulted. As agreed, for these reasons, any discussions related to a potential benefit agreement will be held separately from the consultation process.

If you have any questions about the process, please don't hesitate to contact Les LaFleur or me directly.

Kind regards,

<original signed by>

-

Al Brown

Senior General Manager, Engineering & Technical Services

Cc:

David V. Pathe, President & CEO, Sherritt International Corporation.

Peter W. Hutchins, Hutchins Legal Inc.

Keith Shepherd, Foothills Ojibway Consultant

Stephen Bodley, Director, Coal Valley Resources Inc.

Dean R. Chambers, Director, Coal Valley Resources Inc.

Sean McCaughan, Director, Coal Valley Resources Inc.

Dave Rutland, General Manager, Coal Valley Mine, Coal Valley Resources Inc.

Les LaFleur, Senior Manager, Technical Services, Mountain Operations

Dr. Dan Meyer, Lifeways of Canada Ltd.

Claire Dansereau, Deputy Minister, Fisheries and Oceans Canada

Yaprak Baltacioğlu, Deputy Minister, Transport Canada

Serge P. DuPont, Deputy Minister, Natural Resources Canada

Paul Boothe, Deputy Minister, Environment Canada

Michael Wernick, Deputy Minister, Aboriginal Affairs and Northern Development Canada

Ernie Hui, Deputy Minister, Alberta Ministry of Environment and Water

Elaine Feldman, President, Canadian Environmental Assessment Agency

Corrine Kristensen, Acting Team Leader, Environmental Assessment, Environmental Assessment Group,

Alberta Environment and Water

Terry Abel, Executive Manager. Oil Sands and Coal Branch, Alberta Energy Resources Conversation Board



May 2, 2012

Hutchins Legal Inc.
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Bureau 300
Montreal, Quebec H2Y 1W8

Hutchins Legal Inc.
Avocats-Barristers & Solicitors
400-601 West Broadway
Vancouver, BC V5Z 4C2

Attention: Peter W. Hutchins

Dear Sir:

Re: Foothills Ojibway Community – Robb Trend Project

We are in receipt of your letter dated March 7, 2012, forwarded to several provincial and federal regulators with respect to the Foothills Ojibway community ("Community") and Cola Valley resources Inc.'s ("CVRI") Robb Trend project located in the Yellowhead corridor.

CVRI has worked extensively with members of the Community, and other First Nations groups over the last several years on our activities in the Yellowhead corridor area. We value our relationship with and input from the Community and confirm that we will continue with our ongoing meetings with the Community as part of our commitment to consulting with them about impacts our project may have on their traditional lands. CVRI has provided, and will continue to provide, capacity funding to facilitate the Community's review of applications, including this new application in respect of Robb Trend, which was filed on April 11, 2012. The purpose of that funding is to allow the community to assess the potential impacts of our project on the Community's traditional lands, which we look forward to learning more about in the course of our ongoing meetings.

We have followed up with Alberta Environment and Water with respect to the reference on the website that was noted in your letter. It has now been amended to ensure it reflects that consultations are continuing in relation to Robb Trend. At the date those statements were originally filed, we had not yet commenced the Robb Trend project, and those statements related only to projects much further advanced in the regulatory process, so they were accurate at the time of filing.

As the application for Robb Trend was filed on April 11, 2012 and there is an approximately 9 month time frame open to the Foothills Ojibway and others to examine and comment on the application, they will have until approximately mid-December to respond to the application. We confirm that we will continue our efforts to meet and consult with the Community on this application and are confident that measures can be developed that will respond to their concerns. We would be pleased to speak to you about the extent of our

ongoing consultation efforts with First Nations in relation to our Yellowhead corridor operations.

Future correspondence in this matter can be directed to Mr. Al Brown, Senior General Manager, Engineering and Technical Services with a copy to Lynette Stanley-Maddocks, Senior Legal Counsel.

Yours truly,

<original signed by>

Sean McCaughan
Senior Vice President

cc:

Chief James O'Chiese, Foothills Ojibway First Nation

Keith Shepherd, Consultant, Foothills Ojibway

Claire Dansereau, Deputy Minister, Fisheries and Oceans Canada

Serge P. DuPont, Deputy Minister, Natural Resources Canada

Yaprak Baltacioğlu, Deputy Minister, Transport Canada

Paul Boothe, Deputy Minister, Environment Canada

Michael Wernick, Deputy Minister, Aboriginal Affairs and Northern Development Canada

Ernie Hui, Deputy Minister, Alberta Ministry of Environment and Water

Corrine Kristensen, Acting Team Leader, Environmental Assessment, Environmental Assessment Group, Environment and Water

Terry Abel, Executive Manager, Oil Sands and Coal Branch, Alberta Energy Resources Conservation Board

Shauna Sigurdson, Regional Director, Alberta & NWT Regional Office, Canadian Environmental Assessment Agency

Sean Carriere, Project Manager, Canadian Environmental Assessment Agency

Stephen Bodley, Director, Coal Valley Resources Inc.

