

Attendees:

ACFN	Shell
Nicole Nicholls, IRC	Bill Kovach, EIA Coordinator
Dan Smith, Consultant	Jason Plamondon, Consultation
John Marcel, Elder	
Rene Mareel Bruno, Elder	
Janet Janeovich Daschcavich, Elder	
Alec Bruno, Elder	
Charlie Voyageur, Elder	

Pre-amble:

Shell and ACFN were scheduled to meet in Edmonton at the Sawridge Hotel. Unfortunately, due to winter weather conditions, Shell's 6:30 am flight from Calgary to Edmonton did not depart. Shell and ACFN agreed to continue the meeting via teleconference. ACFN participated from the Sawridge venue as planned, and Shell participated from the Calgary offices.

Comment [NN1]: I suggest that the meeting notes be re-organized according to discussion on technical review questions, and discussion on "other matters" including Elders concerns and the muskeg river diversion, rather than organizing temporally. I've taken the liberty or reorganizing the notes and if you choose to accept those revisions, you could note how you have organized them in the pre-amble.

9:00 AM — 1:00 PM

Introductory Comments

At the outset of the meeting, Shell apologized for the unfortunate circumstance which led to not being able to meet face to face as planned.

The ACFN IRC agreed it was unfortunate but also agreed that considering the objective of the meeting (discussion of ACFN's JPME/PRM EIA Technical Review submission to inform Shell's written response), it was acceptable to proceed via teleconference.

The ACFN IRC suggested that the meeting begin with introductions followed by comments from ACFN before moving into the Technical Review portion of the meeting as per the pre-read provided by Shell.

Shell agreed and advised ACFN that there were a number of additional topics that Shell would like to discuss not part of the pre-read, notably:

- information concerning the Muskeg River Diversion and proposed mitigation to address concerns heard
- Additional questions from PRM Technical Review (Q#82, 83, 84)

ACFN agreed to discuss additional topics and suggested they be discussed at the end of the meeting.

Shell agreed.

ACFN asked Shell if any changes had been made to the EIA in consideration of the Technical Review submitted by ACFN in October.

Shell advised that no changes were made to the EIA given the late timing of the Technical Review submission.

~~ACFN asked if Shell if the comments, questions and/or recommendations from ACFN's Technical Review would be incorporated into the EIA despite Shell's EIA having been deemed complete, had made any modifications to its EIA prior to the completeness decision on October 14, 2010, as a result of considering the concerns presented in ACFN's technical reviews which were sent on September 20 and October 7, 2010.~~

~~Shell answered that it had not incorporated any of the information from ACFN's technical reviews because of timing.~~

~~ACFN asked if Shell would modify or amend its EIA in response to ACFN's concerns, now that the EIA has been deemed to be complete.~~

~~-suggested that it was unsure how it would incorporate feedback from ACFN's Technical Review and how it might impact the regulatory schedule. Shell representatives noted that they would have to ask their legal counsel about this as Shell would not want to lose momentum on the hearing. Shell expressed an interest in incorporating ACFN's comments. Shell suggested that it was unsure how it would incorporate feedback from ACFN's Technical Review given that the completeness decision had already been made and that they were unsure that if they did so how it might impact the regulatory schedule.~~

~~ACFN asked about the timing of the upcoming JPME/PRM hearing-~~

Shell advised that ~~the hearing~~ ~~it~~ was certainly not going to occur in the first quarter of 2011 as originally anticipated, however, Shell remained hopeful of a second quarter date. Shell suggested that the regulatory process steps and the time requirements of each subsequent process step resulted in the anticipated hearing date being pushed back.

ACFN asked when the Joint Panel would be announced.

Shell suggested it was unsure exactly when the Joint Panel would be struck but that it would take the action to try and find out.

- ACTION – Communicate date that Joint Panel expected to be determined.
- ✓ RESPONSE – According to Shell's understanding, the Joint Panel will be announced on the CEAA website. Shell expects to see something this Spring, however, the timing is unknown to Shell.

~~ACFN ACFN expressed a concern that the uncertainty surrounding the hearing timeline was resulting in human resources being taxed potentially unnecessarily~~
~~-suggested that the uncertainty surrounding the hearing was resulting in human resources being taxed potentially unnecessarily and a desire to better understand timelines.~~

Shell expressed understanding and suggested similar stresses were being felt on Shell resources due to the uncertainties surrounding the hearing.

ACFN asked Shell to provide ~~written responses to ACFN's Technical Reviews of the JPME / PRM EIAs by early January. the anticipated date for submitting a written response to ACFN's Technical Review of the JPME/PRM EIA. ACFN further inquired as to whether early January would be possible.~~

Shell confirmed that while its technical leads had begun work, a written response would not be ready in early January. Due to the amount of effort required to provide substantive responses to each of the comments, questions and recommendations, and considering the requirement to consider the results of this meeting, Shell suggested that an exact date for written responses was difficult but that it would likely be in February.

- ACTION – Provide target date for written response to ACFN Technical Review
- ✓ RESPONSE – Shell hopes to have the written response to ACFN's Technical Review by the end of March 2011.

Shell asked if it would be o.k. to proceed with the Technical Review discussion per the pre-read provided.

ACFN agreed.

General Questions:

1. Additional Questions in Appendix D

Shell noted that there were questions in Appendix D that were not summarized in Appendix B, though it seemed that Appendix B was meant to be a summary of all questions and recommendations from the entire submission. Shell asked for confirmation that responses should focus on the summary provided in Appendix B

ACFN confirmed Appendix B was a summary of all questions and recommendations from the entire submission.

