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INDIGENOUS RESISTANCE TO ALBERTA OIL AND GAS DEVELOPMENT

A Response to the Alberta Public Inquiry



INDIGENOUS
CLIMATE ACTION



Indigenous Climate Action (ICA) is an Indigenous-led organisation guided by a diverse group of Indigenous knowledge keepers, water protectors and land defenders from communities and regions across the country. We believe that Indigenous Peoples' rights and knowledge systems are critical to developing solutions to the climate crisis and achieving climate justice.

ICA works on connecting and supporting Indigenous communities to reinforce our place as leaders driving climate change solutions for today and tomorrow. We model our work and organisational structure on systems of free, prior and informed consent and self-determination. By providing communities with knowledge and resources, we can inspire a new generation of Indigenous climate leaders building solutions centred around our inherent rights and cultures.

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INTRODUCTION

In June 2021, a draft report (“Draft Report”) of the Alberta Inquiry into Anti-Alberta Energy Campaigns (the “Allan Inquiry”) was circulated to approximately 40 organisations for review and response. The Commissioner of the Inquiry, Jackson Stephens Allan (“Allan”), stated in the Draft Report that he frequently heard from Indigenous and non-Indigenous individuals that Indigenous opposition to oil and gas development in Alberta was a “vocal minority”.¹ This did not coincide with the lived experience of certain representatives at Indigenous Climate Action and others who had observed Indigenous opposition to Alberta oil and gas development to be widespread and sustained. To correct the record and conclusions of the Allan Inquiry, Indigenous Climate Action asked Ecojustice to compile a record of Indigenous community concerns and opposition with respect to oil and gas development in Alberta.

In the section of the Draft Report dealing with First Nations, Allan refers extensively to the Indian Resource Council (“IRC”) and Stephen Buffalo, President and CEO of the IRC. The IRC consists of First Nations across Canada that have oil and gas production, or the potential of oil and gas production, on their lands.² In the Draft Report, Allan quotes Stephen Buffalo and other sources extensively with respect to the economic benefits that accrue to First Nations from oil and gas development.³ Allan also references extensively First Nations’ support for various oil, gas and pipeline development projects.⁴ In the Draft Report, Allan makes only passing reference to or discounts Indigenous concerns or opposition with respect to oil and gas development or ascribes Indigenous opposition to influence by non-Indigenous environmental organisations.⁵

In the Draft Report, Allan quotes, with approval, a statement by Brian Lee Crowley, Managing Director of the Macdonald Laurier Institute:

Brian Lee Crowley, who is also the Managing Director of the Macdonald Laurier Institute, expresses views that I frequently heard in interviews I conducted with Indigenous and non-Indigenous individuals, “The thing to remember, and the evidence bears this out, is that Indigenous communities (like virtually every other community in Canada) have their vocal minorities opposed to development. These expressions of their dissatisfaction are fodder for the media. But these vocal minorities are no more

¹ Jackson Stephens Allan, “Report of the Alberta Public Inquiry into Anti-Alberta Energy Campaigns – Draft”, (20 June 2021) at para 320 [Draft Report].

² Online at irccanada.ca/about/ (accessed 31 August 2021).

³ Draft Report, *supra* note 1, at paras 292-299.

⁴ *Ibid*, at paras 302, 309, 311, 316-317, 335-337, 340.

⁵ *Ibid*, at paras 300-301, 303, 306, 312, 314.

representative of Indigenous Canada than non-Indigenous protesters are of the country as a whole. When we treat aggressive and vocal minorities as though they are speaking for the mainstream of the Indigenous world, those of us who believe that jobs and wealth creation hold the key to the country's advancement abandon our natural allies and help reinforce a narrative of conflict that is holding a major part of our economy to ransom."⁶

It is this characterization of Indigenous opposition to oil and gas development as a “vocal minority” that did not ring true for Indigenous Climate Action and others at the forefront of such opposition. It appeared to Indigenous Climate Action and others that Allan’s research either was not comprehensive and failed to identify extensive Indigenous concerns and opposition with respect to oil and gas development or Allan chose to ignore the evidence of such concerns and opposition. It is difficult to determine which situation applies given that the Inquiry maintained no public record of the evidence before it and Allan refused to identify all of the parties he had interviewed in the course of the Allan Inquiry. Indigenous Climate Action requested that Ecojustice fill this gap by identifying the extent of Indigenous concerns and opposition with respect to oil and gas development in Alberta.

METHODS

As a starting point, this research adopted the definition of the Alberta oil and gas industry used by the Allan Inquiry, namely:

“Alberta oil and gas industry” means

(i) any and all aspects of Alberta’s petroleum and natural gas sectors, including the exploration, development, extraction, storage, processing, upgrading and refining of Alberta’s oil and gas resources, and

(ii) any aspect of marketing and delivery of Alberta’s oil and gas resources to commercial markets by any mode of transportation whatsoever, including both railways and pipelines falling under provincial or federal jurisdiction.⁷

⁶ *Ibid*, at para 320.

⁷ Terms of Reference for the Alberta Public Inquiry, Appendix to [Order in Council 125/19 \(4 July 2019\)](#), as amended by Order in Council 191/2020 (25 June 2020), Order in Council 249/2020 (5 August 2020), and Order in Council 326/2020 (October 28, 2020).

Similar to the Allan Inquiry, this research considered any public statement, regulatory involvement, legal action or other activity intended to halt, delay, substantially modify or overturn the approval of a proposed oil and gas development as an indicator of opposition to such activity.

In classifying opposition to oil and gas development as “Indigenous opposition”, this research considered opposition expressed by First Nations, non-status Indigenous individuals and organisations, Métis individuals, settlements and organisations, and other Indigenous organisations. We recognize the significant differences in terms of the history, culture, organisation and legal status of these various Indigenous communities and use the terms “Indigenous opposition”, “Indigenous groups”, “Indigenous community” and “Indigenous communities” as a matter of convenience only.

The researchers accessed publicly available information with respect to Indigenous opposition to oil and gas development. In particular, the researchers accessed the following sources:

- (a) Alberta Energy Regulator (“AER”) (and its various predecessor organisations) records including:
 - (a) participatory and procedural decisions from January 24, 2015 to August 19, 2021;⁸
 - (b) decisions from April 3, 1996 to June 17, 2021.⁹
- (b) relevant Canadian Energy Regulator (and its predecessor National Energy Board) decisions and reports;¹⁰
- (c) relevant Impact Assessment Agency (and its predecessor Canadian Environmental Assessment Agency) reports;¹¹
- (d) the CanLII database of Canadian court cases;¹² and
- (e) various publicly accessible media sources.

In assessing the expressions of opposition to Alberta oil and gas development, the researchers considered the following situations as indicative of opposition:

⁸ Online at <https://www.aer.ca/regulating-development/project-application/decisions/participatory-procedural-decisions>.

⁹ Online at <https://www.aer.ca/regulating-development/project-application/decisions>.

¹⁰ Online at <https://apps.cer-rec.gc.ca/REGDOCS/Search/Projects>.

¹¹ Online at <https://iaac-aeic.gc.ca/050/evaluations/index?culture=en-CA>.

¹² Online at <https://www.canlii.org/en/>.

- (a) where an Indigenous community explicitly stated that it was opposed to the development;
- (b) where an Indigenous community filed a statement of concern with respect to a proposed oil or gas development. It is presumed that an Indigenous community that filed a statement of concern opposed at least some element of the proposed development or wished to see some aspect of the proposed development substantially modified. If the statement of concern was withdrawn prior to the relevant hearing or decision, this was not considered to be evidence of opposition. However, there are a few exceptions where an Indigenous community stated that it no longer opposed the project, but continued to raise extensive concerns with the project in an ongoing hearing. These have been included as indicative of opposition to the project;
- (c) where an Indigenous community filed and proceeded with a court case challenging the consultation process or approval of a project; and
- (d) where an Indigenous community signed a declaration, made public statements or took actions that clearly demonstrated opposition to a proposed development.

In particular with reference to Statements of Concern filed with the AER and its predecessors, the researchers did not have access to the actual Statements of Concern within the timeframe for completing this research. The researchers therefore relied on the publicly available AER responses to the Statements of Concern. In some cases, it was possible to discern from those responses the nature of the Indigenous community's concerns. In other cases, the AER provided only a generic response rejecting or accepting the Statement of Concern. In the latter situation, the concerns are noted in the Table in Appendix 1 as simply "Concerns not specified."

The researchers do not intend that this research be taken as a complete compendium of Indigenous concerns or opposition with respect to oil and gas development in Alberta. Rather, the researchers have accessed sufficient publicly available sources and evidence of such concerns and opposition to identify the gaps in the research and findings of the Allan Inquiry and to refute the conclusion that such opposition was limited to a "vocal minority".

RESULTS AND ANALYSIS

OVERVIEW OF RESULTS

The results of this research are summarised in the Table found in Appendix 1. The Table identifies the proposed development, approval or court decision involved, the relevant regulatory body or decision maker, the Indigenous community that expressed the opposition, the nature of that opposition and the outcome of the regulatory or court process. This is intended to provide a concise summary only of the nature of the opposition. For further details, the reader is encouraged to access the source documents, usually referenced by application or decision numbers or by court case references. In some of the more significant or complex cases of opposition, the researchers have provided a short narrative in Appendix 2 expanding on the nature of opposition and the outcome. Appendix 3 summarises the number of Canadian Indigenous communities that have filed statements of concerns with respect to oil and gas developments.

The Table found in Appendix 1 documents 131 incidents of Indigenous community opposition to Alberta oil and gas development. Sixty-eight Canadian Indigenous communities expressed concerns or opposition with respect to one or more oil or gas developments.¹³ In the case of the Treaty Alliance Against Tar Sands Expansion (Reference No. 72 in the Table in Appendix 1), over 150 Canadian First Nations and U.S. Tribes expressed opposition to oil sands development.

The research indicates that Indigenous communities express opposition to specific projects based on their consideration of the perceived risks, impacts and benefits of that project, and the efficacy and meaningfulness of the engagement process. Therefore, the evidence shows that an Indigenous community may support one oil and gas development, while opposing another. The researchers found little evidence of Indigenous communities that opposed or supported oil and gas development on a broad and generalised basis.

For example, the Fort McKay First Nation has generally been a supporter of oil sands development and has benefited economically by providing services to that sector.¹⁴ Yet, the Fort McKay First Nation fought vigorously to protect its Moose Mountain reserves and surrounding area from encroachment

¹³ See Appendix 3.

¹⁴ Draft Report, *supra* note 1, at para 293.

by oil sands development.¹⁵ Similarly, the Haisla Nation is the owner and proponent of the Cedar LNG Project,¹⁶ yet was an opponent of the Northern Gateway Pipeline Project.⁷

While the Allan Inquiry Draft Report relies significantly on the statements of the IRC and its President as evidence of Indigenous support of oil and gas development, it is noted that at least 13 First Nation members of the IRC have either expressed concerns or opposed certain oil and gas developments.¹⁷

OVERVIEW OF ANALYSIS

The results found in Appendices 1 and 2 clearly demonstrate that Indigenous community opposition to oil and gas development has been widespread and continuous for at least the past 35 years. Contrary to the findings of the Allan Inquiry, such opposition, in most cases, preceded and was independent of any organised anti-Alberta energy campaign, influence of non-Indigenous environmental organisations or support through foreign funding.

The evidence also reveals that the Allan Inquiry's framing of the narrative as a dichotomy between total opposition and total support, does not adequately capture the complexity of the issue. Indigenous groups' perspectives and methods are nuanced, dynamic, and strategic. Therefore, Indigenous communities have expressed opposition for several reasons in several ways and at several points in the process. Formal opposition is only one such means – one that Indigenous communities do use when strategically warranted.

The issues and concerns, including the environmental and socioeconomic concerns, which Indigenous groups raise cannot be separated from the political dynamics of the colonial legal system. Canada's legal system, by its design, facilitates settler use of Indigenous lands, at the expense of Indigenous control over those lands. This legal relationship is therefore inexorably political, and creates an additional layer of systemic political imbalances which have led to significant, multi-layered Indigenous opposition. The regulatory approval process is almost entirely unresponsive to Indigenous concerns, and does not provide meaningful opportunities for Indigenous communities to control whether or not oil and gas projects proceed on their traditional territories. Instead, Indigenous groups more often

¹⁵ See Ref. No. 92 in Table, Appendix 1.

¹⁶ Draft Report, *supra* note 1, at para 293.

¹⁷ Specifically, the Fort McKay First Nation, Chiniki First Nation, Fort McMurray #468 First Nation, Chipewyan Prairie First Nation, Beaver Lake Cree First Nation, Alexander First Nation, Samson Cree Nation, O'Chiese First Nation, Cold Lake First Nations, Alexis Nakota Sioux Nation, Whitefish Lake First Nation, Paul First Nation, and Athabasca Chipewyan First Nation are members of the IRC.

have felt forced to participate in the project approval process, despite their unresolved concerns, to have any chance of having even a few of their concerns addressed.

The first layer of Indigenous opposition to Alberta oil and gas projects is therefore centred around the efficacy of the engagement process in ensuring Indigenous groups' meaningful participation. Where the Crown fails to discharge the bare-minimum of the duty to consult and accommodate as part of the engagement process, Indigenous groups have often been further forced to turn to legal opposition.

The second layer of Indigenous opposition to Alberta oil and gas projects is centred on project-specific impacts on the environment, socioeconomic conditions, and section 35 rights. Such concerns are based on substantive, context-specific measures on a wide variety of interconnected topics. Where there is a potential for a project to have adverse effects on Indigenous groups and their traditional territories, they have developed and articulated extensive and detailed concerns.

These concerns are especially prevalent and give rise to formal opposition most often amongst Indigenous groups in northern Alberta, not because they are a "vocal minority" as the Allan Inquiry would suggest, but because oil sands projects in the north have the largest footprint and these groups disproportionately experience the most adverse impacts with the least direct benefits.¹⁸ However, when Alberta oil and gas projects elsewhere have potential to impact the traditional territories of other Indigenous groups, those Indigenous groups have also expressed nation-wide opposition in a variety of ways. Indigenous groups express their opposition through their own initiative in ways and for reasons only they can articulate. Environmental organisations play either no role or only a minor background role in the vast majority of instances of Indigenous opposition.

The Allan Inquiry failed to identify and comprehend much of this opposition, all of which is widely documented and publicly available. The Allan Inquiry has therefore either proven its own incompetence through a failure to conduct adequate research or has proven its own illegitimacy by deliberately ignoring these facts to suit the political purposes of the Inquiry and the Kenney government. In either case, the Allan Inquiry's assertion that Indigenous opposition is only a "vocal minority" is simply incorrect.

¹⁸ See Appendix 3 which documents the number of statements of concern filed by northern Indigenous communities such as the Athabasca Chipewyan First Nation, Mikisew Cree First Nation and Fort McKay First Nation with respect to oil sands developments.

UNDERLYING ISSUE: PARTICIPATION BECAUSE OF LACK OF MEANINGFUL CHOICE

Indigenous groups have complex and dynamic interests which cannot be captured by a simplistic dichotomy between “opposing” and “supporting” oil and gas projects. Therefore, when faced with unresponsiveness in the colonial regulatory system to their interests, Indigenous groups have responded through nuanced approaches to articulate their concerns.

Regulatory approval processes are not responsive to most Indigenous concerns, and rarely disapprove of a project going forward. The Crown rarely disapproves either. Of the 131 instances of opposition to Alberta oil and gas projects listed in the Table in Appendix 1, there is only one instance where the Crown withdrew its support for a project, albeit only after losing in court.¹⁹

The AER (and its predecessors, the Alberta Energy and Utilities Board and the Energy Resources Conservation Board) in particular is almost entirely unresponsive to Indigenous opposition. In the majority of cases where an Indigenous community expressed concern, the AER dismissed that party as not directly and adversely affected. In making these dismissal decisions, the AER uses an interpretation of the “directly and adversely affected” test which sets an inappropriately high threshold for Indigenous groups. According to the AER’s decisions, Indigenous groups must establish that they have rights in the project area, that the proposed activity might interfere with those rights, and that it exercises those rights in that particular area. According to the AER, evidence of use must be incredibly specific and detailed, such that even affidavits from members of the concerned Indigenous group stating that they make some use of the project area are insufficient.²⁰

This interpretation is out of step with the reality of Indigenous interests and the impacts of oil and gas projects, as well as Supreme Court jurisprudence. Firstly, such a restrictive interpretation ignores both the potential for impacts outside the project area, as well as the cumulative effects arising from oil and gas projects. Indigenous groups have regularly raised concerns about impacts outside the project area and cumulative effects, all of which reflect the interconnectivity of Indigenous interests in their traditional territories. The AER, in contrast, does not comprehend these issues. Furthermore, the requirement for detailed, site specific exercising of rights does not accord with the Supreme Court’s position as articulated in *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69. The Supreme Court has made it very clear that where there is a treaty right in an area of the

¹⁹ See Appendices 1 and 2, Northern Gateway Project, Ref. No. 33.

²⁰ See Appendix 1, Kirby Expansion Project, Ref. No. 32; see also Nigel Bankes, “[Directly and Adversely Affected: The Actual Practice of the Alberta Energy Regulator](#)” (3 June 2014), *The University of Calgary Faculty of Law Blog on Developments in Alberta Law* at 3-6, online: <https://ablawg.ca/wp-content/uploads/2014/06/Blog_NB_AER_June-2014.pdf>.

Indigenous groups' traditional territory, any taking up of lands in that area which restricts the ability to exercise that right causes legal prejudice to the Indigenous rights-holder.²¹ This prejudice can be from categorical rights restrictions in the project area, and also from cumulative erosion of meaningful abilities to exercise rights within traditional territories, the latter of which cannot meet the AER's overly high threshold.²²

Because of this inappropriate interpretation of the "directly and adversely affected" test, the test acts as an excessively high threshold requirement which systemically disempowers Indigenous perspectives prior to the hearing stage, and results in very few Indigenous concerns receiving any elaboration in hearings. Subsequently, AER decisions rarely give any weight to Indigenous concerns. Furthermore, the AER does little or nothing to be transparent in its decision-making with respect to Indigenous concerns, and rarely provides complete information about the extent of the Indigenous concerns it is dismissing. The AER, and other regulators to the extent they mirror this pattern, thus do not provide a meaningful avenue for Indigenous groups to exercise their opposition. Formal opposition therefore has a more limited strategic value, and is often more useful at other stages of the process.

In such a system which does not provide meaningful choice, Indigenous opposition manifests through different methods, only one of which is formal opposition. To articulate their interests and concerns, Indigenous groups often favour an approach whereby they initially register their objection but also assume the project will be approved regardless of their input, at which point they also seek to have their specific concerns addressed in the project plan through ongoing cooperation and consultation. Indigenous groups have most often registered formal opposition at the outset, to put pressure on the proponent and the Crown to engage in negotiations with Indigenous groups, after which the Indigenous group withdraws their formal opposition, but continues to articulate the same concerns which gave rise to the formal opposition.

Therefore, Indigenous groups' "support" or "cooperation" in the regulatory process does not reflect a real choice, as Indigenous groups instead have often felt they have no choice but to participate to make sure they get something out of the process, as opposed to the nothing they would get for only formally opposing the project. Thus, Indigenous "cooperation" does not necessarily equate with consent, and more often is instead accompanied by significant unresolved concerns (including concerns raised by Indigenous community members other than the group's formally defined leadership).

²¹ *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, [2005 SCC 69](#) at paras 45-8, [2005] 3 SCR 388; Bankes, "Directly and Adversely Affected: The Actual Practice of the Alberta Energy Regulator", *supra* note 21, at 6.

²² Bankes, "Directly and Adversely Affected: The Actual Practice of the Alberta Energy Regulator", *supra* note 21, at 6.