Dean R. Chambers, Director, Coal Valley Resources Inc.

David V. Pathe, Director, Coal Valley Resources Inc.

Dave Rutland, General Manager, Coal Valley Mine, Coal Valley Resources Inc.

Les LaFleur, Engineering Manager, Coal Valley Resources Inc.

July 3, 2014

Peter Hutchins
Hutchins Legal Inc.
400 – 601 West Broadway
Vancouver BC V5C 4C2

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canada

www.aer.ca

Dear Mr. Hutchins:

**COAL MINING STATEMENT OF CONCERN NO. 29087
COAL VALLEY RESOURCES INC.
COAL MINING APPLICATION FOR PROPOSED ROBB TREND PROJECT
APPLICATION NO. 1725257
LOCATION: 08-049-21W5M**

The Alberta Energy Regulator (AER) acknowledges receipt of your letter on behalf of Foothills Ojibway First Nation dated March 7, 2012, indicating their statement of concern to the subject application. Please be advised that an application was submitted to the AER on April 17, 2012, and was assigned Application No. 1725257. . In addition, on June 4, 2014, the AER re-issued notice of this application and re-established a statement of concern filing deadline of July 9, 2014 (available at <http://www.aer.ca/applications-and-notices/notices/application-1725257-2>). Your client is therefore able to file a different or supplemental statement of concern if you wish to do so, provided that it is received by the AER on or before the deadline.

The application is currently under review and the concerns outlined in your letter will be taken into consideration by the AER in its review of the application. The AER expects parties to discuss outstanding concerns whenever possible. By way of copy of this letter to Coal Valley Resources Inc. (Coal Valley), we are requesting Coal Valley contact you to attempt to address your concerns, as provided under AER requirements.

The AER has no jurisdiction over matters of compensation for land usage. The Alberta Surface Rights Board is the regulatory agency that deals with these issues. Further the AER has no jurisdiction with respect to assessing the adequacy of Crown consultation with the rights of aboriginal peoples.

The AER offers and strongly recommends you make use of our Alternative Dispute Resolution (ADR) program which features either staff or third party mediation arranged through an AER mediator. Please contact Krista Waters at 403-755-1422 for more information on this process. Further information about this program is available through *EnerFAQs: All About Alternative Dispute Resolution* and *Manual 004: ADR Alternative Dispute Resolution Program and Guidelines for Energy Industry Disputes* on the AER web site, (<http://www.aer.ca>), under Applications & Notices, Alternative Dispute Resolution (ADR) Process.

Please note that Section 49 of the *Alberta Energy Regulator Rules of Practice* (Rules) requires that all documents filed with the AER be placed on the public record. However, any party may file a request for confidentiality of information under Section 49 prior to filing the information with the AER. Any request under Section 49 must be copied to the other parties to the proceeding. Section 49 of the Rules is available at the AER website at www.aer.ca.

Please direct questions regarding your statement of concern to Amanda Black at 780-743-7473 who will manage the application through to completion. If you have any questions regarding AER

process please contact the undersigned through our Customer Contact Centre, toll free, at 1-855-297-8311, or collect at 403-297-5749.

inquiries 1-855-297-8311
24-hour
emergency 1-800-222-6514

Yours truly,



Jennifer Richards
Review & Coordination Team
Authorizations Branch

cc: Les Lafleur, Coal Valley Resources Inc., llafleur@westmoreland.com
Amanda Black, AER, Amanda.Black@aer.ca
AER Drayton Valley Field Centre, DraytonValley.FieldCentre@aer.ca
Krista Waters, AER Mediator, Krista.Waters@aer.ca
Bruce Gladue, AER Aboriginal Engagement Unit, Bruce.Gladue@aer.ca
Gabriel Potter, Aboriginal Consultation Office, Gabriel.Potter@gov.ab.ca

September 3, 2014

Peter Hutchins
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204 Rue Du Saint-Sacrement
Bureau 300
Montreal QC H2Y 1W8

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canada

www.aer.ca

Dear Mr. Hutchins:

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COAL VALLEY RESOURCES INC.
COAL MINING APPLICATION FOR PROPOSED ROBB TREND PROJECT
APPLICATION NO. 1725257
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Yours truly,



Jennifer Richards
Review & Coordination Team
Authorizations Branch

cc: Les Lafleur, Coal Valley Resources Inc., LLafleur@westmoreland.com
Amanda Black, AER, Amanda.Black@aer.ca
AER Drayton Valley Field Centre, DraytonValley.FieldCentre@aer.ca
Krista Waters, AER Mediator, Krista.Waters@aer.ca
Bruce Gladue, AER Aboriginal Engagement Unit, Bruce.Gladue@aer.ca
Gabriel Potter, Aboriginal Consultation Office, Gabriel.Potter@gov.ab.ca