2. Pre-industrial / Pre-development based questions

Shell requested additional clarification surrounding ACFN's use of and request for a "pre-industrial / pre-development baseline"

ACFN discussed the justification for requesting a 'pre-industrial / pre-development baseline'. ACFN suggested that 1965 represented a reasonable pre-industrial baseline.

ACFN Technical Review of the SEIA

1. Transportation Rights (Section 5d)

Shell requested clarification surrounding ACFN's use of the term "transportation rights".

ACFN explained the use of the term “transportation rights” by Dr. Jim Tanner in the SEIA review, likely referred to the fact that transportation rights were rights that access, by preferred means, to harvesting areas is incidental to those Aboriginal and to the practice of Treaty Rights such as, for example, hunting, and fishing or berry picking. ACFN explained that access by water-based transportation is critical to the practice of rights. There are many overland routes as well. ACFN referred Shell to the Athabasca River Use, Knowledge and Change study by Craig Candler, Rachel Olson, Steven DeRoy and the Firelight Group Research Cooperative with the ACFN and MCFN and available on the Parkland Institute website, as a good reference regarding access and transportation underlying and necessary to the exercise of treaty rights. ACFN suggested that access to areas where those rights could be practiced resulted in the incidental rights to traditional overland routes and waterways that are preferred.

~~ACFN suggested that the recently released study, “As Long as the Rivers Flow, Athabasca River Knowledge, Use and Change” by Craig Candler, Rachel Olson, Steven DeRoy and the Firelight Group Research Cooperative with the ACFN and MCFN, would be a good reference regarding incidental rights.~~

EIA Methodology

Shell and ACFN agreed that the Questions from the JPME and PRM Technical Reviews were similar and therefore parties would reference the PRM Technical Review when addressing discussion topics from the pre-read. This was true for all questions except Q# 70 from JPME in which the JPME Technical Review would be referenced.

1. TEK / TLU & Pre Industrial Baseline (JPME Q-1 & Q-03; PRM Q-1 & Q-3)

PRM Q# 1: Shell suggested that the TLU/TEK collected in 2008 was not incorporated into the EIA since the ACFN did not allow it to be used. Also, Shell suggested that the supplemental TLU/TEK that Shell funded has not yet been completed. Shell asked how the recommendations in this section considered this.

ACFN advised that the comments made were general in nature and not specifically referring to TLU/TEK completed or not completed, rather that TLU/TEK needs to be considered and that Shells’ methodology for doing so is deficient. As an example, the For example, the TLU/TEK portion of the EIA includes trapper knowledge about moose populations. This knowledge is not community’s assessment of moose populations is not reflected in the EIA assessment and conclusions regarding moose.

PRM Q# 3: Shell requested clarification surrounding comments that without a pre-industrial baseline the assessment is not a true examination of impacts to Treaty Rights. Additionally, Shell asked for clarification surrounding request iii for verification of Shell’s interpretation of ACFN data.

ACFN suggested that without a pre-industrial baseline, companies are continually assessing only incremental impacts. ACFN clarified that while Base Case partially considers pre-development conditions, the cases used in the EIA only provide an incremental cumulative effects assessment. The point was made that this incremental assessment does not lend to understanding when tipping points are being approached or exceeded.

ACFN clarified also that where any TEK/TLU is used, ACFN requests the opportunity to verify that the company is interpreting the data appropriately. Given ACFN’s concern of the data being misconstrued,

Comment [NN2]: I understand that this is Shell’s position, but I do not recall Shell representatives raising this position during the technical review meeting. I would have responded to that comment. Meeting minutes should be confined to what was in fact discussed at the meeting.

even unintentionally, they feel that interpretation of ACFN data needs to be validated prior to incorporation. ACFN suggested that even a verbatim incorporation requires interpretation that should be formally verified to avoid being misconstrued verification to ensure that the information has not been decontextualized or misinterpreted.

2. Restoration of eco-site phases (JPME Q-5; PRM Q-5)

PRM Q# 5: Shell inquired regarding assertions by ACFN that predictions of successful reclamation are uncertain and not supported.

ACFN suggested that Shell's assumptions were unsupported and based on limited experience specific to the region or the experience from elsewhere, not specific to the region or scale of reclamation. Furthermore, Shell's reclamation assumptions are not based on the scale of reclamation needed to restore the ecosystem of the region on a broad scale. ACFN suggested that when the reviewer reads the EIA it seems Shell has a high degree of confidence, however that confidence comes from a lot of assumptions that are not supported. ACFN would look for Shell to more accurately bracket the uncertainty.

ACFN suggested that oil sands projects represent ecosystem transformation at a large scale of disturbance. FN's are looking for restoration of the ecosystem of the region of important eco-sites, not just reclamation. The concern is not only that sites should be restored to the ecosite phase. There are a number of other conditions that underlie the meaningful practice of rights, including such things as feelings of safety, the experience of remoteness, and the quality of traditional resources as evaluated from the perspective of treaty rights-holders. Reclamation "success" should be evaluated taking FN's values and traditional knowledge into account- and that the success of that reclamation would be subject to differing values and perceptions of FN's vs. proponents.

Shell acknowledged that they have heard the concern regarding restoration versus reclamation before, but that the information required to achieve restoration just isn't available yet. Shell expressed that restoration is very difficult.