FIRST LAYER: OPPOSITION FOR LACK OF MEANINGFUL ENGAGEMENT

Regardless of the specific issues arising from particular project designs, many Alberta oil and gas projects have incurred significant Indigenous opposition where the Crown failed to fulfil its role in the engagement process, namely the duty to consult and accommodate. Because participation in the engagement process is so vital to having their concerns addressed even minimally as discussed above, Indigenous groups have taken legal action to ensure consultation and accommodation.

Most Indigenous-led litigation against Alberta oil and gas projects is in response to failures of the federal and/or provincial governments to discharge the duty to consult and accommodate or the regulator's determination that consultation is not required, or for otherwise failing to take action to protect Indigenous interests from the impacts of oil and gas projects. Our research has identified a number of such Indigenous legal challenges. An example of the latter type is the several Indigenous legal challenges seeking to force the federal government to develop and implement strategies for the protection of caribou and caribou habitat from the adverse impacts of Alberta oil and gas projects.

Indigenous groups have expressed their distrust and dissatisfaction with the political part of the process, developed through many years of negative experiences. Far too often, proponents, regulators, and Crown agents have made half-hearted attempts to engage, have failed to keep their promises, and have simply ignored Indigenous groups' views. Such behaviour is indicative of the colonial legal framework in which oil and gas projects operate in Canada, namely a system which provides no meaningful choice to Indigenous groups over how their traditional territories are used by settler society. Where the Crown perpetuates this imbalanced relationship by failing to meaningfully consult and accommodate, Indigenous groups have forcefully articulated their opposition to such exclusion, increasingly through legal proceedings to protect their section 35 rights and to enforce the constitutional duty to consult and accommodate.

SECOND LAYER: SUBSTANTIVE CONCERNS BASED ON SUBSTANTIVE MEASURES

Indigenous groups have articulated interests and concerns which are wide-ranging and very nuanced – therefore their positions on oil and gas projects span across all the elements of the project, and can be “for” or “against” each of these individual elements, regardless of whether or not they are “for” or “against” the project as a whole. As discussed above, Indigenous groups are often forced to participate in order to have even a small chance of having their concerns addressed. Therefore, cooperation and support are not meaningful indicators of general consent or lack of opposition. In fact, Indigenous

groups who participate in oil and gas projects have expressed numerous concerns related to most specific aspects of virtually every project design on their traditional territories.

Indigenous groups' project-specific concerns are wide-ranging and comprehensive. Every element of water, land, air, fish, birds, animals, human health and safety, socioeconomic impacts, and climate change have been raised in Indigenous groups' input. Indigenous groups have articulated that these issues are all interlinked, and are linked with political issues as well, including section 35 rights and the duty to consult and accommodate. Indigenous groups have also raised the overarching issue of cumulative effects with respect to these interlinked sub-issues. Alberta oil and gas project designs continually create potential impacts in all these issue areas, and therefore rarely go ahead without spurring significant and detailed Indigenous concerns from most or all Indigenous groups who have an interest in the project. Alberta oil and gas projects, by their very nature as settler resource-extraction activities which use up lands in Indigenous traditional territories, simply cannot be separated from the interlinked range of environmental, socioeconomic, and political issues of interest to Indigenous groups. In contrast to the Allan Inquiry's assertion, the only real "minority" of cases is Alberta oil and gas projects on Indigenous territories which do not engender opposition of some form by most or all interested Indigenous groups.

Indigenous groups in northern Alberta and the Northwest Territories, who experience the most direct negative effects of Alberta oil sands projects and who receive the least benefit (because their traditional territories are mostly treated as Crown lands where they do not enjoy the same direct economic benefits as First Nations who hold oil and gas rights on reserves) are more likely to voice direct opposition because they are more likely to have to deal with large-footprint projects and their flawed engagement processes and negative impacts, not because they are a "vocal minority". The same is true for Indigenous groups in British Columbia when Alberta-based pipeline projects would cross their territory and could have disproportionately high negative impacts, such as on the southern resident orca population. Southern Indigenous groups have also expressed opposition based on a lack of consultation and when the project has potential adverse impacts on their traditional territory. Alberta-based southern pipeline projects, such as the Energy East and Eastern Mainline projects, have spurred considerable opposition from large numbers of potentially impacted Indigenous groups all along the pipeline route.

Indigenous groups' concerns are real and are based on their real interests and perspectives. Indigenous opposition does not rely on environmental organisations, and in fact the vast majority of cases of Indigenous opposition do not involve environmental organisations at all or in any significant capacity.

Overall, where an Alberta oil or gas project has potential impacts on Indigenous groups' traditional territories, those Indigenous groups have expressed their opposition in the variety of ways described above, depending on the severity of the impacts. Sometimes the potential impacts are too great, and formal opposition is the only option. In all cases, Indigenous groups have voiced their myriad project-specific concerns whenever those concerns arise, which is very often in the case of Alberta oil and gas projects.

CONCLUSION

According to the evidence, the Allen Inquiry's assertion that Indigenous opposition to Alberta oil and gas projects is only a "vocal minority" is simply untrue. Indigenous opposition to Alberta oil and gas has been widespread and sustained for decades. Virtually all Alberta oil and gas projects with potential impacts on Indigenous groups' traditional territories engender significant opposition from most or all interested Indigenous groups.

Indigenous opposition also comes in many nuanced forms, based on Indigenous groups' complex and sophisticated interests and perspectives. Formal objections are not the only manifestation of Indigenous opposition, and Indigenous participation, cooperation, and consultation on projects does not reflect consent, because the regulatory approval process is unresponsive to Indigenous concerns and does not provide meaningful choice to Indigenous groups. Instead, Indigenous groups are often forced to participate to have any hope of having their concerns even acknowledged, let alone addressed even in part.

Indigenous opposition also arises for a variety of reasons, including for the Crown's failure to discharge the bare minimum of the duty to consult and accommodate, and for the interlinked environmental, socioeconomic, and political or rights-based impacts of oil and gas projects. Indigenous groups have very clearly and comprehensively articulated these concerns in a wide range of oil and gas projects in Alberta which, by their very nature as settler extractive uses of Indigenous lands without Indigenous consent, engage the interlinked interests of Indigenous groups whose traditional territory is affected.

It is the design of the projects and the behaviour of the proponents, regulators, and Crown agents which give rise to Indigenous opposition. It is the unresponsiveness of the colonial regulatory system which necessitates Indigenous groups' use of a variety of methods to voice their opposition. It is the initiative and efforts of Indigenous communities to articulate their very real interests and perspectives,

not the intervention of environmental organisations, which empowers Indigenous groups to bring attention to their objections.

The Allan Inquiry failed to identify and comprehend much of the evidence of this opposition, all of which is publicly available and easily accessible. The Allan Inquiry has also failed to engage with a wide range of Indigenous groups or acknowledge their perspectives. Thus, the Allan Inquiry has either demonstrated its incompetence by failing to conduct adequate research, or has demonstrated its illegitimacy by deliberately ignoring the evidence.



