



**Indigenous Relations
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ACO Hearing Report

November 26, 2018

Tara Wheaton, Hearing Coordinator
Alberta Energy Regulator
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Sent via Email: <email address removed>
No original to follow

Mr. Bori Arrobo
Manager, Environment & Regulatory
Fort McKay Sustainability Department
Fort McKay First Nation
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Sent via Email <email address removed>
No original to follow

Dear Ms. Wheaton and Mr. Arrobo:

**RE: Joint Review Panel Hearing for Teck Resource Limited Proposed
Frontier Oil Sands Mine Project Environmental Enhancement Protection
Act Application File No. 001-00247548 and Water Act File No. 00303079**

Background

This ACO Hearing Report was prepared in accordance with the Aboriginal Consultation Office's (ACO) role at Joint Review Panel (JRP) Hearing established through *Energy Ministerial Order 105/2014*, *Environment and Sustainable Resource Development Ministerial Order 53/2014* (October 31, 2014), and the *Joint Operating Procedures for First Nations Consultation on Energy Resource Activities* (June 10, 2015).

In the June 21, 2018 letter, the ACO informed the Joint Review Panel of its intent to attend the Frontier Oil Sands Joint Review Panel Hearing commencing September 25, 2018 in Fort McMurray. The purpose of the ACO's attendance was to observe the Hearing, consider all relevant evidence submitted during the proceedings, and address adequacy of consultation and whether actions may be required to address potential adverse impacts on Treaty rights and traditional uses from Teck Resource Limited

(Teck) proposed Frontier Oil Sands Mine Project (The Project) associated with *Environmental Enhancement Protection Act (EPEA) Application File No. 001-00247548 and Water Act (WA) File No. 00303079*.

First Nation Consultation

The Consultation Plan for the integrated application combining all information required under the EPEA and WA Application was approved on June 12, 2008 by the then Alberta Environment (AENV). Teck was directed to conduct consultation with Fort McKay First Nation (FMFN) in line with *The Government of Alberta’s First Nations Consultation Policy on Land Management and Resource Development* (May 16, 2005) and *Alberta’s First Nations Consultation Guidelines on Land Management and Resource Development* (Updated November 14, 2007).

The August 24, 2018 ACO Report determined that consultation with FMFN for the EPEA and WA Applications was adequate pending the outcome of the Alberta Energy Regulator (AER) process (JRP Hearing). As stated in the August 24, 2018 ACO Report, FMFN raised some concerns that were suggestive of site-specific concerns. However, the August 24, 2018 ACO Report concluded that these concerns did not constitute site-specific concerns.

The ACO has subsequently reviewed the First Nation’s written hearing submission of August 31, 2018 and the First Nation’s evidence at the JRP Hearing and the ACO finds that FMFN did not identify any specific sites requiring avoidance and/or mitigation. The ACO also advises the AER that the JRP Hearing did not reveal new information or concerns regarding potential site-specific impacts of the proposed Project on the continued exercise of FMFN’s Treaty rights and traditional uses.

Fort McKay First Nation did note other concerns captured in the following Table 1- Broad Concerns. The ACO finds that these concerns are better addressed outside of a) project-specific consultation; or (b) outside the scope of *The Government of Alberta’s Policy on Consultation with First Nations on Land and Natural Resource Management 2005 (Policy)* and *The Government of Alberta’s Guidelines on Consultation with First Nations on Land and Natural Resource Management 2007 (Guidelines)*.

Table 1 – Broad Concerns

Concerns Expressed by FMFN	Response to Concern
<p>FMFN states that necessary actions are needed by Alberta to meet their duties to manage the cumulative effects of development in the oil sands on Fort McKay’s Treaty and Aboriginal rights.</p> <ul style="list-style-type: none"> • FMFN expressed concern with biodiversity monitoring; in particular, the nature in which the Alberta Biodiversity Monitoring Institute (ABMI) 	<p>The ACO has considered FMFN’s hearing evidence with respect to cumulative effects concerns and LARP and took these concerns into account in considering consultation adequacy.</p> <p>The ACO recommends that the AER consider this evidence to the extent that this may inform the AER’s regulatory decision.</p>

Concerns Expressed by FMFN	Response to Concern
<p>conducts its work on a grid-based system, both the spatial nature and the time resolution nature, consequently the frequency of assessment. FMFN noted that the system is inadequate and should not be use by Alberta to establish the Biodiversity Management Framework. FMFN states: <i>“it would be dangerous to assume that this system or approach will protect.....”</i></p> <ul style="list-style-type: none"> • FMFN is concerned that discussions (Tables) with Government of Alberta/<i>Alberta Environment and Parks</i> are not committing to equitable and meaning co- management system principles that would share decision making authority with First Nations with respect to industrial drivers adversely affecting Fort McKay's Aboriginal and Treaty rights. 	<p>The ACO notes that these are not site-specific concerns about continuing exercise of Treaty rights and traditional uses but rather a broad environmental concern.</p> <p>The ACO notes that these concerns are general policy proposals, which are more appropriately considered in forums other than the project specific consultation process.</p>

Based on the above the ACO concludes that consultation is adequate.

This ACO Hearing Report concludes the ACO’s involvement with proposed Project Integrated application regarding the EPEA No. 001-00247548, and WA No. 00303079. As per the Alberta consultation policy, guidelines and procedures, Alberta relies on project proponents and regulatory tribunals to assist in meeting consultation obligations should they arise.

Sincerely,

<Original signed by>

Vince Biamonte
 Aboriginal Consultation Office

Cc: Yvonne Walsh, Teck Resources Ltd
Alex Bolton, Joint Review Panel
Charlene Richards, ACO
Sarabpreet Singh, ACO
Robert Kopecky, ACO