Parties agreed that while it is likely there will be a difference of opinion regarding successful reclamation, it is important to make sure that these differences aren't based on a lack of information.

Surface Water Quality

1. Water Quality impact tables (JPME Q-16; PRM Q-17)

PRM Q# 17: Shell prompted further discussion surrounding ACFN's request that certain additional calculations should be provided when it seems the reviewer would not rely on these calculations but rather endeavour to ensure the calculations were correct by doing them anyway.

ACFN advised that the comments were made in the spirit of continuous improvement and making such reports friendlier to the reviewer. ACFN suggested that the reviewer should not be expected to manipulate data and that the calculations should reasonably be provided. ACFN clarified that it did not believe information was being hidden, but rather that it could be more clearly presented and easier for the reviewer to assess.

Shell replied that they have a format that they follow and that they are not sure how to move forward on this because they felt that the presentation of the data is not a big deal.

2. Cumulative impacts on regional water bodies from process-affected seepage (JPME Q-22; PRM Q-23)

PRM Q# 23: Shell suggested that as previously discussed, pre-industrial baseline remains an item of much discussion and differences of opinion.

ACFN emphasized that while developing thresholds, benchmarks etc., it would be important to understand these things from a pre-industrial baseline.

Aquatic Health and Fish / Fish Habitat

1. Pre-industrial benchmarks for aquatic health constituents (JPME Q-23; PRM Q-25)

PRM Q# 25: Shell and ACFN agreed that this was previously addressed in discussions surrounding pre-industrial baseline.

2. Shell's monitoring plan for predicted benchmark exceedances on aquatic health (JPME Q-24; PRM Q-26)

PRM Q# 26: Shell explained why monitoring plans at this stage in planning a development were lacking the detail that would come during more detailed project planning and design. According to Shell, at this stage a conceptual monitoring plan is all that is required. Shell noted that once the project is approved that a detailed monitoring plan will be done. For the public interest determination, all that is required is that comfort is provided to the regulators that monitoring will be done and that Shell will work with regulators to ensure that monitoring will meet their needs, and the public's larger needs. Shell prompted discussion surrounding ACFN's concern about the lack of detail in early monitoring plans.

ACFN suggested that it was understood that fully detailed monitoring plans come later with detailed design; however, Shell has not provided enough information to allow confidence is low that what will be monitored will provide enough data to evaluate assumptions and predictions. monitoring will support predictions. While the final detailed monitoring plan is not required, additional detail a great level of detail on what Shell intends to monitor and why, is required to give ACFN comfort in the assumptions and conclusions in the EIA.

Shell inquired regarding ACFN involvement in the development of monitoring at JPM and MRM.

ACFN explained that they had been involved in the review of Shell's past detailed monitoring plans at the the approvals stage and that Shell had provided draft plans and funding to review plans; agreed that involvement in JPM and MRM monitoring was useful and valuable and that ACFN felt their input was used, however it did not detract from the desire for more detail than what is in the EIA.

3. Fish habitat thermal changes using pre-industrial baseline (PRM Q-27)

Comment [NN3]: I don't recall those statements being made. They are not in my notes.

PRM Q# 27: Shell and ACFN agreed that this was previously addressed in discussions surrounding pre-industrial baseline.

Hydrology

1. Cumulative impacts to the Athabasca Delta (JPME Q-35; PRM Q-43)

PRM Q# 43: Shell prompted discussion surrounding the request to expand the regional study area and asked what exactly ACFN wanted examined in the Delta.

ACFN reiterated that Shell failed to respond to the original Technical Review clarification question from March 2009. ACFN suggested that it was a clear request to expand the study area to include the Athabasca Delta and reassess impacts.

2. Alternative surface water management scenarios (PRM Q-35)

PRM Q# 35: Shell suggested that extensive Research and Development is ongoing to find alternatives to liquid tailings. Shell sought clarity regarding the proposed alternate surface water management scenario described in the request.

ACFN suggested it has seen progress made in the industry on the management of liquid tailings since Directive 74, however, of importance to ACFN is that industry should look at managing three streams (fresh water, process water and tailings) separately. ACFN is interested in understanding the implications of this water management scenario (i.e. capital cost, operating cost, surface disturbance). The ultimate environmental objective is to separate process water from tailings.

~~ACFN Elders expressed concern that they were not involved in the meeting and did not understand what benefit there was to listening to Shell and ACFN technical experts discuss the results of the Technical Review.~~

~~Discussion on Impacts to Athabasca River~~

~~ACFN Elders expressed concern regarding decreased water levels in the Athabasca River and seemingly correlated increase in industry water use. Also, ACFN Elders expressed concern regarding the ability to access traditional lands.~~

~~Shell asked if Elders felt they were involved in appropriate committees where these issues are discussed and solutions are being pursued.~~

~~ACFN Elders suggested there was a parallel process that ACFN was involved in but that it took too long to get funding for that consultation.~~

~~ACFN IRC mentioned a report that was just published (“As Long as the Rivers Flow, Athabasca River Knowledge, Use and Change”).~~

ACFN Elders continued to express their frustration at the process of involving them in the Technical Review at this stage.

Shell asked if Elders were involved in the Technical Review process as the protocol agreement contemplates.

ACFN suggested that Elders are generally involved in the Technical Review however the opportunity had not arisen to debrief the Elders and the IRC were waiting for the written response to the Technical Review to conduct those Elders consultations.

ACFN Elders continued to voice concern regarding water levels, impacts to the Delta, muskrat habitat and concern for the future.