APPENDIX

APPENDIX 1: TABLE OF INDIGENOUS OPPOSITION

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #1</p> <p>Suncor, Steepbank Mine</p> <p>(Application No. 960439; Decision 97-1)</p> <p>[Link: AEUB Decision No. 97-1]</p> <p>22 January 1997</p>	<p>Athabasca Chipewyan First Nation (“ACFN”)</p> <p>Socioeconomic impacts.</p>	<p>Alberta Energy and Utilities Board</p> <p>The Board denied ACFN application as a local intervenor which would have provided funding to ACFN. The Board noted that Suncor voluntarily provided some funding to ACFN.</p> <p>Project approved.</p>
<p>Ref #2</p> <p>Shell Canada Limited, Muskeg River Mine Project</p> <p>(Application No. 970588; Decision 99-2)</p> <p>[Link: AEUB Decision 99-2]</p> <p>12 February 1999</p>	<p>Athabasca Chipewyan First Nation (“ACFN”); Anzac Métis Local #334 (“Anzac”)</p> <p>ACFN: impacts on traditional land uses; lack of adequate consultation; impacts on Athabasca River water quality.</p> <p>Anzac: impacts on traditional land uses; socioeconomic impacts; impacts on regional water quality.</p>	<p>Alberta Energy and Utilities Board</p> <p>The Board rejected ACFN request for additional consultation.</p> <p>Project approved with conditions.</p>
<p>Ref #3</p> <p>Suncor, Amendment of Approval for Millennium Development</p> <p>(Application No. 980197; Decision 99-7)</p> <p>[Link: AEUB Decision 99-7 with Addendums]</p> <p>29 March 1999</p>	<p>Anzac Métis Local #334</p> <p>Air quality issues; lack of health studies; water quality in the Athabasca River and impacts on fish; impacts on traditional harvesting.</p>	<p>Alberta Energy and Utilities Board</p> <p>The Board expected NO_x and SO₂ Management Working Group to set regional air quality limits.</p> <p>Project approved with conditions.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #4</p> <p>Imperial Oil Resources Limited, Cold Lake Production Project, Mahkeses Development</p> <p>(Application No. 970163; Decision 99-22)</p> <p>Link: AEUB Decision 99-22</p> <p>16 September 1999</p>	<p>Cold Lake First Nations (“CLFN”)</p> <p>Lack of environmental monitoring; chemical impacts on groundwater; water quality impacts on local lakes; lack of economic benefits to CLFN.</p>	<p>Alberta Energy and Utilities Board</p> <p>The Board required continued groundwater monitoring. The Board expected Imperial Oil to establish appropriate and effective monitoring systems.</p> <p>Project approved with conditions.</p>
<p>Ref #5</p> <p>Syncrude, Amendment of Approval for Mildred Lake Upgrader Expansion</p> <p>(Application No. 980381; Decision 99-25)</p> <p>[Link: AEUB Decision 99-25]</p> <p>14 October 1999</p>	<p>Wood Buffalo First Nation and Anzac Métis Local #334 (together “WBFN”)</p> <p>WBFN: metals content of particulate matter (“PM”); the areal extent of PM dispersion; potential health impacts of PMs.</p>	<p>Alberta Energy and Utilities Board</p> <p>The Board required Syncrude to identify opportunities to further reduce PM emissions and to abide by air emission standards.</p> <p>Project approved with conditions.</p>
<p>Ref #6</p> <p>PanCanadian Resources, Christina Lake Thermal Project</p> <p>(Application No. 1023589; Decision 2000-7)</p> <p>[Link: AEUB Decision 2000-7]</p> <p>10 February 2000</p>	<p>Wood Buffalo First Nation (“WBFN”); Chipewyan Prairie Dene First Nation (“CPDFN”)</p> <p>WBFN did not oppose the project but requested conditions with respect to ongoing consultation, economic development opportunities, land reclamation and environmental monitoring. WBFN also raised concerns with respect to truck traffic and wildlife impacts.</p> <p>CPDFN did not oppose the project and signed a community development accord with PanCanadian. However, CPDFN expressed that PanCanadian had not adequately consulted with respect to traditional land uses, cabins, gravesites, trails, hunting, wildlife, waste disposal and air monitoring. CPDFN also expressed concern with</p>	<p>Alberta Energy Utilities Board</p> <p>Project approved with conditions. PanCanadian to establish an advisory group of community leaders from Conklin, Janvier and Chard to address economic development and environmental effects of the project. Other outstanding concerns not addressed.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	unfulfilled commitments with respect to economic development.	
<p>Ref #7</p> <p>Petro-Canada, MacKay River SAGD Project</p> <p>(Application No. 1032550; Decision 2000-50)</p> <p>[Link: AEUB Decision 2000-50]</p> <p>14 July 2000</p>	<p>Fort McKay First Nation (“FMFN”); Wood Buffalo First Nation (“WBFN”)</p> <p>FMFN: entered into an environmental mitigation agreement with Petro-Canada and supported the project. FMFN opposed WBFN’s intervention in the hearing.</p> <p>WBFN: groundwater contamination; impacts on the MacKay River; impacts on woodland caribou.</p>	<p>Alberta Energy and Utilities Board</p> <p>Project approved with conditions.</p>
<p>Ref #8</p> <p>Atco Pipelines, Natural Gas Pipeline to EPCOR Rosedale Site</p> <p>(Application No. 1055407; Decision 2001-34)</p> <p>[Link: AEUB Decision 2001-34]</p> <p>8 May 2001</p>	<p>Métis Nation of Alberta Association; Confederation of Treaty Six First Nations (“Treaty Six”); Papachase First Nations (“PFN”)</p> <p>Possible disturbance of archaeological and historical resources along the pipeline route.</p>	<p>Alberta Energy and Utilities Board</p> <p>Project approved, relying on Alberta Community Development decisions with respect to archaeological and historical resources.</p>
<p>Ref #9</p> <p>TrueNorth Energy Corporation, Fort Hills Oil Sands Project</p> <p>(Application Nos. 1096587, 2001202; Decision 2002-089)</p> <p>[See also additional narrative in Appendix 2]</p> <p>[Link: AEUB Decision 2002-89]</p> <p>22 October 2002</p>	<p>Fort McKay First Nation and Métis Local 122 (together, “Fort McKay”); Wood Buffalo First Nation (“WBFN”)</p> <p>Fort McKay: regional environmental limits.</p> <p>WBFN: impacts on moose, furbearers, traplines and traditional land uses.</p>	<p>Alberta Energy Utilities Board</p> <p>The Board approved the project with conditions. None of the conditions directly addressed the outstanding concerns. The Board made some non-binding recommendations with respect to the management of the McClelland Lake Wetland Complex</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #10</p> <p>Canadian Natural Resources Limited, Horizon Oil Sands Project</p> <p>(Application No. 1273113; Decision 2004-005)</p> <p>[See also additional narrative in Appendix 2]</p> <p>[Link: Joint Panel Report and AEUB Decision 2004-005]</p> <p>27 January 2004</p>	<p>Mikisew Cree First Nation (“MCFN”); Athabasca Chipewyan First Nation (“ACFN”); Fort McKay First Nation and Métis Local #122 (together “Fort McKay”); Wood Buffalo First Nation (“WBFN”)</p> <p>ACFN and Fort McKay entered into agreements with CNRL and did not object to the project.</p> <p>MCFN and WBFN: groundwater and surface water quality; instream flow needs in the Athabasca River; impacts on fish and wildlife; health impacts; inadequate consultation.</p>	<p>Joint Review Panel (Alberta Energy and Utilities Board; Canadian Environmental Assessment Agency)</p> <p>The Board approved the project with conditions. None of the conditions directly addressed the outstanding concerns. The Joint Review Panel made some non-binding recommendations with respect to the outstanding concerns.</p>
<p>Ref #11</p> <p>Shell Canada Limited, Jackpine Oil Sands Project</p> <p>(Application Nos. 1271285, 1271307, 1271383; Decision 2004-009)</p> <p>[See also additional narrative in Appendix 2]</p> <p>[Link: Joint Panel Report and AEUB Decision 2004-009]</p> <p>5 February 2004</p>	<p>Mikisew Cree First Nation (“MCFN”); Athabasca Chipewyan First Nation (“ACFN”); Fort McKay First Nation and Métis Local #122 (together “Fort McKay”); Wood Buffalo First Nation (“WBFN”)</p> <p>MCFN, ACFN and Fort McKay entered into agreements with Shell and did not object to the project. Despite these agreements, the MCFN and ACFN expressed concerns with respect to instream flow needs in the Athabasca River, water quality, limits for regional environmental impacts, climate change and health</p>	<p>Joint Review Panel (Alberta Energy and Utilities Board; Canadian Environmental Assessment Agency)</p> <p>The Board approved the project with conditions. None of the conditions directly addressed the outstanding concerns. The Joint Review Panel made some non-binding recommendations with respect to the outstanding concerns.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #12</p> <p>Suncor, External Tailings Pond, Millennium Mine</p> <p>(Application No. 1325847; Decision 2004-113)</p> <p>[Link: AEUB Decision 2004-113]</p> <p>30 December 2004</p>	<p>Wood Buffalo First Nation (“WBFN”); Clearwater River Paul Cree Band #175 (“CRPCB”);</p> <p>Athabasca Chipewyan First Nation (“ACFN”); Fort McKay Industrial Relations Corporation (“FMIRC”); Mikisew Cree First Nation (“MCFN”)</p> <p>WBFN and CRPCB: environmental and socioeconomic concerns</p> <p>ACFN and FMIRC: magnitude of uncertainty regarding reclamation of tailings ponds in the oil sands regions generally.</p> <p>MCFN: cumulative regional impacts associated with tailings storage facilities.</p>	<p>Alberta Energy and Utilities Board</p> <p>The Board found WBFN and CRPCB to be not directly affected.</p> <p>ACFN, FMIRC and MCFN reached agreement with Suncor and did not object to the project, but maintained their concerns with respect to regional tailings ponds.</p> <p>The Board made recommendations with respect to monitoring of tailings seepage.</p> <p>Project approved with conditions.</p>
<p>Ref #13</p> <p>Suncor Energy Inc., Steepbank Extraction Plant</p> <p>(Application No. 1403323; Decision 2006-069)</p> <p>[Link: AEUB Decision 2006-069]</p> <p>30 June 2006</p>	<p>Mikisew Cree First Nation (“MCFN”)</p> <p>Socioeconomic impacts; technology used; baseline conditions; reclamation; cumulative effects.</p>	<p>Alberta Energy and Utilities Board</p> <p>The Board stated that MCFN failed to demonstrate a legally recognized right or interest with respect to the land on or adjacent to the Steepbank Extraction Plant.</p> <p>Project approved.</p>
<p>Ref #14</p> <p>Suncor, Expansion of North Steepbank Mine and Voyageur Upgrader</p> <p>(Application Nos. 1391211, 1391212; Decision No. 2006-112)</p> <p>[See also additional narrative in Appendix 2]</p> <p>[Link: AEUB Decision 2006-112]</p> <p>14 November 2006</p>	<p>Athabasca Chipewyan First Nation (“ACFN”); Mikisew Cree First Nation (“MCFN”); Wood Buffalo Métis Locals Association (“WBMLA”)</p> <p>ACFN entered into an agreement with Suncor and did not object to the project.</p> <p>ACFN, MCFN and WBMLA, amongst their submissions, expressed a wide range of concerns with the project including impacts on public infrastructure and services, the safety and reclamation of</p>	<p>Alberta Energy and Utilities Board</p> <p>The Board set some conditions with respect to consolidated tailings but did not set conditions to address the other concerns.</p> <p>Project approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	<p>consolidated tailings, reclamation plans, instream flow needs in the Athabasca River and health impacts of the project.</p>	
<p>Ref #15</p> <p>Albian Sands Energy Inc., Muskeg River Mine Expansion</p> <p>(Application No. 1398411; Decision No. 2006-128)</p> <p>[See also additional narrative in Appendix 2]</p> <p>[Link: AEUB Decision 2006-128]</p> <p>17 December 2006</p>	<p>Athabasca Chipewyan First Nations (“ACFN”); Mikisew Cree First Nations (“MCFN”); Fort McKay First Nation (“FMFN”)</p> <p>ACFN, MCFN and FMFN each entered into agreements with Albian.</p> <p>ACFN: expressed concerns with respect to instream flow needs and cumulative effects.</p> <p>MCFN: continued to object to the project and expressed concerns with respect to tailings management, reclamation, water quality, environmental base flows in the Athabasca River and human health impacts.</p> <p>FMFN: expressed concerns with respect to cumulative effects of oil sands development.</p>	<p>Joint Review Panel (Alberta Energy and Utilities Board and Canadian Environmental Assessment Agency)</p> <p>The Board set conditions with respect to tailings and reclamation reporting but otherwise did not set conditions that addressed the other outstanding concerns.</p> <p>The Joint Review Panel made a number of non-binding recommendations with respect to the Cumulative Environmental Effects Association establishing water quality objectives and the management of instream flow needs for the Athabasca River. Otherwise, the recommendations did not directly address the outstanding concerns.</p> <p>Project approved.</p>
<p>Ref #16</p> <p>Imperial Oil Resources Ventures Limited, Kearl Oil Sands Project</p> <p>(Application Nos. 1408771, 1414891; Decision 2007-013; Court Decision 2008 FC 302)</p> <p>[See also additional narrative in Appendix 2]</p> <p>[Links: AEUB Decision 2007-013, Court Decision]</p> <p>27 February 2007</p>	<p>Athabasca Chipewyan First Nation; Clearwater River Paul Cree Band; Deninu Kue First Nation; Fort McKay First Nation Industrial Relations Corporation; Mikisew Cree First Nation; Wood Buffalo First Nation and Wood Buffalo Elders Society; Wood Buffalo Métis Association</p> <p>Amongst the Indigenous participants: taking up of traditional lands and resources; inability to exercise s 35 rights; lack of consultation and need for consultation before any further</p>	<p>Joint Review Panel (Alberta Energy and Utilities Board and the Government of Canada)</p> <p>The Joint Review Panel expected Imperial Oil to fulfill its commitments in the agreements it signed with participating Indigenous groups.</p> <p>The Joint Review Panel recommended approval of the project. The recommendation was successfully challenged in a judicial review brought by an environmental organization.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	<p>development; feasibility of reclamation commitments and integration; lack of security; lack of transparency about liability calculation; impacts on habitat, waterfowl and other migratory birds, wildlife and traditional foods; air pollution; impacts on fish; human health impacts.</p> <p>Unresolved concerns despite some First Nations signing agreements with Imperial Oil: in-stream flow needs, flow standards; permanent loss of wetlands; issues related to cumulative effects assessments, water withdrawals, ecosystem integrity of the Athabasca River; tailings process and end pit lakes; water quality and use; liability from unknown final landscape and ecological function; long term effects on traditional land uses and culture.</p>	<p>After the judicial review, the Joint Review Panel provided additional reasons and the project was ultimately approved.</p>
<p>Ref #17</p> <p>North West Upgrading Inc., North West Upgrader</p> <p>(Application No. 1444141; Decision 2007-058)</p> <p>[Link: AEUB Decision 2007-058]</p> <p>7 August 2007</p>	<p>Alexander First Nation ("AFN"); Saddle Lake Cree Nation ("SLCN")</p> <p>AFN: Inadequacy of consultation; environmental impacts.</p> <p>SLCN: requested an adjournment to file a submission and notice of constitutional question.</p>	<p>Alberta Energy and Utilities Board</p> <p>The Board stated that the AFN and SLFN did not present facts to demonstrate that they may be directly and adversely affected by the project.</p> <p>The Board denied the SLFN request for an adjournment or to file a late notice of constitutional question.</p> <p>Project approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #18</p> <p>Canadian Natural Resources Limited, Amendment to Primary Recovery Scheme, Cold Lake Oil Sands Area</p> <p>(Application No. 1428238; Decision 2008-015)</p> <p>[Link: AEUB Decision 2008-015]</p> <p>19 February 2008</p>	<p>Fishing Lake Métis Settlement</p> <p>Impacts on cultural and traditional land uses; truck traffic; lands not subject to <i>Métis Settlement Act</i> and therefore no co-management opportunity.</p>	<p>Alberta Energy and Utilities Board</p> <p>The Board stated that many of the issues raised were outside of their jurisdiction or the subject of future well approvals.</p> <p>Application approved.</p>
<p>Ref #19</p> <p>Petro-Canada Oil Sands Inc., Sturgeon Upgrader</p> <p>(Application No. 1490956; Decisions 2008-024, 2009-002)</p> <p>[Links: ERCB Decision 2008-024, ERCB Decision 2009-002]</p> <p>20 January 2009</p>	<p>Alexander First Nation (“AFN”); Métis Nation Association of Alberta (“MNAA”)</p> <p>AFN: Adverse impacts on treaty and Aboriginal rights to use land in the project area including impacts on wildlife habitat; noise; odours; impacts on fish habitat; impacts on traditional medicinal plants; toxic wastes; negative socioeconomic impacts.</p> <p>MNAA: impacts on air quality, wildlife habitat, groundwater, harvesting and cultural rights. MNAA raised a constitutional question of whether the Crown had discharged its duty to consult.</p>	<p>Energy Resources Conservation Board</p> <p>AFN: The Board stated that AFN had provided insufficient information to establish how its rights would be directly and adversely affected by the project.</p> <p>MNA: The Board determined that it had no jurisdiction to hear the constitutional question as MNA had failed to provide proper notice. The Board further stated that MNA had provided insufficient information to establish how its rights would be directly and adversely affected by the project.</p> <p>Project approved.</p>
<p>Ref #20</p> <p>Athabasca Chipewyan First Nation v Alberta (Minister of Energy), 2009 ABQB 576</p> <p>[See also additional narrative in Appendix 2]</p> <p>[Link: Court of Queen’s Bench Decision, Court of Appeal Decision 2011 ABCA 29]</p> <p>19 October 2009</p>	<p>Athabasca Chipewyan First Nation</p> <p>The Minister of Energy failed to consult with the First Nation prior to granting certain oil sands leases.</p>	<p>Alberta Court of Queen’s Bench</p> <p>The Court declined to make a determination on the question of whether the granting of a mineral lease was a taking up of Treaty lands. The Court determined that the limitation period commenced on the day that the notice of the granting of the leases was posted on the Aboriginal Community Link and therefore that the limitation period had expired.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #21</p> <p>Coastal First Nations Tanker Ban (related to Northern Gateway Pipeline Project)</p> <p>[Link: Declaration]</p> <p>23 March 2010</p>	<p>Wuikinuxv Nation; Heiltsuk Nation; Haisla Nation; Kitasoo Band Council; Metlakatla First Nation; Gitga’at First Nation; Old Massett Village; Skidegate Band Council; Council of the Haida Nation</p> <p>Transportation of crude oil by super tanker through the Coastal First Nations territories; approval of the project would represent an infringement of their governance and decision-making rights.</p>	<p>Joint Review Panel (Canadian Environmental Assessment Agency and the National Energy Board)</p> <p>N/A</p>
<p>Ref #22</p> <p>Petro-Canada, Sullivan Field</p> <p>(Application Nos. 1517168, 1517170, 1574414, 1574366, 1574409, 1517148, 1520922, 1517151, 1520923, 1517160, 1517176, 1520388, 1513051; Decision 2010-22; Court Decision 2012 ABCA 64)</p> <p>[Links: ERCB Decision 2010-022, Court Decision]</p> <p>8 June 2010</p>	<p>Stoney Nakoda Nations (Bears paw First Nation, Chiniki First Nation, Wesley First Nation, Stoney Nakoda Nation, residents of Eden Valley Indian Reserve No. 216)</p> <p>Impacts on Aboriginal and Treaty rights; health impacts in Eden Valley; emergency response planning.</p> <p>Stoney Nakoda also brought a constitutional question of whether the <i>Energy Resources Conservation Act</i>, <i>Oil and Gas Conservation Act</i> and <i>Pipeline Act</i> were applicable in light of the Aboriginal and treaty rights held by Stoney Nakoda.</p>	<p>Energy Resources Conservation Board</p> <p>The Board set conditions with respect to emergency response planning for the Eden Valley Reserve but did not fully address Stoney Nakoda’s concerns.</p> <p>The Board determined that by exercising its jurisdiction under the provincial laws, it did not encroach on areas of exclusive federal jurisdiction.</p> <p>On appeal, the Alberta Court of Appeal determined that the Board had erred in failing to exercise its discretion to determine that the Eden Valley Reserve was an “urban centre” and required setbacks as such. The Board overturned those portions of the approval which found that the Eden Valley Reserve was not an urban centre.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #23</p> <p>Pembina Institute, <i>Canadian Aboriginal Concerns with Oil Sands</i></p> <p>[See also additional narrative in Appendix 2]</p> <p>[Link: Briefing Note]</p> <p>4 September 2010</p>	<p>Treaty 6, 7 and 8 First Nations of Alberta, 44 First Nations in total; Assembly of First Nations, 630 First Nations in total; Dene Nation of NWT.</p> <p>Concerns in the past were primarily related to health impacts, water quality and diversions, wildlife populations, and air quality.</p> <p>Increasingly, concerns are about consultation and protection of s 35 rights.</p>	<p>N/A</p> <p>Treaties 6, 7 and 8 First Nations of Alberta issued a resolution in 2008 citing violation of s 35 rights and calling for an oil sands moratorium until watershed management and resource development plans were put in place.</p> <p>The Assembly of First Nations issued a resolution in 2008 in support of the Treaty 6, 7 and 8 First Nations resolution, citing failure to discharge the duty to consult and to accommodate.</p> <p>The Dene Nation issued a resolution in 2009 calling for a halt to oil sands expansion, for emergency, recovery and mitigation planning and for a cumulative effects analysis.</p> <p>Duncan's and Horse Lake First Nations both successfully intervened in <i>Rio Tinto Alcan Inc., et al v. Carrier Sekani Tribal Council</i>, 2010 SCC 43, based on their concerns with oil sands development.</p> <p>Athabasca Chipewyan First Nation sought judicial review of four oil sands tenures granted by Alberta, citing failures to consult and accommodate.</p> <p>Athabasca Chipewyan First Nation, Beaver Lake Cree Nation and Enoch Cree Nation launched a judicial review application in 2010 against Canada and the Minister of the Environment with a view to forcing caribou habitat protection prior to any oil sands developments being approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
		<p>Beaver Lake Cree Nation sought damages and injunctive relief for cumulative effects and subsequent violation of s 35 rights as a result of some 300 oil and gas projects and some 19,000 approvals from Canada and Alberta.</p>
<p>Ref #24</p> <p>Total E&P Canada Ltd., Strathcona Upgrader</p> <p>(Application No. 1551460; Decision 2010-30)</p> <p>[Link: ERCB Decision 2010-30]</p> <p>16 September 2010</p>	<p>Alexander First Nation</p> <p>Impacts on Aboriginal and treaty rights; inadequate consultation.</p>	<p>Energy Resources Conservation Board</p> <p>The Board stated that it did not appear that the AFN's rights or interests would be directly or adversely affected by the application. The Board permitted AFN to make a brief statement at the hearing.</p> <p>Project approved.</p>
<p>Ref #25</p> <p>Imperial Oil Resources Limited, Imperial Oil Resources Ventures Limited, ConocoPhillips Canada (North) Limited, ConocoPhillips Northern Partnership, ExxonMobil Canada Properties, Shell Canada Limited, Mackenzie Valley Aboriginal Pipeline Limited Partnership, Mackenzie Gas Pipeline Project</p> <p>(JRP Reports, Vol. I and II, Court Decisions 2006 FC 1354, 2008 FCA 20) [See also additional narrative in Appendix 2]</p> <p>[Links: JRP Report Vol. I, JRP Report Vol. II, NEB Report Vol. 1 Parts 1-2, Federal Court Decision, Federal Court of Appeal Decision]</p> <p>16 December 2010</p>	<p>Dene Tha' First Nation, and Dehcho First Nations (representing 9 Indigenous groups)</p> <p>Lack of consultation on Cooperation Plan, Regulators' Agreement, the JRP Agreement, and the Environmental Impact Terms of Reference.</p> <p>Neither the JRP report nor the NEB report provides significant insight into Indigenous concerns or opposition to the project. Instead, both reports appear carefully and deliberately worded to avoid any direct reference to Indigenous concerns beyond vague and general references.</p> <p>The 1977 Report of the Mackenzie Valley Pipeline Inquiry goes into far more significant detail about the presence of widespread Indigenous concerns and</p>	<p>Joint Review Panel and National Energy Board</p> <p>Dene Tha' First Nation sought judicial review of the establishment of the regulatory process for a failure to consult and accommodate. The Federal Court found that the duty to consult and accommodate was triggered when it became clear that an approval request would be made. The Federal Court also found that the crown took essentially no steps to consult with the Dene Tha' at that point with respect to the development of the regulatory process.</p> <p>The Federal Court ordered the Crown to consult and ordered that the Joint Review Panel refrain from considering the project until the Crown had properly consulted.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	<p>opposition to the project as it was initially proposed.</p>	<p>The Dene Tha' and the crown subsequently entered into a consultation protocol, while the crown simultaneously appealed the Federal Court's decision.</p> <p>The Federal Court's decision was upheld on appeal to the Federal Court of Appeal.</p> <p>The Dehcho First Nations also sought judicial review for failure to consult and a settlement agreement was reached.</p> <p>Dene Tha' and Dehcho concerns only briefly appeared in the subsequent Joint Review Panel and National Energy Board reports.</p> <p>The project was abandoned in 2017 as uneconomical, after years of delay.</p>
<p>Ref #26</p> <p>Total E&P Joslyn Ltd., Joslyn North Mine Project</p> <p>(Application No. 1445535; Decision 2011 ABERCB 005)</p> <p>[See also additional narrative in Appendix 2]</p> <p>[Link: JRP Report and Decision 2011 ABERCB 005]</p> <p>27 January 2011</p>	<p>Athabasca Chipewyan First Nation ("ACFN"); Mikisew Cree First Nations ("MCFN"); Fort McKay First Nation and Métis Nation Local #63 (together "Fort McKay"); Non-Status Fort McMurray Band Descendants and Clearwater River Band No. 175 (together "Clearwater").</p> <p>ACFN, MCFN and Fort McKay entered into agreements with Total and withdrew their objections to the project.</p> <p>ACFN, MCFN and Fort McKay provided written submissions to the hearing and Clearwater appeared at the hearing. Amongst them, the parties raised concerns with respect to impacts on wildlife, water withdrawals from the Athabasca River, water</p>	<p>Joint Review Panel (Energy Resources Conservation Board and Canadian Environmental Assessment Agency)</p> <p>The Joint Review Panel stated that it would give little weight to the evidence of ACFN, MCFN and Fort McKay as they had withdrawn their opposition to the project and did not provide any witnesses to speak to their written submissions.</p> <p>The Board set a condition requiring Total to prepare a wildlife mitigation plan. The Joint Review Panel made non-binding recommendations with respect to wildlife mitigation and water quality.</p> <p>Project approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	quality, reclamation and impacts on traditional land uses.	
<p>Ref #27</p> <p>Adam v (Canada) Minister of Environment, 2011 FC 962</p> <p>[See also additional narrative in Appendix 2]</p> <p>[Link: Court Decision]</p> <p>28 July 2011</p>	<p>Athabasca Chipewyan First Nation; Beaver Lake Cree Nation; Enoch Cree Nation</p> <p>Seeking finalisation of a Recovery Strategy for boreal caribou in northeastern Alberta and an emergency protection order for seven herds of boreal caribou in northeastern Alberta.</p>	<p>Federal Court</p> <p>The Federal Minister of Environment's refusal to issue an emergency protection order was set aside. The Minister subsequently again refused to issue an emergency protection order. An Order requiring the Minister to prepare a Recovery Strategy was deferred for 5 weeks, on the grounds that the Minister intended to issue the Recovery Strategy within that period.</p>
<p>Ref #28</p> <p>Enbridge Pipelines (Woodland) Inc., Applications for Pipeline and Pump Station Licenses</p> <p>(Application Nos. 1688169, 1688170; Decision 2012 ABERCB 009)</p> <p>[Link: ERCB Decision 2012 ABERCB 009]</p> <p>30 August 2012</p>	<p>Lac La Biche Historical Métis Community; Métis Nation of Alberta Association Local Council 1909 ("Métis Local 1909"); Athabasca Landing Métis Local 2010</p> <p>Métis Local 1909: Inadequate consultation and lack of capacity to respond to application.</p>	<p>Energy Resources Conservation Board</p> <p>Applications approved.</p>
<p>Ref #29</p> <p>Dover Operating Corp., Bitumen Recovery Scheme, Athabasca Oil Sands Area</p> <p>(Application No. 1673682; Decision 2013 ABAER 014)</p> <p>[Link: AER Decision 2013 ABAER 014]</p> <p>6 August 2013</p>	<p>Fort McKay First Nation and Fort McKay Métis Community Association (together "Fort McKay")</p> <p>Buffers on Moose Lake reserves; impacts on moose and caribou; impacts on fur bearers; access management; reclamation; air quality; light pollution; traffic; impacts on traditional land uses.</p>	<p>Alberta Energy Regulator</p> <p>The AER rejected the request for a buffer on the Moose Lake reserves. The AER stated that the project would have minimal impacts on the southernmost area of the Moose Lake reserves and that the project would have little or no use on traditional land use on the Moose Lake reserve lands as a whole.</p> <p>Project approved with conditions related to air quality.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #30</p> <p>Teck Resources Limited, Oil Sands Evaluation Licences</p> <p>(Application Nos. 1749543, 1749567, 1749568, 1749569, 1749570, 1749572, 1749605, 1749607, 1749620, 1751999, 1752756, 1763318, 1763325, 1763326, 1763327; Decision 2013 ABAER 017)</p> <p>[Link: AER Decision 2013 ABAER 017]</p> <p>21 October 2013</p>	<p>Athabasca Chipewyan First Nation (“ACFN”); Fort Chipewyan Métis Local 125 (“Métis Local 125”); Mikisew Cree First Nation (“MCFN”)</p> <p>ACFN: inadequacy of consultation; need for the evaluation program; water quantity; water quality; impacts on Ronald Lake bison herd; impacts on traditional land uses.</p> <p>Métis Local 125: lack of notification; water quantity; water quality; impacts on traditional land uses; impacts on bison, caribou, moose, furbearers and medicinal plants.</p> <p>MCFN: inadequacy of consultation; impacts on the Ronald Lake bison herd; impacts on traditional land uses.</p>	<p>Alberta Energy Regulator</p> <p>The AER stated that the impacts of the program would be localized, temporary and of short duration and would not result in significant adverse impacts on traditional land uses and rights.</p> <p>Applications approved.</p>
<p>Ref #31</p> <p>Shell Canada Energy, Jackpine Mine Expansion Project</p> <p>(Application No. 1554388, Decision 2013 ABAER 011, Court Decisions 2014 FC 1185, 2012 ABCA 352)</p> <p>[See also additional narrative in Appendix 2]</p> <p>[Links: JRP Report and AER Decision 2013 ABAER 011, Federal Court Decision, Court of Appeal Decision]</p> <p>6 December 2013</p>	<p>Athabasca Chipewyan First Nation (“ACFN”); Mikisew Cree First Nation (“MCFN”); Fort McKay First Nation and Fort McKay Métis Community Association (together “Fort McKay”); Fort McMurray First Nation (“FMMFN”); Non-Status Fort McMurray and Fort McKay First Nation and Clearwater River Band (together, “Clearwater”); Clearwater River Paul Cree Band (“CRPCB”); Métis Nation of Alberta (Region 1) (“MNA-R1”) and individuals and groups named together with Métis Nation of Alberta Region 1</p> <p>All Indigenous participants: inadequate consultation,</p>	<p>Joint Review Panel (Alberta Energy Regulator and Canadian Environmental Assessment Agency)</p> <p>Five of 7 Indigenous groups requested that the project application be denied or at least not approved until proper consultation took place. These 5 groups ACFN, Fort McKay, FMMFN, Clearwater and CRPCB.</p> <p>MCFN also initiated their participation with a statement of concern,</p> <p>All Indigenous participants requested numerous conditions related to mitigation, accommodation and consultation.</p> <p>The Joint Review Panel accepted that there would be significant</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	<p>especially with regards to cumulative impacts to s 35 rights.</p> <p>Amongst the Indigenous participants: the insufficiency of the Cumulative Environmental Management Association process and the consultations on the Lower Athabasca Regional Plan, disturbance of lands and resources important for Indigenous traditional land use, rights, and culture including wetlands, old-growth forests, traditional plant potential areas, migratory birds, and wildlife species, such as caribou; reclamation; insufficient mitigation measures (including a compensation lake); Shell's study methodology; groundwater and water quality; water levels; noise effects; air quality; fish; bison habitat; birds and migratory birds; ancestral burial sites; traffic safety; quality of life; living conditions at work-camps; health service resources; community fragmentation.</p>	<p>environmental effects of the kind described by the Indigenous participants' concerns. The Joint Review Panel also accepted there would be adverse impacts on traditional land use.</p> <p>The Joint Review Panel still recommended approval of the project, with 88 recommendations to Canada and Alberta and 22 conditions for the proponent.</p> <p>The Panel also found that it did not have jurisdiction to rule on the adequacy of consultation and accommodation.</p> <p>ACFN remained opposed, maintained that the Crown had not discharged the duty to consult and accommodate, and sought judicial review of the Crown's decision to approve.</p> <p>ACFN and MNA-R1 also sought a judicial review of the Panel's decision that it did not have jurisdiction to rule on the adequacy of consultation and accommodation.</p> <p>MCFN and Fort McKay signed agreements with Shell and withdrew their project-specific objections, but each still raised several concerns throughout the Panel's report, especially with regards to broader cumulative impacts.</p> <p>ACFN sought judicial review at the Federal Court of the Crown's decisions that the project's environmental impacts were justified in the circumstances and that the project could proceed subject to conditions.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
		ACFN and MNA-R1 (along with a coalition of MNA-R1 affiliated groups and individuals) also sought judicial review at the Alberta Court of Appeal of the Panel's decision that it did not have jurisdiction to rule on the adequacy of Crown consultation. Project approved.
<p>Ref #32</p> <p>Canadian Natural Resources Limited, Kirby Expansion Project</p> <p>(Application No. 1712215; Decision 2014 ABAER 006)</p> <p>[Link: AER Decision 2014 ABAER 006]</p> <p>3 April 2014</p>	<p>Whitefish (Goodfish) Lake First Nation; Beaver Lake Cree Nation; Kehewin Cree Nation; Cold Lake First Nations; Fort McMurray First Nation</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>No hearing required.</p> <p>The AER decided that none of the First Nations demonstrated that they would be directly and adversely affected.</p> <p>Application approved.</p>
<p>Ref #33</p> <p>Northern Gateway Pipelines Limited Partnership, Northern Gateway Project</p> <p>(JRP Report, Court Cases 2016 FCA 187, 2016 BCSC 34)</p> <p>[See also additional narrative in Appendix 2]</p> <p>[Links: JRP Report Vol 1, JRP Report Vol 2, Federal Court of Appeal Decision, British Columbia Supreme Court Decision]</p> <p>17 June 2014</p>	<p>Over 80 Indigenous groups (full list at pp 32-33 of Report of the Joint Review Panel for the Enbridge Northern Gateway Project Vol 2)</p> <p>Northern Gateway's consultations failed to address concerns, were not meaningful, were flawed and incomplete, and were inappropriately "pan-Aboriginal".</p> <p>Concerns with Northern Gateway's response to specific concerns on project impacts, including: Aboriginal title; jurisdiction; consent; governance; reliance on standard mitigation; insufficient time and resources for meaningful responses; lack of accommodation for culturally relevant concepts.</p>	<p>Joint Review Panel (National Energy Board and Canadian Environmental Assessment Agency)</p> <p>Order in Council was then issued to approve the project, but a First Nations coalition successfully sought judicial review of the Order (2016 FCA 187). The Crown was found to have failed to discharge the duty to consult because the Joint Review Panel Report left much of the Indigenous concerns to be dealt with in further discussion, whereas the Crown did not provide enough opportunity during Phase IV consultations to achieve that further discussion and to resolve Indigenous concerns.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	<p>Dissatisfaction with Crown's overreliance on JRP process as means of consultation.</p> <p>Concerns about changes to traditionally harvested resources and ability to access those resources; associated disruption of traditional governance and cultural practices and community health; community economic development; infringement of Aboriginal and Treaty rights; lack of information and consideration of impacts; insufficient understanding of significance of impacts.</p> <p>Concerns about flaws in Northern Gateway's approach to assessing effects on traditional land use, including: limited scope; flawed methodology; lack of funding; lack of detail and baseline information; failure to take traditional use studies into account; selective use of information; ultimate determination that there would be no significant effects on Indigenous land use.</p>	<p>The British Columbia government was also found to have failed to discharge the duty to consult, because of its failure to undertake any consultation while in a position to affect the outcome (2016 BCSC 34)</p> <p>The federal government then declined to undertake further consultations and did not support the project.</p>



PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #34</p> <p>Grand Rapids Pipeline GP Ltd., Grand Rapids Pipeline Project</p> <p>(Application Nos. 1771853, 1771854, 1771855, 1771856, 1773696, 1773896, 1788926, 1793176, 001-350276, MLL130090, LOC131042, PLA130672, PLA130662; Decision 2014 ABAER 012)</p> <p>[Link: AER Decision 2014 ABAER 012]</p> <p>9 October 2014</p>	<p>Athabasca Chipewyan First Nation (“ACFN”)</p> <p>ACFN stated that it was not opposed to the project but raised concerns with respect to the adequacy of consultation, spills, change in Athabasca River water levels, impacts on vegetation communities and wildlife and impacts on caribou.</p> <p>ACFN posed a notice of constitutional question with respect to the validity of section 21 of the <i>Responsible Energy Development Act</i>.</p>	<p>Alberta Energy Regulator</p> <p>The AER decided that it was premature to determine the constitutional question.</p> <p>ACFN withdrew from the hearing before finishing cross examination and before presenting direct evidence indicating that continuing in the hearing would constitute consent to further prejudice of their rights.</p> <p>Applications approved in part. Certain pump stations and pipeline segments were not approved as the AER determined they were not needed or the proponent proposed alternative routes.</p>
<p>Ref #35</p> <p>Penn West Petroleum Ltd.</p> <p>(Application Nos. 1835955, 1835959)</p> <p>[Link: AER Response Letter]</p> <p>6 October 2015</p>	<p>O’Chiese First Nation (“OFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that OFN did not provide specific information to demonstrate how the activities may interfere with the members’ Aboriginal or Treaty rights. The AER stated that OFN did not demonstrate how it would be directly and adversely affected.</p> <p>Applications approved.</p>
<p>Ref #36</p> <p>Penn West Petroleum Ltd. (Application No. 150882)</p> <p>[Link: AER Response Letter]</p> <p>7 October 2015</p>	<p>O’Chiese First Nation</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that OFN concerns were of a general nature and no specific site information was provided. AER stated that OFN had not demonstrated that they were directly and adversely affected.</p> <p>Application approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #37</p> <p>Teck Resources Limited</p> <p>(Application Nos. 1830281, 1830284, 1830285, 1830287, 1830288, 1830289, 1830290, 1830291, 1832083, 1832084, OSE150003, OSE150004)</p> <p>[Links: AER Letter to ACFN, AER Letter to FMFN, AER Letter to MCFN]</p> <p>20 October 2015</p>	<p>Athabasca Chipewyan First Nation; Fort McMurray #468 First Nation; Mikisew Cree First Nation</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that the First Nations provided no specific information about locations of land used by the First Nations or their members.</p> <p>Applications approved.</p>
<p>Ref #38</p> <p>Penn West Petroleum Ltd.</p> <p>(Application Nos. 1839298, 1836037)</p> <p>[Link: AER Response Letter]</p> <p>27 October 2015</p>	<p>O’Chiese First Nation (“OFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>AER stated that OFN did not provide specific information to demonstrate how the activities may interfere with the members’ Aboriginal or Treaty rights. The AER stated that OFN did not demonstrate how it would be directly and adversely affected.</p> <p>Applications approved.</p>
<p>Ref #39</p> <p>Shell Canada Limited</p> <p>(Application Nos. 1835409, 1835410)</p> <p>[Link: AER Response Letter]</p> <p>6 November 2015</p>	<p>O’Chiese First Nation (“OFN”)</p> <p>Impacts on fishing and harvesting along the North Saskatchewan River.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that the concerns raised are general in nature and there was no indication as to how the activities relate to OFN’s activities, including along the North Saskatchewan River.</p> <p>Applications approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #40</p> <p>Shell Canada Limited</p> <p>(Application Nos. 1835552, 1835553)</p> <p>[Link: AER Response Letter]</p> <p>6 November 2015</p>	<p>O’Chiese First Nation (“OFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that OFN did not provide specific information to demonstrate how the activities may interfere with the members’ Aboriginal or Treaty rights. The AER stated that OFN did not demonstrate how it would be directly and adversely affected.</p> <p>Applications approved.</p>
<p>Ref #41</p> <p><i>O’Chiese First Nation v Alberta Energy Regulator, 2015 ABCA 348</i></p> <p>[See also additional narrative in Appendix 2]</p> <p>[Links: Court Decision, Court Decision Dismissing Application for Leave to Appeal]</p> <p>13 November 2015</p>	<p>O’Chiese First Nation (“OFN”)</p> <p>Seeking leave to appeal a decision of the Alberta Energy Regulator that OFN was not directly and adversely affected by two pipeline approvals.</p>	<p>Alberta Court of Appeal</p> <p>The Alberta Court of Appeal refused to grant leave to appeal on the grounds that OFN had failed to file any evidence with the AER that it was directly and adversely affected.</p> <p>Leave to appeal to the Supreme Court of Canada denied.</p>
<p>Ref #42</p> <p>Imperial Oil Resources Ltd.</p> <p>(Application Nos. 1841087, 1841088, OSE150014)</p> <p>[Links: AER Letter to BLCN, AER Letter to CLFN]</p> <p>20 November 2015</p>	<p>Beaver Lake Cree Nation (“BLCN”); Cold Lake First Nations (“CLFN”)</p> <p>Impacts on traditional trails and historical sites.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that BLCN did not demonstrate how the applications may directly and adversely affect BLCN members. AER also stated that Imperial Oil provided satisfactory mitigation measures for BLCN’s concerns.</p> <p>AER stated that Imperial Oil provided satisfactory mitigation measures for CLFN’s concerns.</p> <p>Applications approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #43</p> <p>Devon Canada Corporation, Oil Sands Exploration Program</p> <p>(Application Nos. OSE150010, 1844144, 1844146, 1844147, 1844148, 1844153, 1844155, 1844158)</p> <p>[Link: AER Response Letter]</p> <p>26 November 2015</p>	<p>Fort McMurray #468 First Nation (“FMMFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that FMMFN statement of concern lacked detail.</p> <p>Applications approved.</p>
<p>Ref #44</p> <p>Devon Canada Corporation, Oil Sands Exploration Program</p> <p>(Application Nos. OSE150011, OSE150012, 1844144, 1844146, 1844147, 1844148, 1844153, 1844155, 1844158)</p> <p>[Link: AER Response Letter]</p> <p>26 November 2015</p>	<p>Fort McMurray #468 First Nation (“FMMFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that FMMFN statement of concern lacked detail.</p> <p>Applications approved.</p>
<p>Ref #45</p> <p>Imperial Oil Resources Ventures Limited, Oil Sands Exploration Program</p> <p>(Application Nos. OSE150007, OSE1500016)</p> <p>[Link: AER Response Letter]</p> <p>1 December 2015</p>	<p>Fort McMurray #468 First Nation (“FMMFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that FMMFN did not provide any specific information about how land within the proposed OSE programs are used by FMMFN or how its members are affected.</p> <p>Applications approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #46</p> <p>Imperial Oil Resources Ventures Limited, Oil Sands Exploration Program</p> <p>(Application Nos. 1841478, 1841491, 1841589, OSE150007, OSE1500016)</p> <p>[Link: AER Response Letter]</p> <p>2 December 2015</p>	<p>Métis Nation of Alberta Association Fort McMurray Local Council 1935 (“Métis Local 1935”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that Métis Local 1935 did not provide any specific information about how land within the proposed OSE programs were used by Métis Local 1935 or how its members were affected. AER further stated that the Métis Local 1935 concerns had been addressed by Imperial Oil to AER’s satisfaction.</p> <p>Applications approved.</p>
<p>Ref #47</p> <p>Canadian Natural Resources Ltd., Oil Sands Exploration Program</p> <p>(Application No. OSE140047)</p> <p>[Link: AER Response Letter]</p> <p>3 December 2015</p>	<p>Fort McMurray #468 First Nation (“FMMFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER states that FMMFN statement of concern lacked detail.</p> <p>Application approved.</p>
<p>Ref #48</p> <p>Cenovus FCCL Ltd., Christina Lake Phase H Expansion</p> <p>(Application No. 1758947)</p> <p>[Link: AER Response Letter]</p> <p>16 December 2015</p>	<p>Non-Status Fort McMurray and Fort McKay Band; Clearwater River Band #175</p> <p>Impacts on wildlife; cumulative impacts.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that the Band’s concerns were general in nature and did not demonstrate how the Bands may be directly and adversely affected by the application. AER stated that the Bands did not provide sufficient detail on where activities take place and how they are impacted by the project.</p> <p>Application approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #49</p> <p>Husky Oil Operations Limited, Oil Sands Exploration Program</p> <p>(Application No. OSE150015)</p> <p>[Link: AER Response Letter]</p> <p>16 December 2015</p>	<p>Fort McMurray #468 First Nation (“FMMFN”)</p> <p>Adequacy of consultation. Other concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that FMMFN did not provide sufficient information with regard to the FMMFN’s members’ use of the land and how that would be impacted by the project.</p> <p>Application approved.</p>
<p>Ref #50</p> <p>Canadian Natural Resources Limited</p> <p>(Application Nos. LOC140633, PLA141333, MSL142192, LOC142079, LOC151061)</p> <p>[Link: AER Response Letter]</p> <p>29 January 2016</p>	<p>Kehewin Cree Nation</p> <p>Impacts on harvest of rare plants and medicines; impacts unmarked graves; impacts on wildlife.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that concerns were adequately addressed by CNRL.</p> <p>Applications approved.</p>
<p>Ref #51</p> <p>Imperial Oil Resources Limited, Amendment to Waste Facility Licence</p> <p>(Application No. 1842263) [Link: AER Response Letter]</p> <p>3 February 2016</p>	<p>Beaver Lake Cree Nation (“BLCN”)</p> <p>Impacts on treaty and traditional rights; impacts on wildlife and vegetation due to potential soil and groundwater contamination.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that BLCN had not demonstrated that they might be directly and adversely affected by the application.</p> <p>Application approved.</p>
<p>Ref #52</p> <p>Penn West Petroleum Ltd.</p> <p>(Application No. 1842114)</p> <p>[Link: AER Response Letter]</p> <p>3 February 2016</p>	<p>O’Chiese First Nation (“OFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that OFN’s concerns were of a general nature and that OFN did not establish a sufficient degree of location or connection between the application and the potential impacts on OFN.</p> <p>Applications approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #53</p> <p>Shell Canada Limited</p> <p>(Application Nos. 1849363, 1850233)</p> <p>[Link: AER Response Letter]</p> <p>22 February 2016</p>	<p>O’Chiese First Nation (“OFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that OFN’s concerns were of a general nature and that OFN did not establish a sufficient degree of location or connection between the application and the potential impacts on OFN.</p> <p>Applications approved.</p>
<p>Ref #54</p> <p>Shell Canada Limited</p> <p>(Application Nos. 1845551, 1845552, 1845554, 4845555, 1845579, 1845580, 1845581, 1845584, 1845806, 1845807, 1846347)</p> <p>[Link: AER Response Letter]</p> <p>4 March 2016</p>	<p>O’Chiese First Nation (“OFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that OFN’s concerns were of a general nature and that OFN did not establish a sufficient degree of location or connection between the application and the potential impacts on OFN.</p> <p>Applications approved.</p>
<p>Ref #55</p> <p>Shell Canada Limited</p> <p>(Application No. 1850868)</p> <p>[Link: AER Response Letter]</p> <p>22 March 2016</p>	<p>O’Chiese First Nation (“OFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that OFN’s concerns were of a general nature and that OFN did not establish a sufficient degree of location or connection between the application and the potential impacts on OFN.</p> <p>Application approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #56</p> <p>Pembina Pipeline Corporation, Fox Creek to Namao Pipeline Expansion Project</p> <p>(Application Nos. 1806873, PLA141460, PLA141465, PLA141468 to PLA141473, PLA141475 to PLA141480, PLA141487, 001-00356633; Decision 2016 ABAER 004)</p> <p>[Link: AER Decision 2016 ABAER 004]</p> <p>23 March 2016</p>	<p>Gunn Métis Local #55 (“Métis Local 55”); Driftpile First Nation (“DFN”); Alexander First Nation (“AFN”)</p> <p>Métis Local 55: impacts of a spill; use of pesticides; adequacy of reclamation; impacts on wildlife habitat; impacts on traditional practices.</p> <p>DFN: impacts of a spill; adequacy of reclamation; impacts on grizzly bear habitat; impacts on moose and moose habitat; impacts on traditional land uses.</p> <p>AFN: adequacy of consultation; socioeconomic impacts; public safety risks.</p>	<p>Alberta Energy Regulator</p> <p>The AER stated that the impacts on Aboriginal peoples could be mitigated.</p> <p>Project approved with conditions, including conditions with respect to reclamation.</p>
<p>Ref #57</p> <p>Shell Canada Limited</p> <p>(Application Nos. 1850756, PLA151643-001, PIL150851-001)</p> <p>[Link: AER Response Letter]</p> <p>8 April 2016</p>	<p>O’Chiese First Nation (“OFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that OFN’s concerns were of a general nature and that OFN did not establish a sufficient degree of location or connection between the application and the potential impacts on OFN.</p> <p>Applications approved.</p>
<p>Ref #58</p> <p>Shell Canada Limited</p> <p>(Application No. 1850978)</p> <p>[Link: AER Response Letter]</p> <p>18 April 2016</p>	<p>O’Chiese First Nation (“OFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that OFN’s concerns were of a general nature and that OFN did not establish a sufficient degree of location or connection between the application and the potential impacts on OFN.</p> <p>Application approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #59</p> <p>Penn West Petroleum Ltd.</p> <p>(Application Nos. PLA160019-001, PIL160061-001, LOC 160169-001)</p> <p>[Link: AER Response Letter]</p> <p>12 May 2016</p>	<p>O'Chiese First Nation ("OFN")</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that OFN's concerns were of a general nature and that OFN did not establish a sufficient degree of location or connection between the application and the potential impacts on OFN.</p> <p>Application approved.</p>
<p>Ref #60</p> <p>Shell Canada Limited</p> <p>(Application Nos. 1849404, 1850839, 1850842, PLA151597-001)</p> <p>[Link: AER Response Letter]</p> <p>18 May 2016</p>	<p>O'Chiese First Nation ("OFN")</p> <p>Impacts on the exercise of Aboriginal rights.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Despite the OFN having provided maps showing areas of current and traditional land use activities such as gathering, trapping, hunting, habitation and travel routes, the AER stated that OFN did not provide information outlining specific locations where these activities were conducted.</p> <p>Applications approved.</p>
<p>Ref #61</p> <p>Pengrowth Energy Corporation</p> <p>(Application No. OSCA1784285, 008-1581)</p> <p>[Link: AER Response Letter]</p> <p>27 May 2016</p>	<p>Samson Cree Nation ("SCN")</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that SCN's concerns were of a general nature and that SCN did not establish a sufficient degree of location or connection between the application and the potential impacts on SCN.</p> <p>Applications approved.</p>
<p>Ref #62</p> <p>Shell Canada Limited</p> <p>(Application No. PIL910052)</p> <p>[Link: AER Response Letter]</p> <p>31 May 2016</p>	<p>O'Chiese First Nation ("OFN")</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that OFN's concerns were of a general nature and that OFN did not establish a sufficient degree of location or connection</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
		<p>between the application and the potential impacts on OFN.</p> <p>Application approved.</p>
<p>Ref #63</p> <p>Penn West Petroleum Ltd.</p> <p>(Application Nos. A10016580, A10016579, A10016573, A10016563, A10016556, A10016552, A10016548, A10016544, A10016541, A10016537, A10016525, A10016517, A10016508, A10016500, A10016253, A10016239, A10016237, A10016232, A10016229, A10016222, A10016217, A10016154, A10016078, A10016072, A10016071, A10015452, A10015449, A10015450, A10015239, A10015234, A10015201, A10015198, A10014900, A10014792, A10014791)</p> <p>[Link: AER Response Letter]</p> <p>1 June 2016</p>	<p>O'Chiese First Nation ("OFN")</p> <p>Concerns not specified</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that there were no changes in the lands included in the renewal applications and that OFN failed to demonstrate that its members conducted traditional activities in proximity to the project.</p> <p>Applications approved.</p>
<p>Ref #64</p> <p>Tourmaline Oil Corp.</p> <p>(Application Nos. PIL160062-001, LOC160177-001, PLA160116-001, PLA160220-001)</p> <p>[Link: AER Response Letter]</p> <p>8 July 2016</p>	<p>O'Chiese First Nation ("OFN")</p> <p>Impacts on Treaty and Aboriginal rights.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that OFN failed to demonstrate that its members conducted traditional activities in proximity to the project.</p> <p>Application approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #65 Williams Energy Canada ULC (Application No. 007-73203) [Link: AER Response Letter] 24 August 2016</p>	<p>Fort Chipewyan Métis Local 125 (“Métis Local 125”) Inadequate notification; transportation of liquid hydrocarbons; adequacy of consultation.</p>	<p>Alberta Energy Regulator Hearing not required. AER stated that Métis Local 125’s concerns were of a general nature and did not identify how Métis Local 125 may be directly and adversely affected. Application approved.</p>
<p>Ref #66 Cenovus Energy Inc., Pelican Lake Grand Rapids Thermal Project (Application No. 004-269241) [Link: AER Response Letter] 29 August 2016</p>	<p>Bigstone Cree First Nation Impacts on treaty rights to fish, hunt, harvest and trap; cumulative effects; lack of notification; adequacy of consultation.</p>	<p>Alberta Energy Regulator Hearing not required. AER stated BCFN did not provide sufficient detail to establish that its members may be directly and adversely affected. Application approved.</p>
<p>Ref #67 BlackPearl Resources Inc. (Application No. 1728831) [Link: AER Response Letter] 15 September 2016</p>	<p>Non-Status Fort McMurray/Fort Mackay Band Concerns not specified.</p>	<p>Alberta Energy Regulator Hearing not required. AER stated that concerns raised were addressed by BlackPearl, were beyond the scope of the application and were addressed by conditions in the approval. Application approved.</p>
<p>Ref #68 Surmont Energy Limited. (Application Nos. 1746146, 001-318401) [Link: AER Response Letter] 15 September 2016</p>	<p>Chipewyan Prairie Dene First Nation (“CPDFN”) General environmental concerns.</p>	<p>Alberta Energy Regulator Hearing not required. AER stated that CPDFN did not provide sufficient detail on where traditional activities take place and how rights may be impacted. Applications approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #69</p> <p>Teck Resources Limited, Extension of Existing Oil Sands Exploration Approvals</p> <p>(Application Nos. A10026515, A10026518, A10026523, A10026527, A10027815, OSE160002, OSE160003, OSE160004, OSE160005)</p> <p>[Links: AER Letter to ACFN, AER Letter to MCFN]</p> <p>19 September 2016</p>	<p>Athabasca Chipewyan First Nation (“ACFN”); Mikisew Cree First Nation (“MCFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that concerns were dealt with in AER decision 2013 ABAER 017 and that ACFN and MCFN did not demonstrate that they may be directly and adversely affected.</p> <p>Applications approved.</p>
<p>Ref #70</p> <p>Canadian Natural Resources Limited</p> <p>(Application No. 1863046)</p> <p>[AER Response Letter]</p> <p>31 October 2016</p>	<p>Kehewin First Nation (“KFN”)</p> <p>Inadequate consultation; noise impacts; traffic and road use; impacts on harvesting on traditional lands.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that concerns were addressed by CNRL or were outside of AER’s jurisdiction.</p> <p>Application approved.</p>
<p>Ref #71 Athabasca Oil Corporation, Hangingstone SAGD Project (Application No. 1852014)</p> <p>[Link: AER Response Letter]</p> <p>16 November 2016</p>	<p>Mikisew Cree First Nation (“MCFN”)</p> <p>Impacts on traditional land uses.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that MCFN’s concerns were general in nature and MCFN failed to demonstrate that its members may be directly and adversely affected.</p> <p>Application approved.</p>
<p>Ref #72</p> <p>Treaty Alliance Against Tar Sands Expansion</p> <p>[Links: Treaty, List of Signatory Nations]</p> <p>12 December 2016</p>	<p>150 Indigenous Nations</p> <p>The use of Indigenous territories and coast to expand tar sands operations; the building, converting or expansion of pipelines; increased oil train and tanker traffic; impacts from oil spills on territories, waterways, shores; catastrophic climate change.</p>	<p>N/A</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #73</p> <p>Imperial Oil Resources Ventures Limited, Oil Sands Exploration Program</p> <p>(Application Nos. OSE160006, 1869196, 1869631)</p> <p>[Link: AER Response Letter]</p> <p>16 December 2016</p>	<p>Métis Nation of Alberta Association Fort McMurray Local Council 1935 (“Métis Local 1935”)</p> <p>Concerns not specified</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that Métis Local 1935’s concerns lacked detail and specifics and that Métis Local 1935 failed to demonstrate that they may be directly and adversely affected.</p> <p>Applications approved.</p>
<p>Ref #74</p> <p>Imperial Oil Resources Ventures Limited, Oil Sands Exploration Program</p> <p>(Application Nos. A10033421, OSE160020)</p> <p>[Link: AER Response Letter]</p> <p>16 December 2016</p>	<p>Métis Nation of Alberta Association Fort McMurray Local Council 1935 (“Métis Local 1935”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that Métis Local 1935’s concerns were general and lacked detail and specifics and that Métis Local 1935 failed to demonstrate that they may be directly and adversely affected.</p> <p>Application approved.</p>
<p>Ref #75</p> <p>Métis Nation of Alberta Association Fort McMurray Local Council 1935 v Alberta, 2016 ABQB 712</p> <p>[Link: Court Decision]</p> <p>16 December 2016</p>	<p>Métis Nation of Alberta Association Fort McMurray Local Council 1935 (“Métis Local 1935”)</p> <p>Failure of Alberta Crown to consult with Métis Local 1935 with respect to various oil sands exploration and development approvals.</p>	<p>Alberta Court of Queen’s Bench</p> <p>The Court determined that the Crown breached procedural fairness by setting unreasonable deadlines for Métis Local 1935 to respond to Information Requests and by failing to fully and fairly consider the information and evidence provided by Métis Local 1935.</p>
<p>Ref #76</p> <p>Shell Canada Limited, Pipeline Application, Ferrier Field</p> <p>(Application Nos. 1823846, PLA150215; Decision 2017 ABAER 002)</p> <p>[Link: AER Decision 2017 ABAER 002]</p> <p>1 February 2017</p>	<p>O’Chiese First Nation (“OFN”)</p> <p>Impacts on traditional land uses; impacts on wildlife habitat; vegetation impacts; traffic; noise; light.</p>	<p>Alberta Energy Regulator</p> <p>The AER stated that the impacts of the project would be minimal and temporary and would have limited effect on OFN’s ability to exercise their Aboriginal and treaty rights.</p> <p>Project approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #77</p> <p>Canadian Natural Resources Limited, Oil Sands Exploration Program</p> <p>(Application Nos. OSE160038, MSL160908-160914; MSL140822, MSL151794, LOC161011-161015, LOC140796, LOC152047)</p> <p>[Links: AER Letter to MCFN, AER Correction Letter to MCFN]</p> <p>19 May 2017</p>	<p>Mikisew Cree First Nation</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Applications approved.</p>
<p>Ref #78</p> <p>Canadian Natural Resources Ltd.</p> <p>(Application No. 001-00329572)</p> <p>[Link: AER Response Letter]</p> <p>25 May 2017</p>	<p>Bigstone Cree Nation (“BCN”)</p> <p>Impacts on future groundwater use; groundwater contamination; surface water impacts.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that BCN failed to demonstrate that they may be directly and adversely affected.</p> <p>Applications approved.</p>
<p>Ref #79</p> <p>Peyto Exploration & Development Corp.</p> <p>(Application Nos. 1884949, 1885133)</p> <p>[Link: AER Response Letter]</p> <p>28 June 2017</p>	<p>East Prairie Métis Settlement (“EPMS”)</p> <p>Adequacy of consultation; compensation; impacts on traditional land uses.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that statement of concern had insufficient information to determine that EPMS was directly and adversely affected.</p>
<p>Ref #80</p> <p>Imperial Oil Resources Ltd.</p> <p>(Water Act Application Nos. 00079923-007, 00148301-008)</p> <p>[Link: AER Response Letter]</p> <p>5 July 2017</p>	<p>Cold Lake First Nations (“CLFN”)</p> <p>Requesting reduction in water allocation; water quantity and quality impacts and monitoring; municipal development.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that CLFN failed to demonstrate that they are directly and adversely affected.</p> <p>Applications approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #81</p> <p>Canadian Natural Resources Limited, Horizon Oil Sands Project</p> <p>(Application No. 1862178)</p> <p>[Links: AER Letter to FMFN, AER Letter to MCFN]</p> <p>26 September 2017</p>	<p>Fort McKay First Nation (“FMFN”); Mikisew Cree First Nation (“MCFN”); Fort McKay Métis Community Association (“FMMCA”)</p> <p>Amongst the Indigenous participants: concerns about use of petroleum coke in dyke drains; loss of access to traditional lands.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that all parties failed to demonstrate that they will be directly and adversely affected.</p> <p>Application approved.</p>
<p>Ref #82</p> <p>TransCanada Pipelines Limited, Energy East Asset Transfer and Eastern Mainline Project</p> <p>[See also additional narrative in Appendix 2]</p> <p>[Link: Project Application Vol. 1 Section 8]</p> <p>5 October 2017</p>	<p>Early consultations and review of draft consultation approach: 65 First Nations and 6 Tribal councils representing a total of 36 First Nations.</p> <p>166 Indigenous groups engaged by May 2016 according to the Energy East Consolidated Application.</p> <p>Amongst the Indigenous participants: pipeline safety; the nature of the product and the potential effects of a spill or other emergencies; community participation in environmental protection and emergency response; valve placement; adequacy of project engagement and Crown consultation; effects of the project on treaty, Aboriginal rights and title; traditional land and resource use; effects on watercourses, native prairie and heritage resources; lack of involvement in construction monitoring and reclamation plans; economic development and participation, including capacity funding, community investment, employment, training and vendor opportunities during construction and operations, and opportunities for project revenue sharing; effects on the</p>	<p>National Energy Board</p> <p>Kanehsatà:ke, as well as many individual Indigenous nations and activists.</p> <p>Aroland First Nation and Ginoogaming First Nation sought a court declaration that the duty to consult had been triggered by invasive testing along the Eastern Mainline route.</p> <p>Reasonable apprehension of bias was alleged for several NEB panel members, who subsequently recused themselves.</p> <p>TransCanada withdrew the project application on October 5, 2017</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	<p>environment; including on surface and groundwater quality; fish, traditional and commercial fishing; marine shipping; tourism; wildlife; traditional land and resource use activities and community interests; species at risk; invasive species; health of community members; need for abandonment and decommissioning plans; corporate responsibility for all TransCanada facilities within the region over the lifetime of the project; inadequacy of NEB consultation and engagement processes; lack of participation funding; prematurity of invitations to comment; NEB conflicts of interest; limited scope in the draft list of issues.</p> <p>16 Indigenous groups listed in October 2014 ESA for Eastern Mainline.</p>	
<p>Ref #83</p> <p>Suncor Energy Inc., Millennium Operational Amendment and Base Plant Tailings Management Plan</p> <p>(Applications 1857270, 1857274, 1890348, 075-94; OSCA Approval No. 8535N; EPEA Approval No. 94-02-18; Decision 20171025A)</p> <p>[Links: AER Letter to Métis Local 1935, AER Letter to ACFN, AER Letter to FMMCA, AER Decision 20171025A]</p> <p>25 October 2017</p>	<p>Métis Nation of Alberta Association Fort McMurray Local Council 1935 (“Métis Local 1935”); Athabasca Chipewyan First Nation (“ACFN”); Fort McKay Métis Community Association (“FMMCA”)</p> <p>Métis Local 1935: opportunities to be engaged on tailings management; reclamation timelines; reclamation monitoring; reclamation criteria; seepage and water quality; dust management; failure to consider climate change in water balance; dam safety risks; capacity funding.</p> <p>ACFN: opportunities to be engaged on tailings management; tailings placement and closure in</p>	<p>Alberta Energy Regulator</p> <p>No hearing required.</p> <p>Métis Local 1935, ACFN: AER stated that concerns were addressed by Suncor and in decision.</p> <p>FMMCA: AER stated that concerns were addressed in decision.</p> <p>Applications approved with conditions.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	<p>dedicated disposal areas; reclamation criteria; seepage concerns; protection of wetlands; dam safety risks.</p> <p>FMMCA: opportunities to be engaged on tailings management; reclamation timelines; reclamation monitoring; reclamation criteria; treated tailings storage; groundwater quality impacts; surface water quality; dust management.</p>	
<p>Ref #84</p> <p>Devon NEC Corporation and Devon Canada Corporation, Jackfish West, Jackfish East and Pike Oil Sands Exploration Programs (</p> <p>Application Nos. OSE170003, OSE170004, OSE170005, 1894936, 1894937, 1894932, 1894934, 1894938, 1894939, 1894941)</p> <p>[Link: AER Response Letter]</p> <p>4 December 2017</p>	<p>Fort McKay Métis Community Association (“FMMCA”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Applications approved.</p>
<p>Ref #85</p> <p>Canadian Natural Resources Ltd.</p> <p>(Application No. 1869003)</p> <p>[Links: AER Letter to ACFN, AER Letter to FMFN, AER Letter to Métis Local 1935]</p> <p>18 December 2017</p>	<p>Athabasca Chipewyan First Nation (“ACFN”); Fort McKay First Nation (“FMFN”); Métis Nation of Alberta, McMurray Métis Local 1935 (“Métis Local 1935”)</p> <p>ACFN: tailings technology; fluid tailings inventory; end pit lakes; impacts of process affected water; reclamation criteria; use of petroleum coke as a capping material; dam safety risks; groundwater sampling and monitoring; need for ongoing engagement; impact on traditional uses; inconsistency</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that concerns were addressed in decision or were outside of the scope of the application.</p> <p>Approved with conditions.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	<p>between tailings management plan and EPEA approval.</p> <p>FMFN, Métis Local 1935: tailings technology; fluid tailings inventory; tailings disposal area; use of end pit lakes; impacts of process affected water; reclamation criteria; use of petroleum coke as a capping material; dam safety risks; impacts on traditional land uses; socio-economic and cultural impacts; adequacy of Crown consultation.</p>	