Shell assured ACFN Elders that they heard the concerns expressed in this meeting as well in previous meetings and that Shell was working to do its part to improve its performance and reduce its water use. Shell shared examples of mitigation measures and suggested that it would be a combined effort needed to tackle this regional issue.

ACFN IRC suggested that thresholds for navigability were published in the report and that Shell's plans should consider this information to influence water storage plans, etc.

Shell assured ACFN that it was cooperating with several different water management committees and participating in the water management framework development in which it was sure the results of their report would be considered.

ACFN expressed concern that Shell would build something that didn't comply with upcoming frameworks not yet released.

Shell reiterated its previously stated commitment in the EIA that it would comply.

ACFN Elders suggested that the water issue was too big an issue to discuss over the phone and that Shell should meet face to face with ACFN on such important issues.

Shell reminded the ACFN Elders of the objective of the meeting and agreed that such large regional issues required much ongoing work and cooperation. Shell advised the Elders of an upcoming Elders meeting being coordinated with the ACFN IRC to meet and to share information many important issues.

ACFN Elders agreed that issues get discussed but that it was often in smaller advisory meetings. Elders expressed an interest in a larger meeting.

Shell reiterated the numerous activities ongoing to address a number of issues (e.g. Ph 2 Framework which includes the Delta, Water Management Framework, Feb 16 Federal Review coming soon). Shell asked if it gives the community some comfort to see the many activities underway to address the many issues, albeit slow progress.

~~ACFN Elders suggested that there is work underway but that it didn't address the impacts of the past and the cost to the community to date.~~

~~Shell agreed that initiatives were focused on improving current practices and looking to continuous improvement in the future.~~

~~ACFN IRC suggested that initiatives were not addressing Treaty Rights of the future and that while FN's were trying to help, it was very slow.~~

~~ACFN Elders referred to past work with CEMA but suggested that points put forward by the FN were not accepted by government. ACFN Elders suggested that the number of plants existing, plus the future plants planned will continue to draw down water levels so FN's have to target government to get them to stop approvals.~~

~~Shell reiterated efforts to do its part and that the concerns of the FN were taken seriously.~~

~~ACFN Elders agreed that Shell is trying but suggested that government doesn't listen.~~

~~ACFN IRC suggested that the conversation focuses back on the Technical Review. ACFN suggested that we skip to Reclamation, Soil and Landforms discussion as this would be more relevant to the Elders.~~

~~Shell agreed.~~

Reclamation, Soils and Landforms

1. Monitoring programs (JPME Q-70)

JPME Q# 70: Shell and ACFN agreed that this was addressed in previous discussions.

2. Biodiversity linkage to direct placement (JPME Q-72; PRM Q-76)

PRM Q# 76: While this question was on the meeting agenda, Shell ~~did not feel additional clarification was required, explained that their reclamation expert was not able to provide details in advance of this meeting as to what specifically Shell required clarification on in regards to this question.~~

~~ACFN explained direct placement to Elders. ACFN IRC explained that direct placement is preferred method by Shell as they understand it enhances biodiversity, that if Shell's question concerns direct placement, that ACFN expects that Shell's response will address to what degree direct placement will enhance biodiversity.~~

3. Reclamation of wetlands as upland forest (JPME Q-74; PRM Q-80)

PRM Q# 80: Shell asked for clarification surrounding the request for a description of decisions and costs necessary to implement 2:1 ratio of watershed to wetlands.

ACFN expressed concern about the systematic conversion of large scale areas from low-lying wetlands to upland areas. ACFN expressed further concern about the lack of confidence, ability and experience to reclaim peat-forming wetlands on disturbed bases.

ACFN IRC explained to Elders reclamation of wetland to upland and ACFN pointed out that the the CEMA guidelines recommend recommendation of a 2:1 ratio which is not talked about in the EIA. ACFN clarified that it wants to know what steps Shell would need to take, including the key internal decision, in order to decide whether or not to implement and what costs would result if they were to implement the a 2:1 ratio. ACFN is interested in knowing how important of a factor the cost of implementing a 2:1 ratio is to Shell's decision.

Comment [NN4]: Not applicable

Shell suggested that efforts were being made to understand the CEMA recommendations; however, it would be highly unlikely Shell could provide cost information to ACFN due to competitive implications. Shell asked if something other than costs would suffice.

ACFN suggested they were interested in understanding the relative cost. Comparing one form of reclamation to another is useful. Providing a 'feasibility' assessment that shows relative costs would suffice at this juncture.

4. Reclamation knowledge gaps - Restoration/Reclamation (JPME Q-76; PRM Q-81)

PRM Q# 81: Shell sought clarification from ACFN on their definition of restoration. Shell acknowledged that they cannot reclaim an area back to what exactly was there before. Also, Shell asked for clarification on where ACFN sees restoration as reasonably achievable given the nature of mining.

Comment [NN5]: I don't recall this language being used in the meeting.

ACFN suggested that restoration means more than reclaiming eco-sites but also restoring a high degree of functionality in the ecosystem-eco function. Also, ACFN suggests it involves more than just ecological factors, but sociocultural factors as well. ACFN explained that there are a number of factors that means restoring the factors that support underly the meaningful practice of Aboriginal-Treaty Rights and these factors must be restored in order for First Nations to exercise their rights in these areas meaningfully in the future. ACFN suggested Shell provide targets/endpoints in its reclamation plans.

Shell explained that the end goal was to provide a reclaimed landscape that provided the ability for traditional pursuits similar to that which occurred before disturbance.

ACFN suggested that this was-Both parties acknowledged that a regional work that required more than Shell approach would be required that involves not only Shell.

Air Quality

1. Oxidizing potential of the regional air shed (JPME Q- 41; PRM Q-49)

PRM Q# 49: Shell and ACFN agreed that by crossing out the word 'odour' in the request, the request becomes clear.

2. Cumulative effect of multiple projects on regional air quality (JPME Q- 43; PRM Q-51)

PRM Q# 51: Shell requested clarification from ACFN on how Shell could project 100 years and still provide meaningful projection.

ACFN suggested that since Shell was already forecasting out 40 – 60 years in their mining plans and reclamation plans, 100 years should be feasible and it is more meaningful from a cultural perspective. ACFN did not know if it had been done before or have any specific suggestions on how to do this ~~but suggested that Shell had the resources to do it.~~ ACFN suggested that the assumptions would have to be clearly articulated and then you could run the models. Assumptions could then be tweaked later on if needed.

Shell asked for further clarification on how effects 100 years from now would inform a decision now.

ACFN explained that 100 years is really only a couple of generations. There is a need to look at cumulative impacts that consider the uncertainty of further development in the region, large scale transformation of the landscape, and the success of reclamation plans.

ACFN clarified that the 100 year projection was from 1965 to 2065.

Discussion on Elder honoraria

~~ACFN Elders raised concern regarding honoraria and insufficient funding of travel expenses. Shell explained that honoraria and all relevant expenses were contemplated in the Technical Review budget provided in the protocol agreement and that the IRC was responsible to pay Elders expenses out of the funds provided by Shell to the IRC for the review.~~

~~ACFN Elders and the ACFN IRC discussed a number of internal concerns.~~

Comment [NN6]: Jason, this is internal business that is not relevant to the meeting so it is better to leave it out.

Wildlife

1. KIR Selection (JPME Q-44; PRM Q-52)

PRM Q# 52: Shell asked for clarity surrounding ACFN concern of using the beaver as an analogue for migratory birds such as waterfowl.

ACFN suggested that it was an expert opinion and that Shell should answer as best they can. ACFN suggested that additional resources are unavailable to commit to an undertaking to provide additional information.

2. Wildlife baseline survey gaps (JPME Q-45; PRM Q-53)

PRM Q# 53: Shell asked for clarification on this question. ACFN explained that the expert report in Appendix D lists a number of surveys that should be undertaken that were deficient in the EIA. The question refers to the detailed report. Shell and ACFN agreed that the report in question is clearer when Appendix D is clearer when considering the report in Appendix D this question.

3. Moose Habitat modeling (JPME Q-47; PRM Q-55)

PRM Q# 55: Shell asked why ACFN felt that wildlife habitat models were inaccurate.

ACFN suggested that HSI models are not validated and therefore need to be validated with field data, not populated with data from other models or other species, as opposed to other models.

4. Loss of Riparian habitat (JPME Q-48; PRM Q-56)

PRM Q# 56: Shell asked ACFN what accepted scientific criteria they were referring to when suggesting Shell should reassess riparian habitat losses based on accepted scientific criteria.

ACFN ~~suggested that Shell had not used accepted wildlife data.~~ ACFN suggested Shell look at Appendix D-13 for clarity.

5. Pre-industrial baseline / Cumulative effects of tailings ponds (JPME Q-52; PRM Q-61)

PRM Q# 61: Shell and ACFN agreed that this was addressed in previous discussions.

6. Pre-industrial baseline / Cumulative effect of multiple projects on wildlife (JPME Q-53; PRM Q-62)

PRM Q# 62: Shell and ACFN agreed that this was addressed in previous discussions.

Vegetation, Wetlands and Biodiversity

1. Regional loss of wetlands (JPME Q-58; PRM Q-67)

PRM Q# 67: Shell and ACFN agreed that this was addressed in previous discussions.

Traditional Land Use and Traditional Knowledge

1. Cumulative impacts from the Project and nearby Operations (JPME Q- 80; PRM Q-85)

PRM Q# 85: Shell asked for clarity surrounding the term ‘near permanent’ when describing the impact on ACFN’s use of the area for traditional purposes.

~~ACFN suggested that they would have preferred to say permanent however they recognize that nature in time will fix anything. The issue ACFN sees is that it will take hundreds of years, which is near permanent.~~ ACFN explained that there will be perpetual and residual impacts for decades, if not millennia, and so for all intents and purposes “near permanent” should be taken as “permanent”.

Additional Discussion Items not in Pre-Read

PRM Q# 82: Shell asked for clarity surrounding the comment that ACFN was not fully consulted and therefore did not meet the Terms of Reference.

ACFN suggested that Shell refer to Appendix D-16 which is a review of the EIA from the perspective of Traditional Land Use and Traditional Knowledge. ACFN reiterated that the Shell's approach to the TLU/TK assessment was methodologically flawed. For example, trapper interviews were limited and not adequate or encompassing of membership representative of the population of treaty rights-holders. -ACFN then asked Shell to clarify indicate its view on how it had consulted ACFN.

Shell summarized some of the more significant aspects of its consultation since 2007 including but not limited to the funding of the Technical Review, the 2008 TLU/TEK Study, the direction from ACFN not to utilize the TLU/TEK in the EIA, the agreement to collect supplemental TLU/TEK at the request of ACFN.