<p>Ref #86</p> <p>Imperial Oil Resources Limited, Oil Sands Exploration Program</p> <p>(Application Nos. A10058634, OSE170009)</p> <p>[Link: AER Response Letter]</p> <p>29 January 2018</p>	<p>Cold Lake First Nations ("CLFN")</p> <p>Wildlife habitat loss; impacts on woodland caribou.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that concerns were general in nature and did not identify direct and adverse impacts.</p> <p>Application approved.</p>
<p>Ref #87</p> <p>Imperial Oil Resources Limited, Oil Sands Exploration Program</p> <p>(Application Nos. 1905477, OSE180001)</p> <p>[Links: AER Letter to MCFN, AER Letter to FMFN]</p> <p>31 January 2018</p>	<p>Mikisew Cree First Nation ("MCFN"); Fort McKay First Nation ("FMFN")</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that MCFN and FMFN failed to demonstrate that they may be directly and adversely affected.</p> <p>Applications approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #88</p> <p>TransCanada Pipelines Limited, White Spruce Pipeline Project</p> <p>(Application Nos. 1866519, 1866521, PLA160525, PLA160526, PLA160527, PLA160529, PLA160530, PLA160531, PLA160532, PIL160286, PIL160287, PIL160288, PIL160289, PIL160321, PIL160376, LOC160846, LOC160995; Decision 2018 ABAER 001)</p> <p>[Link: AER Decision 2018 ABAER 001]</p> <p>22 February 2018</p>	<p>Fort McKay First Nation (“FMFN”)</p> <p>Need for the project; watercourse crossings; impacts on wildlife and wildlife habitat including caribou and moose; herbicide use; spill response; impact of cumulative effects on ability to exercise treaty and Aboriginal rights.</p>	<p>Alberta Energy Regulator</p> <p>The AER stated that the concerns with respect to impacts on treaty and Aboriginal rights were general in nature and not supported by sufficient evidence. The AER also stated that concerns were adequately addressed through mitigation measures.</p> <p>Applications approved, with some conditions with respect to disturbance of moose and caribou habitat restoration.</p>
<p>Ref #89</p> <p>Value Creation Inc.</p> <p>(Application Nos. 1884499, 001-00371074, 003-00269702)</p> <p>[Link: AER Response Letter]</p> <p>16 March 2018</p>	<p>Mikisew Cree First Nation (“MCFN”)</p> <p>Adequacy of Crown consultation; impacts on woodland caribou.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that no additional footprint is associated with application.</p> <p>Application approved.</p>
<p>Ref #90</p> <p>Athabasca Chipewyan First Nation v Alberta, 2018 ABQB 262; Athabasca Chipewyan First Nation v Alberta, 2019 ABCA 401</p> <p>[See also additional narrative in Appendix 2]</p> <p>[Links: Court of Queen’s Bench Decision, Court of Appeal Decision]</p> <p>5 April 2018</p>	<p>Athabasca Chipewyan First Nation (“ACFN”)</p> <p>Challenge of the Alberta Consultation Office’s determination that there was no duty to consult with the ACFN with respect to the proposed Grand Rapids Pipeline Project.</p>	<p>Alberta Court of Queen’s Bench; Alberta Court of Appeal</p> <p>Procedural fairness is engaged in the determination of whether a duty to consult is triggered. Because the ACFN did not challenge the approval decision or the adequacy of consultation, the Court declined to exercise its discretion with respect to whether the duty to consult was triggered or what evidence was needed to trigger it. The Alberta Court of Appeal upheld the lower Court decision.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #91</p> <p>PTTEP Canada Ltd., Mariana Thornbury Project</p> <p>(Application Nos. 002-00353243, 1831433)</p> <p>[Links: AER Letter to Métis Local 1949, AER Letter to Métis Local 1935, AER Letter to MNA-R1]</p> <p>31 May 2018</p>	<p>Métis Nation of Alberta Local 1949 (“Métis Local 1949”); Métis Nation of Alberta Association Fort McMurray Local Council 1935 (“Métis Local 1935”); Métis Nation of Alberta, Region 1 (“MNA-R1”)</p> <p>Impacts on harvesting and hunting.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Applications approved.</p>
<p>Ref #92</p> <p>Prosper Petroleum Ltd., Prosper Rigel SAGD Project</p> <p>(Application Nos. 1778538, 00370772-001, 001-341659; Decision 2018 ABAER 005, Court Decision 2020 ABCA 163) [See also additional narrative in Appendix 2]</p> <p>[Links: Court Decision, AER Decision 2018 ABAER 005, AER Decision 2017-03-16, AER Decision 2017-08-16, AER Decision 2017-10-16, AER Decision 2017-01-16]</p> <p>13 June 2018</p>	<p>Fort McKay First Nation (“FMFN”); Fort McKay Métis; Mikisew Cree First Nation (“MCFN”); Athabasca Chipewyan First Nation (ACFN”); Fort Chipewyan Métis Local 125 (“Métis Local 125”); Fort McMurray Métis Local 1935 (“Métis Local 1935”)</p> <p>Environmental and cumulative effects of oil sands development on Treaty 8 rights; the inadequacy of the Lower Athabasca Regional Plan (“LARP”) process and the development of the Moose Lake Access Management Plan (“MLAMP”);</p> <p>AER approval of the project without considering the honour of the Crown, and without halting the project until FMFN completed its negotiations with Alberta on the development of a Moose Lake Access Management Plan; reasonable apprehension of bias of Commissioners on the AER panel.</p>	<p>Alberta Energy Regulator; Alberta Court of Appeal</p> <p>Only FMFN and Fort McKay Métis were directly addressed in the 2018 approval.</p> <p>The other Indigenous groups sought to participate at several points in the AER hearing process.</p> <p>FMFN successfully appealed the AER’s approval decision on the grounds that the AER failed to consider the honour of the Crown and failed to postpone the project until after the Moose Lake Access Management Plan negotiations were complete.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #93</p> <p>Synchrude, Aurora North Tailings Management Plan</p> <p>(Application No. 1871794; Decision 20180613A) [iManage Doc. No.]</p> <p>Links: AER Letter to ACFN, AER Letter to FMFN, AER Letter to MCFN, AER Letter to MMSC, AER Letter to Métis Local 1909, AER Letter to Métis Local 1935, AER Letter to MNA-R1, AER Decision 20180613A]</p> <p>13 June 2018</p>	<p>Athabasca Chipewyan First Nation (“ACFN”); Fort McKay First Nation (“FMFN”); Mikisew Cree First Nation (“MCFN”); McKay Métis Sustainability Centre (“MMSC”); Métis Nation of Alberta Local Council 1909 Lakeland (“Métis Local 1909”); Métis Nation of Alberta Association Fort McMurray Local Council 1935 (“Métis Local 1935”); Métis Nation of Alberta – Region 1 (“MNA-R1”).</p> <p>ACFN: tailings technology; fluid tailings inventories; use of end pit lakes; reclamation criteria; lack of meaningful engagement; impacts on traditional land uses and exercise of Treaty rights.</p> <p>MCFN: tailings technology; fluid tailings inventories; use of end pit lakes; impacts to surface water; reclamation criteria; tailings water release; dam safety; need for ongoing engagement; impacts on traditional land uses and harvesting rights.</p> <p>MCFN, MMSC: tailings technology; fluid tailings inventories; use of end pit lakes; reclamation criteria; tailings water release; dam safety; need for ongoing engagement; impacts on traditional land uses and harvesting rights.</p> <p>Métis Local 1935: tailings technology; fluid tailings inventory; use of end pit lakes; reclamation criteria; need for ongoing engagement; impacts on traditional land uses and harvesting rights.</p> <p>Métis Local 1909, MNA-R1: need for ongoing engagement; impacts</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER provided an opportunity for parties to attend an AER-facilitated technical meeting and an opportunity to provide feedback on draft approval terms and conditions.</p> <p>Tailings management plan approved, with conditions that Synchrude was required to provide an updated tailings management plan by December 31, 2023 to address non-compliant reliance on water-capped tailings and inconsistency with <i>Directive 085</i> with respect to tailings volume increases.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	on traditional land uses and harvesting rights.	
<p>Ref #94</p> <p>Persta Resources Inc.</p> <p>(Pipeline Application No. 1890300)</p> <p>[Link: AER Response Letter]</p> <p>21 June 2018</p>	<p>Alexis Nakota Sioux Nation (“ANSN”)</p> <p>Impacts on treaty and Aboriginal rights to hunt, trap and gather, and traditional use areas; inadequate consultation.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that concerns were of a general nature and not supported by sufficient detail.</p> <p>Pipeline approved.</p>
<p>Ref #95</p> <p>Syncrude, Mildred Lake Extension Project</p> <p>(Applications 1820856, 00263298-005, 00363203-001, 00000026-034, MSL0352, MSL170423, MSL170430)</p> <p>[Links: AER Letter to MCFN, AER Letter to ACFN, AER Letter to FMFN, AER Letter to Clearwater]</p> <p>11 July 2018</p>	<p>Mikisew Cree First Nation (“MCFN”); Athabasca Chipewyan First Nation (“ACFN”); Fort McKay First Nation (“FMFN”); Clear Water River (Paul Cree) Band #175 and Original Fort McMurray Band (together, “Clearwater”)</p> <p>MCFN: impacts on traditional land uses and harvesting rights; impacts on wildlife habitat; impact on water quantity and quality; impacts on river navigation; impact on air quality; health impacts.</p> <p>ACFN: impacts on water levels in the Athabasca River; impacts of surface water and groundwater quality; impacts on harvesting rights; impact on a burial site.</p> <p>FMFN: concerns not specified.</p> <p>Clearwater: lack of restoration of lands; destruction of habitat for species of importance to exercise of Aboriginal rights.</p>	<p>Alberta Energy Regulator</p> <p>AER found MCFN, ACFN and FMFN: to be directly and adversely affected and granted right to participate in hearing.</p> <p>Clearwater was not recognized by Alberta or Canada as a rights bearing group and failed to demonstrate how it may be directly and adversely affected.</p> <p>Application approved.</p>
<p>Ref #96</p> <p>Imperial Oil Resources Limited, Kearn Oil Sands Tailings Management Plan</p>	<p>Fort McKay First Nation (“FMFN”); Mikisew Cree First Nation (“MCFN”); Métis Nation of Alberta Local Council 1909 Lakeland (“Métis Local 1909”); Métis Nation of Alberta</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER determined that concerns were dealt with in the approval or</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>(Application No. 1872083; Decision 20180716A)</p> <p>[Links: AER Letter to FMFN, AER Letter MCFN, AER Letter to Métis Local 1909, AER Letter to Métis Local 1935, AER Letter to MMSC, AER Letter to MNA-R1, AER Decision 20180716A]</p> <p>16 July 2018</p>	<p>Association, Fort McMurray Local Council 1935 (“Métis Local 1935”); McKay Métis Sustainability Centre (“MMSC”); Métis Nation of Alberta Region 1 (“MNA-R1”)</p> <p>FMFN, MCFN, Métis Local 1935 and MMSC: use of end pit lakes; fluid tailings inventory; tailings technology; insufficient reclamation criteria; water management; need for ongoing engagement; impacts on traditional land uses and harvesting rights.</p> <p>Métis Local 1909: negative effects on surface water and ground water quality; need for ongoing engagement; impacts on traditional land uses and harvesting rights.</p> <p>MNA-R1: need for ongoing engagement; risk of spills into the Athabasca and Firebag Rivers; impacts on traditional land uses and harvesting rights.</p>	<p>were outside of the scope of the decision.</p> <p>Tailings management plan approved with conditions.</p>
<p>Ref #97</p> <p>Imperial Oil Resources Limited,</p> <p>(Application Nos. 1854138, 013-73534)</p> <p>[Links: AER Letter to CLFN, AER Letter to BLCN, AER Letter to WLFN, AER Letter to OLCN, AER Letter to KMS, AER Letter to FLMS, AER Letter to EMS, AER Letter to EPMS, AER Letter to BLMS]</p> <p>14 August 2018</p>	<p>Cold Lake First Nations (“CLFN”); Beaver Lake Cree Nation (“BLCN”); Whitefish (Goodfish) Lake First Nation (“WLFN”); Onion Lake Cree Nation (“OLCN”); Kikino Métis Settlement (“KMS”); Fishing Lake Métis Settlement (“FLMS”); Elizabeth Métis Settlement (“EMS”); East Prairie Métis Settlement (“EPMS”); Buffalo Lake Métis Settlement (“BLMS”)</p> <p>Groundwater quality; air quality; noise; light; traffic.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that matters were reviewed by AER technical staff.</p> <p>Applications approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #98</p> <p>Imperial Oil Resources Limited, Oil Sands Evaluation Program</p> <p>(Application Nos. A10058536, OSE170007)</p> <p>[Link: AER Response Letter]</p> <p>29 August 2018</p>	<p>Chipewyan Prairie Dene First Nations (“CPDFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that OSE program impacts were localized and temporary in nature.</p> <p>Application approved.</p>
<p>Ref #99</p> <p>Syncrude</p> <p>(Application Nos. 046-00000026, 1904558)</p> <p>Link: AER Response Letter</p> <p>6 September 2018</p>	<p>Athabasca Chipewyan First Nation (“ACFN”)</p> <p>Mining and reclamation practices.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that concerns were adequately addressed by previous decisions.</p> <p>Applications approved.</p>
<p>Ref #100</p> <p><i>Mikisew Cree First Nation v Canada, 2014 FC 1244; Canada v Mikisew Cree First Nation, 2016 FCA 311; Mikisew Cree First Nation v Canada, 2018 SCC 40</i></p> <p>[Links: Federal Court Decision, Federal Court of Appeal Decision, Supreme Court Decision]</p> <p>11 October 2018</p>	<p>Mikisew Cree First Nation (“MCFN”)</p> <p>The MCFN challenged the Federal government’s failure to consult with the MCFN with respect to two omnibus bills that amended the <i>Navigable Waters Protection Act</i> and the <i>Fisheries Act</i>, and replaced the <i>Canadian Environmental Assessment Act, 1992</i> with the <i>Canadian Environmental Assessment Act, 2012</i>. The effect of those amendments was to reduce the number of bodies of water which were protected by federal legislation, with the potential for greater impacts on fishing, trapping and navigation from existing and proposed oil sands development.</p>	<p>Federal Court; Federal Court of Appeal; Supreme Court of Canada</p> <p>While the Federal Court found a duty to consult with respect to the proposed legislation, this was overturned by the Federal Court of Appeal. On further appeal, the Supreme Court of Canada was unanimous that sections 2(1), 2(2), 18 and 18.1 of the <i>Federal Courts Act</i> precluded judicial review of the legislative process leading to the development and passing of the omnibus bills. The Court was also unanimous that legislation that infringed on Aboriginal or treaty rights could be challenged <i>post facto</i>. The Court was split on the question of whether adverse effects of legislation that did not rise to the level of infringement could be challenged.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #101</p> <p>Cenovus Energy Inc., Oil Sands Evaluation Program</p> <p>(Application Nos. OSE180007, OSE180008, OSE180009, OSE180010, 1911382, 1911383, 1911384, 1911401, 1911392, 1911394)</p> <p>[Link: AER Response Letter]</p> <p>25 October 2018</p>	<p>McKay Métis Sustainability Centre (“MMSC”)</p> <p>Fort McKay Métis Community Association (“FMMCA”)</p> <p>Reliance on key wildlife and biodiversity zone; cumulative impacts on the environment; reclamation.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Applications approved.</p>
<p>Ref #102</p> <p>Synchrude Canada Ltd.</p> <p>(Application No. 1910996)</p> <p>[Link: AER Response Letter]</p> <p>16 November 2018</p>	<p>Fort McKay First Nation (“FMFN”)</p> <p>Degradation to air quality and odours; loss of land; trucking operations; inadequate consultation; future pipeline applications</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Application approved.</p>
<p>Ref #103</p> <p>Devon Canada Corporation</p> <p>(Application Nos. 1904200, 008-00224816)</p> <p>[Link: AER Response Letter]</p> <p>19 December 2018</p>	<p>McKay Métis Sustainability Centre (“MMSC”)</p> <p>Fort McKay Métis Community Association (“FMMCA”)</p> <p>Location of the project and effects on hunting locations, trapping sites, fishing sites, gathering areas, berry picking locations and cabin locations; impacts on waterways and groundwater; noise, dust and disturbance during construction and operations; increased risk of spills into waterbodies/groundwater; increased human activity in the area; increased access to the project area; industrial vehicles within the project area; loss of old growth habitat; habitat loss impacting wildlife; diminishing furbearers; loss of wetlands.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Applications approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #104</p> <p>Imperial Oil Resources Limited, Oil Sands Evaluation Program</p> <p>(Application No. OSE180012) [Link: AER Response Letter]</p> <p>21 December 2018</p>	<p>Onion Lake Cree Nation (“OLCN”)</p> <p>Project and cumulative effects on traditional rights including hunting, fishing and trapping, subsistence and historical resource value; destruction or damage to berry patches and medicinal plant gathering locations; construction and operating noise; access to the lands; water monitoring programs.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that concerns were already addressed.</p> <p>Application approved.</p>
<p>Ref #105</p> <p>Fort Hills Energy Corporation</p> <p>(Application Nos. 1881217, 010-151469, 023-00151636, 010-00190012)</p> <p>[Links: AER Letter to ACFN, AER Letter to FMMCA]</p> <p>25 February 2019</p>	<p>Athabasca Chipewyan First Nation (“ACFN”); Fort McKay Métis Community Association (“FMMCA”)</p> <p>ACFN: increased project footprint related to groundwater and Stanley Creek hydrology, particularly fish habitat; integrity and sustainability of the McClelland Lake Wetland Complex.</p> <p>MMSC: increased project footprint related to Stanley Creek hydrology, particularly fish habitat; effects on wildlife; wildlife habitat; vegetation; emissions, air quality; noise.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that concerns were dealt with in the approval or were outside of AER jurisdiction.</p> <p>Applications approved.</p>
<p>Ref #106</p> <p>Fort Hills Energy Corporation, Fort Hills Tailings Management Plan</p> <p>(Application No. 1881219; Decision 20190225A)</p> <p>[Links: AER Letter to MMSC, AER Decision 20190225A]</p> <p>25 February 2019</p>	<p>Athabasca Chipewyan First Nation (“ACFN”); Fort McKay Métis Community Association (“FMMCA”); Métis Nation of Alberta Fort McMurray Local Council 1935 (Métis Local 1935); McKay Métis Sustainability Centre (“MMSC”)</p> <p>ACFN: air quality from fugitive emissions; need for further engagement.</p>	<p>Alberta Energy Regulator</p> <p>Tailings management plan approved with conditions.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	<p>FMMCA: time to accumulate peak fluid tailings volumes; air quality from fugitive emissions; need for further engagement.</p> <p>Métis Local 1935: time to accumulate peak tailings volumes; need for further engagement.</p> <p>MMSC: time to accumulate peak tailings volumes; thickener performance; in-line flocculation; need for more information about the polymers used; dedicated disposal area reclamation options; lack of detail regarding alternative technology for treating fluid tailings; water capping and end pit lakes; need for additional information regarding the return of process affected water to the environment; need for additional information regarding ready to reclaim criteria.</p>	
<p>Ref #107</p> <p>Canadian Natural Resources Limited</p> <p>(Applications No. 1916659, 1916661, 433530, 433572)</p> <p>[Link: AER Response Letter]</p> <p>27 February 2019</p>	<p>Elizabeth Metis Settlement (“EMS”)</p> <p>Impacts on community harvesting area, rights to hunt, fish, trap, gather and harvest on the lands and waters in the project area; inadequate consultation; set-back waivers;</p> <p>reclamation.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Applications approved.</p>
<p>Ref #108</p> <p>Canadian Natural Upgrading Limited, Jackpine Mine Expansion Project</p> <p>(Application Nos. 005-00153125, 006-00153125, 012-00205433, 001-00329253, 005-00186157, 001-00329252)</p>	<p>Athabasca Chipewyan First Nation (“ACFN”); Fort McMurray #468 First Nation (“FMMFN”)</p> <p>Concerns not specified.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required</p> <p>AER stated that concerns were adequately dealt with or addressed.</p> <p>Applications approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>[Links: AER Letter to ACFN, AER Letter to FMMFN]</p> <p>12 June 2019</p>		
<p>Ref #109</p> <p>Enbridge Pipelines (Athabasca) Inc.</p> <p>(Application Nos. 432511, 920092, 921099, 921107, 921111)</p> <p>[Link: AER Response Letter]</p> <p>13 June 2019</p>	<p>McKay Métis Sustainability Centre (“MMSC”)</p> <p>Existing pipelines in geologically unstable areas; land disturbances from pipeline construction.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Applications approved.</p>
<p>Ref #110</p> <p>Enbridge Pipelines (Woodland) Inc.</p> <p>(Application No.. 921146)</p> <p>[Link: AER Response Letter]</p> <p>13 June 2019</p>	<p>McKay Métis Sustainability Centre (“MMSC”)</p> <p>Existing pipelines in geologically unstable areas; land disturbances from pipeline construction.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Applications approved.</p>
<p>Ref #111</p> <p>Trans Mountain Pipeline ULC, Trans Mountain Expansion Project</p> <p>(NEB Report OH-001-2014, Ministerial Panel Report, NEB Reconsideration Report MH-052-2018, Court Decisions 2018 FCA 153, 2020 FCA 34)</p> <p>[See also additional narrative in Appendix 2]</p> <p>[Links: NEB Report OH-001-2014, Ministerial Panel Report, NEB Reconsideration Report MH-052-2018, Court Decision 2018 FCA 153, Court Decision 2020 FCA 34]</p> <p>18 June 2019</p>	<p>Over 140 Indigenous groups (full list in Appendix 9, pp 515-7 of the National Energy Board Report for the Trans Mountain Expansion Project)</p> <p>Proponent level: lack of engagement regarding emergency response; lack of consideration for Aboriginal rights and strength of claims at early stages when project design could be fundamentally altered; impersonal, inaccurate, insincere engagement; proponent retreating from offers of engagement; limited scope for mitigation measures; lack of targeted avoidance, mitigation, accommodation; lack of continued consultation after construction; lack of discussion of routing; reluctance to formalize</p>	<p>National Energy Board, Federal Cabinet</p> <p>The federal government approved the project in 2016, subject to 157 conditions. The federal government also appointed a ministerial panel to review the project, which published a report in 2016.</p> <p>The 2016 report reiterated the findings that most First Nations involved, including those which had signed benefit agreements and which had written letters of support, still had concerns that the consultation was inadequate and over-reliant on the NEB process, and that there was no real meaningful negotiation or</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	<p>commitments outside of Mutual Benefit Agreements and to directly involve Indigenous experts.</p> <p>Federal level: overreliance on NEB process to fulfil duty to consult and accommodate; inadequacy of the NEB process for consultation because of insufficient participation funding, incomplete information, inappropriate scoping, overreliance on biophysical indicators as proxies for s 35 rights; lack of early consultation; biophysical and environmental concerns, including impacts to marine environments, marine vessel traffic and Southern resident killer whales; socio-economic impacts including employment; health impacts; impacts on cultural resources and practices, s 35 rights; cumulative impacts.</p>	<p>Indigenous approval inherent in the benefit agreements.</p> <p>Several legal proceedings against the project were then launched, by the Squamish Nation, and by a coalition including Tsleil-Waututh Nation, Coldwater Indian Band, Squamish Nation, Aitchelitz, Skowkale, Tzeachten, Squiala First Nation, Yakweakwoose, Shxway: Village, Soowahlie, Skwah, Kwaw-Kwaw-Apilt, Upper Nicola Band, and the Stk'emlupsemc te Secwepemc Division (which includes Skeetchestn Indian Band and Tk'emlups Indian Band).</p> <p>Kinder Morgan suspended TMX funding in April 2018, after which the federal government purchased the project in May 2018.</p> <p>The Federal Court of Appeal found in 2018 that the Order in Council approving the project was invalid in part because the Crown had failed to properly consult First Nations in its Phase III engagements.</p> <p>The NEB and federal cabinet re-approved the project in 2019, though many Indigenous groups remained unsatisfied, and a further judicial review was launched by a First Nations coalition including Coldwater Indian Band, Squamish Nation, Tsleil-Waututh Nation, Aitchelitz, Skowkale, Shxwhá:y Village, Soowahlie, Squiala First Nation, Tzeachten and Yakweakwoose.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #112</p> <p>Enbridge Pipelines (Woodland) Inc.</p> <p>(Application Nos. 921157, 932232)</p> <p>[Link: AER Response Letter]</p> <p>18 June 2019</p>	<p>McKay Métis Sustainability Centre (“MMSC”)</p> <p>Wetland loss and impact; inadequate consultation.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Applications approved.</p>
<p>Ref #113</p> <p>Imperial Oil Resources Limited, Cold Lake Expansion Project Regulatory Appeal</p> <p>(Approval Nos. 73534-01-02, 8558MM)</p> <p>[Links: AER Letter to KCN, AER Letter to FLM, AER Letter to BLM]</p> <p>9 July 2019</p>	<p>Elizabeth Métis Settlement (“EMS”); Kehewin Cree Nation (“KCN”); Fishing Lake Métis (“FLM”); Buffalo Lake Métis (“BLM”)</p> <p>KCN: impacts on traditional land uses and Treaty rights.</p> <p>FLM: potential to directly and adversely impact the rights and interests of FLM.</p> <p>BLM: potential impacts on Aboriginal rights and traditional land uses.</p>	<p>Alberta Energy Regulator</p> <p>Full participation in hearing granted.</p>
<p>Ref #114</p> <p>Synchrude Canada Ltd., Mildred Lake Extension Project and Mildred Lake Tailings Management Plan</p> <p>(Application Nos. 1820856, MSL170423, MSL170430, MSL352, 034-00000026, 005-00263298, 001-0363203; Decision 2019 ABAER 006)</p> <p>[Link: AER Decision 2019 ABAER 006]</p> <p>16 July 2019</p>	<p>Athabasca Chipewyan First Nation (“ACFN”)</p> <p>Dust emissions; odours; air quality; water levels in the McKay River, Athabasca River and Peace-Athabasca delta; water quality; fisheries impacts; impacts on caribou, moose and their habitat; reclamation concerns; economic analysis including carbon costs; impacts on traditional land use.</p>	<p>Alberta Energy Regulator</p> <p>The AER stated that the adverse impacts on the ACFN ability to continue to conduct their traditional activities could be mitigated through standard approval conditions and conditions imposed by the Panel.</p> <p>Project approved with conditions.</p>
<p>Ref #115</p> <p>Teck Resources Limited, Frontier Oil Sands Mine Project</p> <p>(Joint Review Panel Report and Decision 2019 ABAER 008, Court</p>	<p>Athabasca Chipewyan First Nation (“ACFN”); Mikisew Cree First Nation (“MCFN”); Fort McMurray First Nation #468 (“FMMFN”); Fort McKay First Nation (“FMFN”); Deninu K'ue</p>	<p>Joint Review Panel (Alberta Energy Regulator and Canadian Environmental Assessment Agency)</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Decision 2016 ABQB 713) [See also additional narrative in Appendix 2]</p> <p>[Links: JRP Report and AER Decision 2019 ABAER 008, Court Decision]</p> <p>Report Date: 25 July 2019;</p> <p>Cancellation Date: 23 February 2020</p>	<p>First Nation (“DKFN”); Smith’s Landing First Nation (“SLFN”); Kátł’odeeche First Nation (“KFN”); Fond du Lac First Nation (“FDLFN”)</p> <p>Original (First) Fort McMurray First Nation and Clearwater River Band (together, “Clearwater”); Métis Nation of Alberta Region 1 (“MNA-R1”); Fort Chipewyan Métis Local 125 (“Métis Local 125”); Fort McMurray Métis Local 1935 (“Métis Local 1935”); Fort McMurray Métis Local 2020 (“Métis Local 2020”); Willow Lake/Anzac Métis Local 780 (“Métis Local 780”); Conklin Métis Local 193 (Métis Local 193”);</p> <p>Lac La Biche Métis Local 2097 (“Métis Local 2097”); Fort McKay Métis Local 63 (Métis Local 63”); Lakeland Métis Local 1909 (“Métis Local 1909”); Athabasca Landing Métis Local 2010 (“Métis Local 2010”); Buffalo Lake Métis Local 2002 (“Métis Local 2002”); Owl River Métis Local 1949 (“Métis Local 1949”); Northwest Territory Métis Nation</p> <p>Lack of consultation with specific Indigenous parties; impacts on avian life and habitat within traditional territory; destruction of habitat, traditional resources, medicines, and harvesting areas, cabins, campsites, trails, and sites of cultural relevance; regional cumulative effects and impacts on s 35 rights, including in cases where the Indigenous participant’s project-specific concerns had been addressed; the lack of biodiversity</p>	<p>At least 2 participating Indigenous groups expressly opposed the project.</p> <p>Both ACFN and MCFN’s agreements were conditional.</p> <p>A total of 24 agreements were signed with Indigenous groups, and 18 of these groups had initially filed statements of concern or objections which were then withdrawn.</p> <p>3 groups were concerned about not being consulted, and the Joint Review Panel determined that consultation was not required for 2 of these groups, and made no determination on the third.</p> <p>The Alberta Crown also decided that the duty to consult and accommodate was not triggered for Métis Local 125.</p> <p>Métis Local 125 unsuccessfully sought judicial review of the Alberta Crown’s decision.</p> <p>Teck withdrew the project application in 2020 (ostensibly based on climate change concerns), during the blockades in solidarity with Wet’suwet’en First Nation.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	<p>management frameworks generally and under the Lower Athabasca Regional Plan (“LARP”), and the inadequacy of the LARP; impacts on Wood Buffalo National Park World Heritage Site’s environmental integrity and universal value, species at risk, migratory birds, methylmercury, bison, caribou, moose, water quality and quantity in the Peace-Athabasca river system, airborne contamination, and consistency with the UNDRIP; permanent impacts; tailings in end-pit lakes; noise impacts on traditional land use; outstanding regional planning impacts on s 35 rights; concerns about climate change impacts.</p>	
<p>Ref #116</p> <p>Canadian Natural Resources Limited</p> <p>(Application Nos. 1912063, 014-00149968)</p> <p>[Links: AER Letter to FMMCA, AER Letter to FMFN, AER Letter to Métis Local 125]</p> <p>1 August 2019</p>	<p>Fort McKay Métis Community Association (“FMMCA”); Fort McKay First Nation (“FMFN”); Fort Chipewyan Métis Local 125 (“Métis Local 125”)</p> <p>MMCA: impacts on Métis harvesting rights and traditional land uses at the Project site since construction began; air emissions; inadequacy of Tailing Management Plan; cumulative effects; inadequacy of Crown consultation.</p> <p>FMFN: impacts on Treaty and Aboriginal rights; air quality; inadequacy of Tailings Management Plan.</p> <p>Métis Local 125: impacts on Métis harvesting rights and traditional land uses at the Project site since construction; cumulative impacts; air emissions; inadequacy of Tailings Management Plan.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Applications approved.</p>



PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #117</p> <p>Pembina Pipeline Corporation</p> <p>(Application Nos. 1158508, 001-00432581, 10091890, 10091214, 10091239, 10091251, 10091305, PLA190239, PLA190202, PLA190207, PLA190206, PLA190209)</p> <p>[Links: AER Letter to ECN, AER Letter to CLM]</p> <p>12 August 2019</p>	<p>Ermineskin Cree Nation (“ECN”); Cadotte Lake Métis (“CLM”)</p> <p>ECN: impacts on Aboriginal and Treaty rights; funding a Traditional Land Use study; inadequate consultation; impacts to wildlife and wildlife habitat; locations where the pipeline deviates from existing corridors resulting in some fragmentation of the landscape; sensitive fish and their habitats; overall integrity of the land and water in the project area.</p> <p>CLM: impacts to wildlife and wildlife habitat; concerns regarding Key Wildlife Biodiversity Zone; locations where the pipeline deviates from existing corridors; sensitive fish and their habitats; overall integrity of the land and water; visual impacts to the landscape; impacts to vegetation.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Applications approved.</p>
<p>Ref #118</p> <p>Syncrude Canada Ltd.</p> <p>(Application Nos. 1905189, 0045-00000026, 011-00251073, 011-00048398, MSL973220)</p> <p>[Links: AER Letter to ACFN, AER Letter to Métis Local 125, AER Letter to FMMCA]</p> <p>13 August 2019</p>	<p>Athabasca Chipewyan First Nation (“ACFN”); Fort Chipewyan Métis Local 125 (“Métis Local 125”); Fort McKay Métis Community Association (“FMMCA”)</p> <p>ACFN: the location of the project in a proximate use zone, and traditional land use site; inadequate consultation with respect to wildlife concerns.</p> <p>Métis Local 125: impacts on harvesting and land use practices; funding a Traditional Land Use study; wildlife and fish habitat; effect on Stanley Creek; seepage into groundwater; hydrology and hydrogeology; reclamation.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that concerns were dealt with in the approval or are outside of the AER’s jurisdiction.</p> <p>Applications approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	<p>FMMCA: impacts on hunting, fishing, trapping, and gathering;</p> <p>funding a Traditional Land Use study; wildlife; fish habitat; impacts on Stanley Creek; seepage into groundwater; hydrology and hydrogeology; reclamation.</p>	
<p>Ref #119</p> <p>Suncor Energy Inc.</p> <p>(Application No. 1899100)</p> <p>[Links: AER Letter to WLCA, AER Letter to Métis Local 1909, AER Letter to Métis Local 1949, AER Letter to MNA-R1, AER Letter to Métis Local 193]</p> <p>12 September 2019</p>	<p>Willow Lake Community Association (“WLCA”); Métis Nation of Alberta, Local 1909 (“Métis Local 1909”); Owl River Metis Local 1949 (“Métis Local 1949”); Métis Nation of Alberta Region 1 (“MNA-R1”); Conklin Métis Local 193 (“Métis Local 193”)</p> <p>WLCA: project location; lack of involvement throughout the implementation and completion of the project; impacts to the Willow Lake community.</p> <p>Métis Local 1909: adverse effects on hunting, fishing, gathering and trapping; disturbance of fish habitat; impacts to wildlife; deforestation; land disturbance; access to land for hunting; disturbances to historic resources; socio-economic impacts.</p> <p>Métis Local 1949: Location of project in regards to Métis Harvesting Area; air quality, air emissions and odours; groundwater quality; hydrology and surface water impacts; impacts to fish and fish habitat;</p> <p>wildlife impacts; cumulative impacts; disturbances to historic resources.</p>	<p>Alberta Energy Regulator</p> <p>AER decided to disregard the statements of concern.</p> <p>Application approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	<p>MNA-R1: project location in traditional territory; adverse effects on harvesting practices; wildlife habitat, game movement, and local boreal forest fragmentation; impacts to human health; impacts to fish and fish habitat; surface freshwater sources; important for cultural and traditional gathering sites; cumulative impacts; socio-economic impacts.</p> <p>Métis Local 193: project within specified Métis Harvesting Area; impacts on traplines, medicinal harvesting areas, hunting areas, and travel corridors; surface and groundwater; caprock integrity; adequacy of consultation; socio-economic impacts.</p>	
<p>Ref #120 Suncor Energy Inc. (Application No. 1899100) [Link: AER Response Letter] 24 October 2019</p>	<p>Fort McMurray Métis Local 1935 ("Métis Local 1935")</p> <p>Risks of in-situ oil sands extraction and transport of product; disposal of waste into deep disposal wells; groundwater contamination; surface water contamination; human-wildlife encounters; threats to constitutionally-protected Aboriginal rights and traditional way of life; cumulative impacts; pipeline operational issues.</p>	<p>Alberta Energy Regulator Hearing not required. Application approved.</p>
<p>Ref #121 Canadian Natural Resources Limited (Application Nos.. 1920658, 009-00224816) [Links: AER Letter to Métis Local 1909, AER Letter to FMMCA] 28 October 2019</p>	<p>Lakeland Métis Local Council #1909 ("Métis Local 1909"); Fort McKay Métis Community Association ("FMMCA")</p> <p>Métis Local 1909: impacts on family connections, historic and contemporary occupancy, the ongoing use of the area for hunting, trapping and fishing for</p>	<p>Alberta Energy Regulator Hearing not required. Application approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	<p>food, and moose habitat; impacts on socio-economic wellbeing and Aboriginal rights.</p> <p>FMMCA: impacts on Aboriginal rights to hunt, fish, trap and gather and traditional land use activities; decreased water levels and water contamination; wildlife habitat loss; diminishing furbearers; risk of leaks or spills and other impacts into nearby waterways and groundwater.</p>	
<p>Ref #122</p> <p>Imperial Oil Resources Limited</p> <p>(Application Nos. 1923510, 1923511, OSE190020)</p> <p>[Link: AER Response Letter]</p> <p>13 November 2019</p>	<p>Métis Nation of Alberta - Region 1 ("MNA-R1")</p> <p>Location of project on traditional territory; cumulative impacts; funding a Traditional Land Use study; inadequacy of Crown consultation.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Application approved.</p>
<p>Ref #123</p> <p>Suncor Energy Inc.</p> <p>(Application Nos. 1922922, 080-00000094)</p> <p>[Link: AER Response Letter]</p> <p>29 January 2020</p>	<p>Métis Nation of Alberta - Region 1 ("MNA-R1")</p> <p>Impacts on harvesting areas, and Métis rights to hunt, fish and trap; cumulative impacts; funding to study socio-economic impacts.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Application approved.</p>
<p>Ref #124</p> <p>Syncrude Canada Ltd.</p> <p>(Application No. 040-00000026)</p> <p>[Links: AER Letter to ACFN, AER Letter to MNA-R1, AER Letter to Métis Local 1909, AER Letter to Métis Local 125]</p> <p>18 June 2020</p>	<p>Athabasca Chipewyan First Nation ("ACFN"); Metis Nation of Alberta Region 1 ("MNA-R1"); Métis Nation of Alberta Local 1909 ("Métis Local 1909"); Fort Chipewyan Métis Local 125 ("Métis Local 125")</p> <p>ACFN: reclamation strategies; inadequacy of Crown consultation; tailings management; landfill practices;</p> <p>basal water release; domestic wastewater; traffic.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that concerns were dealt with in the approval or were outside of AER's jurisdiction.</p> <p>Application approved.Regulator</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	<p>MNA-R1: inadequacy of Crown consultation; cumulative impacts.</p> <p>Métis Local 1909: capacity funding for a Traditional Land Use study; inadequacy of Crown consultation; cumulative impacts; traffic.</p> <p>Métis Local 125: reclamation strategies; inadequacy of Crown consultation; tailings management; basal water release; landfill practices; domestic wastewater.</p>	
<p>Ref #125</p> <p><i>Alberta Wilderness Association v Canada</i></p> <p><i>(Minister of Environment and Climate Change)</i>, Federal Court Docket No. T-175-19</p> <p>[See also additional narrative in Appendix 2]</p> <p>[Links: Notice of Application, Notice of Discontinuance]</p> <p>22 October 2020</p>	<p>Athabasca Chipewyan First Nation (“ACFN”); Mikisew Cree First Nation (“MCFN”)</p> <p>Seeking a habitat protection order for five herds of boreal caribou in northeastern Alberta.</p>	<p>Federal Court</p> <p>A settlement was reached in the matter, ultimately leading the federal Minister and the Province of Alberta to enter into a conservation agreement with respect to Boreal caribou.</p>
<p>Ref #126</p> <p>Syncrude Canada Ltd.</p> <p>(Application Nos. 008-00263298, 001-00466043, 053-00000026)</p> <p>[Link: AER Response Letter]</p> <p>9 November 2020</p>	<p>Athabasca Chipewyan First Nation (“ACFN”)</p> <p>Appropriate placement of fisheries offset; inadequate consultation.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that concerns were dealt with in the approval, or were outside of AER’s jurisdiction.</p> <p>Applications approved.</p>
<p>Ref #127</p> <p>Canadian Natural Resources Limited</p> <p>(Application No. 1932193) [Link: AER Response Letter]</p> <p>31 March 2021</p>	<p>Métis Nation of Alberta Association Fort McMurray Métis Local 1935 (“Métis Local 1935”)</p> <p>SO₂ emission rate; sulphur production.</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>Applications approved.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
<p>Ref #128</p> <p>Métis Nation of Alberta Association Fort McMurray Métis Local Council 1935 v Alberta, 2021 ABQB 282</p> <p>[See also additional narrative in Appendix 2] [Link: Court Decision]</p> <p>12 April 2021</p>	<p>Métis Nation of Alberta Association Fort McMurray Local Council 1935 (“Métis Local 1935”)</p> <p>Métis Local 1935 filed a statement of concern with respect to the proposed integration of two oil sands mines operations asserting that the integration would impact their asserted Aboriginal rights. Métis Local 1935 subsequently filed an application for judicial review of the Aboriginal Consultation Office’s decision that no consultation was required with any party with respect to the proposed mine integration.</p>	<p>Alberta Court of Queen’s Bench</p> <p>The Alberta Court of Queen’s Bench dismissed the application for judicial review on the grounds that the application was a collateral attack on an earlier Credible Assertion Decision of the Ministry of Indigenous Relations, rather than an attack on the decision of the Aboriginal Consultation Office.</p>
<p>Ref #129</p> <p>Enbridge Pipelines Inc., Line 5</p> <p>[Link: News Release]</p> <p>6 May 2021</p>	<p>Anishinabek Nation (a political advocate for 39 member First Nations across Ontario, representing approximately 65,000 citizens)</p> <p>Impacts on the cross-border commitment to protect the Great Lakes via the <i>Great Lakes Water Quality Agreement</i>; pollution to the Great Lakes, affecting drinking water and 4,000 species of plants and wildlife; impacts to Treaty rights to hunt, fish and gather; relationship between missing women and children and construction activities; spiritual connection to water.</p>	<p>Government of Canada</p> <p>N/A</p>
<p>Ref #130</p> <p>Syncrude</p> <p>(Application No. 055-00000026)</p> <p>[Links: AER Letter the FMMN, AER Letter to Métis Local 125]</p> <p>3 June 2021</p>	<p>Fort McKay Métis Nation (“FMMN”); Fort Chipewyan Métis Association Local 125 (“Métis Local 125”)</p> <p>FMMN: Inadequate consultation; soil capping thickness.</p> <p>Métis Local 125: inadequate consultation; soil capping</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that FMMN had not demonstrated that the application would have any new or additional impacts on its rights or traditional land uses.</p>