ACFN expressed its position that consultation is a process of assessment and accommodation of impacts to treaty rights. ACFN noted that to date the consultation record demonstrates discussion about the process by which consultation should or will occur. ACFN noted that suggested that funding is not consultation but rather is necessary to providing capacity to gather information for the assessment, the 1st step of gathering information. Consultation should include the gathering of information, assessment of impacts and accommodation of rights. There has been no assessment of impacts to ACFN treaty rights completed to date.

Shell explained that the EIA is Shell's assessment of impacts and that Shell has provided funding to ACFN to review and assess the EIA, as well as funding for a supplemental Traditional Use Study. Shell agreed that funding an activity is not consultation, however the funding of an activity which is defined as including consultation, such as the technical review as set out in the protocol agreement, should be considered consultation. Shell suggested that consultation has been ongoing and that significant activities are still underway, including the collection of supplemental TLU/TEK that has not yet been completed.

Comment [NN7]: I don't recall this.

Shell and ACFN agreed that the term 'not fully consulted' did not consider the outstanding consultation activities that will continue including the completion of the Technical Review and the collection of supplemental TLU/TEK.

Comment [NN8]: I don't have this in my meeting notes.

ACFN acknowledged that the comments were based on a 'to date' assessment of the completeness of consultation rather than looking at it as an ongoing process since it was an assessment of the EIA; however, ACFN also expressed that it's view is that consultation has not been meaningful or adequate

Shell expressed their understanding that there is more technical review work to be done, including Shell's response to the Technical Review and to the TLU/TEK report-

PRM Q# 83: Shell asked for greater clarity surrounding ACFN assertions that Shell had not addressed or responded to issues of inadequate consultation related to use of TLU/TEK data in the EIA.

ACFN suggested that correspondence often talked around the issues and did not fully address concerns or that in some instances questions were not answered. ACFN explained that there is a need to incorporate TK/TLU information into the EIA.

Comment [NN9]: I don't recall this.

Shell noted that in the TK Scope and Use Agreement, Shell and ACFN agreed to provide the supplemental TUS to the regulators to inform the public interest decision. Shell had expected to receive the supplemental TUS in October 2010.

-ACFN acknowledged that they understand that Shell does not yet have the information from the supplemental TUS. ACFN suggested explained that due to scheduling issues the supplemental TUS was somewhat delayed. ACFN expressed that this delay was not intentional, that completion of the supplemental TUS is in ACFN's best interest, and that they are doing their best to get the work completed as soon as possible. ACFN expressed that both parties they were not trying to slow the process and that both parties had contributed to the delay in the collection of TLU/TEK, the completion of the supplemental TUS. ACFN pointed out their view that despite this delay, Shell is not relieved of their obligation to assess impacts. Shell's own consultation plan states clearly that the purpose of consultation is to assess impacts to ACFN's rights. Shell's EIA methodology is deficient in its ability to do such an assessment.

Shell agreed that the collection of TLU/TEK was taking a long time and that signing the TK Sharing Agreement was a factor in that delay. Shell referred to the TK Sharing Agreement. Shell suggested that the Scope and Use portions of the agreement clearly set out how the TK would be used; however, it was unclear how information in the Technical Review would be used since the because the EIA was deemed complete Shell is struggling with identifying how to incorporate information into the EIA.-

Comment [NN10]: ACFN's statement was not that TLU/TEK collection was taking a long time.

Comment [NN11]: Given that the discussion pertains to the TK Sharing Agreement, I believe the incorporation of info refers to the supplemental TUS not to the technical review.

Shell suggested that where ACFN and Shell disagree on adequacy of consultation efforts, they will have to agree to disagree.

Shell expressed that it will review forthcoming TLU/TEK for the project, as anticipated from ACFN. Shell will review the information to ~~confirm~~ determine whether they consider that if the additional information would ~~suggest~~ require a change to EIA findings. This is the approach they used for the TLU/TEK information provided by ACFN in 2008. Shell explained that if there is new information that Shell thinks needs to be brought forward, they will have to find a way to include this information as part of the public record.

ACFN asked for commitment from Shell to carry forward with integrating information where it is a valuable addition to the project.

Similarly, Shell noted that it is reviewing the ACFN Technical Review questions this same way. For some questions where Shell does not agree with an ACFN assertion, Shell will try to clearly articulate the reasons for a difference in opinion. Where an ACFN concern may suggest a short-coming in Shell's approach, Shell suggested that it will review the concern with its EIA practitioners to ensure the EIA is comprehensive and appropriate. As an example, Shell noted that the ACFN question on thermal effects to downstream watercourses from pit lake discharge was a question where Shell personnel were not readily aware of whether it was adequately considered in the EIA. Accordingly, Shell is checking with the EIA practitioners to confirm, and adjust if necessary, the EIA to ensure it is appropriately considered.

PRM Q# 84: Shell asked for clarification regarding the comment that information gained through consultation was not being used as part of the EIA. Shell suggested that the information Shell gleaned through consultation was used in the EIA.

ACFN suggested it was surprised to hear that ACFN information was used because they had asked repeatedly about how it would be incorporated and requested verification on how it was used. ~~ACFN suggested that transparency is key in providing confidence that information provided is used, noted that if ACFN information was used, the incorporation and use of this information in the EIA is not visible or transparent.~~

ACFN asked Shell how the ~~information from the~~ TLU/TK section is used ~~to influence~~ other parts of the EIA. ~~ACFN suggested that Shell should clearly state how TLU/TK was used in other parts of the EIA.~~

Shell explained that TLU is one of several data sources used to inform assessment findings. Shell has included TLU/TEK sections for each environmental component of the EIA so it is clear where each TLU/TEK information piece is considered in the EIA.