PROJECT	COMMUNITY & CONCERNS	DECISION MAKER & RESULTS
	thickness; salt movement in soils; vegetation performance.	AER stated that Métis Local 125 had not demonstrated that the application would have any new or additional impacts on its rights or traditional land uses or that the concerns were addressed by existing conditions. Application approved.
<p>Ref #131</p> <p>Osum Production Corp. (Application No. 1929868) [Link: AER Response Letter]</p> <p>4 August 2021</p>	<p>Cold Lake First Nations (“CLFN”)</p> <p>Impacts on harvesting practices and traditional land</p>	<p>Alberta Energy Regulator</p> <p>Hearing not required.</p> <p>AER stated that CLFN failed to demonstrate that it would be directly and adversely affected by the application, that the concerns were outside of the scope of the application or outside of the jurisdiction of the AER.</p> <p>Project approval pending.</p>

APPENDIX 2: ADDITIONAL NARRATIVES

TABLE REF. NO. 9: TRUENORTH ENERGY CORPORATION, FORT HILLS OIL SANDS PROJECT (EUB DECISION NO. 2002-089)

TrueNorth Energy Corporation (“TrueNorth”) filed applications for the Fort Hills Oil Sands Project with the Alberta Energy and Utilities Board (“AEUB”).

The Athabasca Chipewyan First Nation (“ACFN”), Mikisew Cree First Nation (“MCFN”) and Fort McKay First Nation entered into agreements with TrueNorth.²³ ACFN, MCFN and Métis Local 1935 provided written submissions but did not appear at the AEUB hearing.²⁴

The Fort McKay First Nation and Métis Local 122 (together, “Fort McKay”) developed a sustainability plan for the McClelland Lake Wetland Complex in cooperation with TrueNorth.²⁵ Fort McKay supported recommendations by the federal Department of Fisheries and Oceans to develop and implement interim environmental thresholds for water quality and air emissions.²⁶

The Wood Buffalo First Nation attended at the AEUB hearing and expressed concerns with respect to:

- damage to the McClelland Lake Wetland Complex;²⁷
- impacts on moose and fur-bearers;²⁸
- lack of consultation with non-status Indians and Métis;²⁹
- social and economic impacts of the project;³⁰ and
- impacts on traplines and traditional land use.³¹

²³ Alberta Energy and Utilities Board, *TrueNorth Energy Corporation, Application to Construct and Operate an Oil Sands Mine and Cogeneration Plant in the Fort McMurray Area*, [AEUB Decision No. 2002-089](#) (22 October 2002), at 56.