Shell ~~asked for clarification on the term “culturally appropriate information”, which is used on page 2 of the Technical Review prompted a discussion surrounding Section 3.0 Traditional and Treaty Rights of the ACFN Technical Review submission asking about a~~ ~~in a comment on page 2 of the Technical Review which suggested that suggests~~ a complete understanding of a project’s impacts requires, amongst other things, culturally appropriate information.

ACFN ~~explained that this term relates to the need to consider information (sociocultural values, knowledge and impacts) that go beyond a mere scientific analysis of ecological effects and impacts, suggested the requirement to link e~~ Ecological effects ~~to must be linked to socio~~ cultural impacts when assessing impacts to ~~Traditional-Treaty~~ Rights. As an example, ~~it may not be valid to simply restate the results of the vegetation assessment in the analysis of project impacts to traditional use of plants. The assessment and significance of impacts to use of plants must consider other factors that support the meaningful practice of rights above and beyond whether or not a particular plant will exist on the site in the future. when removing vegetation, it is not as simple as replanting it. For example, Shell must consider all the things that were connected to the plant like proximity to other plants, access to the plant, perceived pollution or tampering with the plants perceived uses~~ things such as the relative cultural value of different plant species, the feelings of safety for traditional resource users associated with harvesting of the plants in the particular location, the evaluation of the quality of the resource by traditional resource users, etc.

Shell noted that they consider traditionally used plant species in their assessment.

~~Shell inquired about available information given ACFN’s concern that Shell mistakenly treats all traditional plants as having equal value.~~

ACFN suggested that not all traditional plants are equally important ~~and that further community-based research is required to identify the appropriate criteria, measures and thresholds for such an assessment, and that the only way to get that information is from talking with Elders.~~

~~Shell inquired about available information given ACFN’s concern that Shell mistakenly treats all traditional plants as having equal value.~~

ACFN discussed its proposal to government and Shell for a Traditional Land Resource Use Management Plan which is related ~~to this issue~~ to assessment of Treaty Rights and consultation. ACFN reinforced that there is a cultural component to every impact.

Muskeg River Diversion Mitigation:

Shell provided information to ACFN regarding proposed mitigation to address the concerns heard from the community surrounding the Muskeg River Diversion.

ACFN expressed its view that Shell's proposal to divert Muskeg River along a temporary ditch canal, which runs north of the mine site, rather than through a pipeline as originally proposed, does not represent a mitigation but is rather simply an alternate plan. ACFN expressed concerns about disturbance to and channelization of, the Muskeg River, including disturbance to the riparian area and animals which use the river and its riparian area. As such, ACFN expressed that assessment of the impacts of this alternate plan are required. ACFN asked Shell to provide the results of assessment of impacts of the Muskeg River diversion plan.

Shell acknowledged that further assessment was required, but noted that it had not yet been completed. Shell stated that they could provide additional data to ACFN. The maps of the proposed diversion could be provided right away, but the technical details and assessment results would take more time.

- ACTION – Shell agreed to send additional information to ACFN regarding the proposed mitigation/diversion of Muskeg River, including technical details and assessment results.
- ✓ RESPONSE – Shell sent additional information regarding the maps and preliminary information on the proposed mitigation via email dated December 13, 2010. Technical details and assessment results have not yet been provided.

ACFN Elder Comments Regarding Impacts to Athabasca River and Water Levels:

Discussion on Impacts to Athabasca River

ACFN Elders expressed concern regarding decreased water levels in the Athabasca River and Delta. Elders noted that water levels have never been so low in the last 76 year as they are now. These lower water levels are causing problems for ACFN members to access traditional lands. Elders are concerned that ~~and seemingly correlated increase in~~ industry is taking the water-water use. Also, ACFN Elders expressed concern regarding the ability to access traditional lands.

Elders expressed their desire for Shell to come to Ft. Chipewyan to meet with the community and to have someone take them out on the land so that they could experience these impacts for themselves. Elders suggest that in order for Shell to truly understand the issue and the concerns about water levels, Shell employees must experience this in person.

Shell agreed that it must understand what the impacts are to the Athabasca River. Shell asked if Elders felt they were ACFN had been involved in appropriate committees where these issues are discussed and solutions are being pursued.

~~ACFN Elders suggested explained that there was a parallel consultation process on the Phase 2 Water Management Framework that ACFN was involved in. It took a long time to work through the process to the point where capacity funding was made available for research with Elders and other ACFN members that are knowledgeable about the river, but that it took too long to get funding for that consultation. This research was completed this summer and the resulting report ("As Long as the Rivers Flow, Athabasca River Knowledge, Use and Change) was published yesterday by the Parkland Institute. This report suggests treaty rights-based thresholds for water flows required in the river to sustain traditional use. It also raises issues related to water quality. ACFN IRC mentioned a report that was just published ("As Long as the Rivers Flow, Athabasca River Knowledge, Use and Change").~~

~~ACFN Elders continued to express their frustration at the process of involving them in the Technical Review at this stage.~~

~~Shell asked if Elders were involved in the Technical Review process as the protocol agreement contemplates.~~

~~ACFN suggested that Elders are generally involved in the Technical Review however the opportunity had not arisen to debrief the Elders and the IRC were waiting for the written response to the Technical Review to conduct those Elders consultations.~~

ACFN Elders continued to voice concern regarding water levels, impacts to the Delta, muskrat habitat and concern for the future. Elders explained that navigation of the river by boat is getting more difficult as water levels decline. As it becomes more difficult for ACFN members to use the river due to declining water levels, ACFN Elders become increasingly frustrated with industry water use. Elders expressed concern about what it will be like in the next 50 years as oil sands development continues to grow and more companies are granted water allocations.

Shell assured ACFN Elders that they heard the concerns expressed in this meeting as well in previous meetings and that Shell was working to do its part to improve its performance and reduce its water use. Shell shared examples of mitigation measures and suggested that it would be a combined effort needed to tackle this regional issue.

~~ACFN IRC suggested that mitigations proposed without consideration of rights-based criteria, measures and thresholds may not be successful for mitigating impacts to treaty rights. For example, rights-based thresholds for navigability water levels that are were published in the report suggest that water withdrawals should be limited during ice free conditions, not just under the winter flow conditions suggested by an EBF-based thresholds. and that Shell's plans should consider this information to influence water storage plans, etc. If the phase 2 framework accepts the implementation of the rights-based thresholds and the recommendations in the report, this could have implications for Shell's plans.~~

Shell assured ACFN that it was cooperating with several different water management committees and participating in the water management framework development in which it was sure the results of their report would be considered. Shell's EIAs commit to complying with the Phase 2 Framework. Shell acknowledged that it would have to manage adaptively to comply with the Phase 2 Framework.

~~ACFN expressed concern that Shell would build something that didn't comply with upcoming frameworks not yet released.~~

~~Shell reiterated its previously stated commitment in the EIA that it would comply.~~

ACFN Elders suggested ~~that the water issue was too big an issue to discuss over the phone and that once again that~~ Shell should meet face to face with ACFN, including all of the members that use the river and the Delta, on such important issues so that they could share their input. Elders reiterated that Shell should see first-hand the changes in order to aid in building common understanding. Elders noted that it is difficult for ACFN members to accept Shell's projects and that Shell must meet with the members to share information.

Shell agreed that it is important that Shell comes to the community and shares information. Shell reminded the ACFN Elders of the objective of the meeting and agreed that such large regional issues required much ongoing work and cooperation. Shell advised the Elders of an upcoming Elders meeting being coordinated with the ACFN IRC to meet and to share information many important issues.

ACFN Elders agreed that issues get discussed but that it was often in smaller advisory meetings. Elders noted that the community's concerns are rising and that something must be done. Elders expressed an interest in a larger meeting—that involved all of the community.

Elders explained that ACFN traditional lands still belong to ACFN. ACFN has never been properly compensated or accommodated for the impacts that have occurred to the traditional lands and the delta.

Shell reiterated the numerous activities ongoing to address a number of issues (e.g. Ph 2 Framework which includes the Delta, Water Management Framework, Feb 16 Federal Review coming soon). Shell asked if it gives the community some comfort to see the many activities underway to address the many issues, albeit slow progress.

ACFN Elders suggested that there is work underway but that it didn't address the impacts of the past and the cost to the community to date. While studies and processes to address water quality and quantity issues are being initiated, they do not adequately assess impacts to the past, present and future practice of treaty rights.

Shell agreed that initiatives were focused on improving current practices and looking to continuous improvement in the future.

~~ACFN IRC suggested that initiatives were not addressing Treaty Rights of the future and that while FN's were trying to help, it was very slow.~~

ACFN Elders referred to past work with CEMA but suggested that points put forward by the FN were not accepted by government. ACFN Elders suggested that the number of plants existing, plus the future plants planned will continue to draw down water levels. ACFN Elders said that government does not listen and that ACFN Elders want to get Industry and Government together in a meeting. so FN's have to target government to get them to stop approvals.

Shell reiterated efforts to do its part and that the concerns of the FN were taken seriously.

~~ACFN Elders agreed that Shell is trying but suggested that government doesn't listen.~~

~~ACFN IRC suggested that the conversation focuses back on the Technical Review. ACFN suggested that we skip to Reclamation, Soil and Landforms discussion as this would be more relevant to the Elders.~~

~~Shell agreed.~~

Elders Comments on Involvement of Elders in Technical Review Meeting:

ACFN Elders expressed concern that Shell was not available to meet in person as the meeting format was not. Additionally ACFN Elders expressed concern surrounding their role in the meeting and about not knowing the objective or agenda for the meeting.

Shell again apologized for the unfortunate weather which resulted in the change in plans. Shell explained the objective of the meeting (i.e. to discuss the technical review submitted by the ACFN IRC to inform Shell's written response) and advised that an agenda in the form of a pre-read had been sent 1 week prior to the meeting.

ACFN IRC representatives explained the objective of the meeting to the Elders and apologized for not providing an agenda in writing at prior to the meeting.

ACFN Elders expressed concern that they were not involved in the meeting and did not understand what benefit there was to listening to Shell and ACFN technical experts discuss the results of specifics on the the Technical Review questions about which Shell required further clarification before responding.

Shell asked if Elders were involved in the Technical Review process as the protocol agreement contemplates.

ACFN ~~suggested that Elders are generally~~ replied that Elders were generally involved in the Technical Review, however the opportunity had not arisen to debrief the Elders and the IRC were waiting for the written response to the Technical Review to conduct those Elders consultations.