²⁴ *Ibid*, at 4.

²⁵ *Ibid*, at 31-33.

²⁶ *Ibid*, at 64-65.

²⁷ *Ibid*, at 36.

²⁸ *Ibid*, at 42.

²⁹ *Ibid*, at 56.

³⁰ *Ibid*, at 59.

³¹ *Ibid*, at 63.

The AEUB approved the project with a number of conditions, none of which addressed the outstanding First Nations' concerns.³² The AEUB made non-binding recommendations with respect to the management of the McClelland Lake Wetland Complex.³³

TABLE REF. NO. 10: CANADIAN NATURAL RESOURCES LIMITED, HORIZON OIL SANDS PROJECT (AEUB DECISION NO. 2004-005)

Canadian Natural Resources Limited ("CNRL") filed applications for the Horizon oil sands mine, bitumen extraction plant and bitumen upgrading plant. The project required an environmental assessment under the Canadian Environmental Assessment Act, SC 1992, c 37 and approval under the Alberta Energy Resources Conservation Act, RSA 2000, c E-10. The project was referred to a Joint Review Panel of the Alberta Energy and Utilities Board ("AEUB") and the Canadian Environmental Assessment Agency.

The Mikisew Cree First Nation ("MCFN") requested that approval of the project be delayed or denied until gaps in the environmental impact assessment had been filled.³⁴ MCFN appeared at the Joint Review Panel hearing and expressed concerns or made recommendations with respect to:

- water withdrawals from the Athabasca River;³⁵
- baseline groundwater data and monitoring;³⁶
- impacts of climate change on flows in the Athabasca River and the need to establish instream flow needs;³⁷
- water quality impacts in compensation lakes, end pit lakes and the Athabasca River;³⁸
- impacts on fish and fish habitat;³⁹
- impacts on wetlands;⁴⁰
- the inadequacy of the wildlife corridor;⁴¹

³² *Ibid*, at 66-69.

³³ *Ibid*, at 69.

³⁴ Alberta Energy and Utilities Board, *Joint Review Panel Report: Canadian Natural Resources Limited, Application for an Oil Sands Mine, Bitumen Extraction Plant, and Bitumen Upgrading Plant in the Fort McMurray Area*, [AEUB Decision No. 2004-005](#) (27 January 2004), at 9.

³⁵ *Ibid*, at 25.

³⁶ *Ibid*, at 31.

³⁷ *Ibid*, at 37-39.

³⁸ *Ibid*, at 44-45.

³⁹ *Ibid*, at 50.

⁴⁰ *Ibid*, at 55-56.

⁴¹ *Ibid*, at 60.

- the inadequacy of reclamation plans;⁴²
- the inadequacy of end pit lakes;⁴³
- the impacts of the project on health;⁴⁴
- lack of progress by the Cumulative Effects Management Association (“CEMA”) in setting regional environmental limits;⁴⁵ and
- inadequacy of consultation.⁴⁶

The Athabasca Chipewyan First Nation (“ACFN”) reached an agreement with CNRL prior to the Joint Review Panel hearing and did not object to the project.⁴⁷ However, ACFN appeared at the Joint Review Panel hearing and expressed concerns or made recommendations with respect to the lack of progress by CEMA in setting regional environmental limits.⁴⁸

The Fort McKay First Nation and Métis Local 122 (together, “Fort McKay”) reached an agreement with CNRL prior to the Joint Review Panel hearing.⁴⁹ However, Fort McKay appeared at the Joint Review Panel hearing and expressed concerns or made recommendations with respect to the establishment of instream flow needs for the Athabasca River⁵⁰ and the lack of progress by CEMA in setting regional environmental limits.⁵¹

The Wood Buffalo First Nation (“WBFN”) opposed the project, appeared at the Joint Review Panel hearing and expressed concerns with respect to:

- the production and storage of coke;⁵²
- failure to consider springs entering the Athabasca River;⁵³
- impacts of climate change, water extraction and dams on Athabasca River flows;⁵⁴
- the inadequacy of the wildlife corridor;⁵⁵
- the impacts of the project on health;⁵⁶ and

⁴² *Ibid*, at 63.

⁴³ *Ibid*, at 65.

⁴⁴ *Ibid*, at 71.

⁴⁵ *Ibid*, at 74-75.

⁴⁶ *Ibid*, at 86-87.

⁴⁷ *Ibid*, at 39.

⁴⁸ *Ibid*, at 74.

⁴⁹ *Ibid*, at 39.

⁵⁰ *Ibid*.

⁵¹ *Ibid*, at 74.

⁵² *Ibid*, at 22, 23.

⁵³ *Ibid*, at 31.

⁵⁴ *Ibid*, at 39.

⁵⁵ *Ibid*, at 60.

⁵⁶ *Ibid*, at 71.

- inadequacy of consultation.⁵⁷

The Government of Canada did not recognize WBFN as a band under the Indian Act.⁵⁸

The AEUB set conditions on the approval of the project, none of which directly addressed the outstanding concerns of the First Nations.⁵⁹ The Joint Review Panel made a number of non-binding recommendations, some of which were related to the outstanding concerns including:

- the establishment of inflow stream needs for the Athabasca River;
- the development of a groundwater monitoring program;
- the development of water quality monitoring programs; and
- completion of a regional health study.⁶⁰

TABLE REF. NO. 11: SHELL CANADA LIMITED, JACKPINE OIL SANDS PROJECT (AEUB DECISION NO. 2004-009)

Shell Canada Limited (“Shell”) filed applications for the Jackpine oil sands mine and bitumen extraction plant. The project required an environmental assessment under the Canadian Environmental Assessment Act, SC 1992, c 37 and approval under the Alberta Energy Resources Conservation Act, RSA 2000, c E-10. The project was referred to a Joint Review Panel of the Alberta Energy and Utilities Board (“AEUB”) and the Canadian Environmental Assessment Agency.

The Mikisew Cree First Nation (“MCFN”) reached an agreement with Shell prior to the Joint Review Panel hearing and withdrew its objection to the project. However, MCFN stated that it remained concerned about climate change, long term flows in the Athabasca River and the Cumulative Environmental Management Association’s (“CEMA”) lack of progress in setting instream flow needs for the Athabasca River.⁶¹ MCFN appeared at the Joint Review Panel hearing and expressed concerns or made recommendations with respect to:

- setting instream flow needs for the Athabasca River;⁶²

⁵⁷ *Ibid*, at 87.

⁵⁸ *Ibid*, at 87.

⁵⁹ *Ibid*, at 95-96.

⁶⁰ *Ibid*, at 1-3.

⁶¹ Alberta Energy and Utilities Board, *Joint Review Panel Report: Shell Canada Limited, Applications for an Oil Sands Mine, Bitumen Extraction Plant, Cogeneration Plant, and Water Pipeline in the Fort McMurray Area*, [AEUB Decision No. 2004-009](#) (5 February 2004), at 6-7.

⁶² *Ibid*, at 29, 37.

- developing a water management plan for the lower Athabasca River;⁶³
- MCFN involvement in water quality monitoring;⁶⁴
- climate change;⁶⁵
- lack of progress by CEMA in setting regional environmental limits;⁶⁶
- changes in water access to traditional land use areas;⁶⁷ and
- health impacts.⁶⁸

The Athabasca Chipewyan First Nation (“ACFN”) reached an agreement with Shell prior to the Joint Review Panel hearing and did not object to the project.⁶⁹ However, ACFN appeared at the Joint Review Panel hearing and expressed concerns or made recommendations with respect to:

- ACFN participation in water quality monitoring;⁷⁰ and
- the setting of instream flow needs for the Athabasca River.⁷¹

The Fort McKay First Nation and Métis Local 122 (together, “Fort McKay”) reached an agreement with Shell prior to the Joint Review Panel hearing and did not object to the project.⁷² However, Fort McKay appeared at the Joint Review Panel hearing and expressed concerns or made recommendations with respect to:

- the setting of interim guidelines for instream flow needs for the Athabasca River;⁷³
- compliance with the objectives and management systems set by the Muskeg River Watershed Integrity subgroup;⁷⁴ and
- lack of progress by CEMA in setting regional environmental limits.⁷⁵

The Wood Buffalo First Nation (“WBFN”) opposed the project.⁷⁶ WBFN appeared at the Joint Review Panel hearing and expressed concerns with respect to:

⁶³ *Ibid*, at 29.

⁶⁴ *Ibid*, at 33.

⁶⁵ *Ibid*, at 54.

⁶⁶ *Ibid*, at 75.

⁶⁷ *Ibid*, at 84.

⁶⁸ *Ibid*, at 86.

⁶⁹ *Ibid*, at 7.

⁷⁰ *Ibid*, at 33.

⁷¹ *Ibid*, at 75.

⁷² *Ibid*.

⁷³ *Ibid*, at 37-38.

⁷⁴ *Ibid*, at 67.

⁷⁵ *Ibid*, at 75.

⁷⁶ *Ibid*, at 89.

- impacts on the Peace/Athabasca delta;⁷⁷
- water quality in the Athabasca River;⁷⁸ and
- social impacts in Fort McMurray.⁷⁹

The AEUB set conditions on the approval of the project, none of which directly addressed the outstanding concerns of the First Nations.⁸⁰ The Joint Review Panel made a number of non-binding recommendations, some of which were related to the outstanding concerns including:

- the establishment of instream flow needs for the Athabasca River;
- water quality monitoring programs;
- the completion of a baseline regional health study; and
- development of a management plan for the Muskeg River.⁸¹

TABLE REF. NO. 14: SUNCOR ENERGY INC., EXPANSION OF NORTH STEEPBANK MINE AND VOYAGEUR UPGRADER (AEUB DECISION NO. 2006-112)

Suncor Energy Inc. (“Suncor”) applied to expand its North Steepbank Mine and the Voyageur Upgrader.

The Athabasca Chipewyan First Nation (“ACFN”) advised that it had entered into a mitigation agreement with Suncor with respect to the project.⁸² ACFN stated that it did not object to the Voyageur Project.⁸³ However, ACFN appeared at the hearing and expressed concerns or made recommendations with respect to:

- Suncor’s ability to achieve its reclamation targets;⁸⁴
- water withdrawal from the Athabasca River and instream flow needs,⁸⁵

⁷⁷ *Ibid*, at 29.

⁷⁸ *Ibid*, at 33.

⁷⁹ *Ibid*, at 74.

⁸⁰ *Ibid*, at 95-96.

⁸¹ *Ibid*, at 1-3.

⁸² Alberta Energy and Utilities Board, *Suncor Energy Inc., Application for Expansion of an Oil Sands Mine (North Steepbank Mine Extension) and a Bitumen Upgrading Facility (Voyageur Upgrader) in the Fort McMurray Area*, [AEUB Decision No. 2006-112](#) (14 November 2006), at 2.

⁸³ *Ibid*.

⁸⁴ *Ibid*, at 48.

⁸⁵ *Ibid*, at 54.

- failure of Alberta Health and Wellness to consult with ACFN with respect to a study indicating cancer risk associated with arsenic in moose tissue and cattail root;⁸⁶
- the reliability of the Alberta Health and Wellness Fort Chipewyan Health Study;⁸⁷ and
- economic, environmental and social impacts on ACFN traditional lands.⁸⁸

Mikisew Cree First Nation (“MCFN”) entered into a Traditional Environmental Knowledge sharing agreement with Suncor.⁸⁹ MCFN appeared at the hearing and expressed concerns or made recommendations with respect to:

- social and environmental costs of the development;⁹⁰
- impacts on public infrastructure and resources;⁹¹
- impacts on housing costs;⁹²
- lack of consultation;⁹³
- safety and reclamation of consolidated tailings;⁹⁴
- the use of end pit lakes;⁹⁵
- reclamation plans;⁹⁶
- inadequate groundwater modelling;⁹⁷
- instream flow needs in the Athabasca River;⁹⁸
- inadequate consideration of climate change;⁹⁹
- impacts of oil spills;¹⁰⁰
- impacts of tailings and end pit lakes on water quality;¹⁰¹
- arsenic levels in moose and cattail root;¹⁰²
- the reliability of the Alberta Health and Wellness Fort Chipewyan Health Study;¹⁰³

⁸⁶ *Ibid*, at 61

⁸⁷ *Ibid*, at 62-63.

⁸⁸ *Ibid*, at 65.

⁸⁹ *Ibid*, at 2.

⁹⁰ *Ibid*, at 6.

⁹¹ *Ibid*, at 8.

⁹² *Ibid*, at 15.

⁹³ *Ibid*, at 18.

⁹⁴ *Ibid*, at 30, 32.

⁹⁵ *Ibid*, at 35.

⁹⁶ *Ibid*, at 47-48.

⁹⁷ *Ibid*, at 51-52.

⁹⁸ *Ibid*, at 55.

⁹⁹ *Ibid*, at 57.

¹⁰⁰ *Ibid*.

¹⁰¹ *Ibid*, at 59.

¹⁰² *Ibid*, at 62.

¹⁰³ *Ibid*, at 63.

- the process and timetable of the work of Cumulative Effects Management Association;¹⁰⁴ and
- reclamation liability and security requirements.¹⁰⁵

The Fort McKay First Nation (“Fort McKay”) entered into a mitigation agreement with Suncor.¹⁰⁶ Fort McKay appeared at the hearing but did not express any concerns with the Project.

A consortium consisting of Fort McMurray Métis Local 1935, Fort McMurray Métis Local 2020, Conklin Métis Local 193, Fort McKay Métis Local 63, Chard Métis Local 214, Anzac Métis Local 780, and two individuals (together the “Wood Buffalo Métis Locals Association” or “WBMLA”) filed an intervention and appeared at the hearing.¹⁰⁷ The WBMLA expressed concerns or made recommendations with respect to:

- traffic;¹⁰⁸
- cost of housing;¹⁰⁹
- inadequacy of consultation;¹¹⁰
- lack of credible reclamation plans;¹¹¹
- failure to include Métis in the Fort Chipewyan Health Study;¹¹² and
- lack of Métis traditional land use data.¹¹³

The Clearwater River Paul Cree Band #175, the Wood Buffalo First Nation and the Wood Buffalo First Nation Elders Society filed interventions but later withdrew from the proceeding after the AEUB determined that it did not have jurisdiction to make a decision on questions of constitutional law raised by these and other parties.¹¹⁴

The AEUB set some conditions with respect to consolidated tailings¹¹⁵ but otherwise did not set any conditions addressing the First Nations and WBMLA concerns.

¹⁰⁴ *Ibid*, at 66-67.

¹⁰⁵ *Ibid*, at 70-71.

¹⁰⁶ *Ibid*, at 2.

¹⁰⁷ *Ibid*, at 3.

¹⁰⁸ *Ibid*, at 8.

¹⁰⁹ *Ibid*, at 15.

¹¹⁰ *Ibid*, at 18-19.

¹¹¹ *Ibid*, at 48.

¹¹² *Ibid*, at 63.

¹¹³ *Ibid*, at 65.

¹¹⁴ *Ibid*, at 3.

¹¹⁵ *Ibid*, at 77.

TABLE REF. NO. 15: ALBIAN SANDS ENERGY INC., MUSKEG RIVER MINE EXPANSION (AEUB DECISION NO. 2006-128)

Albian Sands Energy Inc. (“Albian”) filed an application to expand the existing Muskeg River Mine and to add new bitumen extraction facilities.¹¹⁶ The project required an environmental assessment under the Canadian Environmental Assessment Act, SC 1992, c 37 and approval under the Alberta Energy Resources Conservation Act, RSA 2000, c E-10. The project was referred to a Joint Review Panel of the Alberta Energy and Utilities Board (“AEUB”) and the Canadian Environmental Assessment Agency.

The Athabasca Chipewyan First Nation (“ACFN”) indicated that it had entered into a socioeconomic and environmental mitigation agreement with Albian.¹¹⁷ ACFN appeared at the hearing and presented concerns or recommendations with respect to:

- the need for and adequacy of an instream flow needs water management framework for the Athabasca River;¹¹⁸
- cumulative effects and the lack of progress by the Cumulative Effects Management Association (“CEMA”).¹¹⁹

The Mikisew Cree First Nation (“MCFN”) entered into an Environmental Action Plan agreement with Albian which allowed for MCFN input into monitoring programs and establishing environmental benchmarks.¹²⁰ However, MCFN indicated that not all of its concerns were mitigated by that agreement and MCFN continued to object to the Project.¹²¹ MCFN appeared at the hearing and expressed concerns or recommendations with respect to:

- wildlife recolonization of reclaimed sites;¹²²
- the viability of tailings management plans;¹²³
- water quality associated with tailings and end pit lakes;¹²⁴
- reclamation;¹²⁵

¹¹⁶ Alberta Energy and Utilities Board, *Joint Review Panel Report for Albian Sands Energy Inc., Application to Expand Oil Sands Mining and Processing Plant Facilities at the Muskeg River Mine*, [AEUB Decision No. 2006-128](#) (17 December 2006), at 4.

¹¹⁷ *Ibid.*, at 19-20.

¹¹⁸ *Ibid.*, at 68.

¹¹⁹ *Ibid.*, at 75.

¹²⁰ *Ibid.*, at 21.

¹²¹ *Ibid.*

¹²² *Ibid.*, at 30.

¹²³ *Ibid.*, at 36.

¹²⁴ *Ibid.*, at 44.

¹²⁵ *Ibid.*, at 53-54, 57-58.

- the viability of end pit lakes;¹²⁶
- security for reclamation;¹²⁷
- the removal of environmental base flows from the water management framework for the Athabasca River;¹²⁸
- the slow progress of the CEQA in setting regional thresholds;¹²⁹ and
- human health impacts.¹³⁰

The Fort McKay First Nation (“FMFN”) entered into an agreement with Albion.¹³¹ However, the FMFN appeared at the hearing and expressed concerns with respect to the cumulative effects of oil sands development.¹³²

The AEUB set conditions with respect to tailings and reclamation reporting but otherwise did not set conditions that addressed the other outstanding concerns.¹³³ The Joint Review Panel made a number of non-binding recommendations with respect to CEQA establishing water quality objectives and the management of instream flow needs for the Athabasca River.¹³⁴

TABLE REF. NO. 16: IMPERIAL OIL RESOURCES VENTURES LIMITED, KEARL OIL SANDS PROJECT (AEUB DECISION NO. 2007-013)

The Kearl Oil Sands Project was originally proposed by Imperial Oil Resources Ventures Limited (“Imperial Oil”) in 1997, and a Joint Review Panel was established in 2006 to review the application and to conduct the federal environmental assessment. The Joint Review Panel conducted the review and assessment from 2006 to 2007, approved the applications and recommended federal approval in its 2007 report¹³⁵, and again recommended approval in June 2008 after the initial recommendation was quashed by a judicial review (which was not launched by First Nations).¹³⁶

¹²⁶ *Ibid*, at 62-63.

¹²⁷ *Ibid*, at 65-66.

¹²⁸ *Ibid*, at 68-69.

¹²⁹ *Ibid*, at 76-77.

¹³⁰ *Ibid*, at 84.

¹³¹ *Ibid*, at 19, 21.

¹³² *Ibid*, at 75-76.

¹³³ *Ibid*, at 88-90.

¹³⁴ *Ibid*, at 3-4.

¹³⁵ Alberta Energy and Utilities Board and Canadian Environmental Assessment Agency, *Imperial Oil Resources Ventures Limited, Application for an Oil Sands Mine and Bitumen Processing Facility (Kearl Oil Sands Project) in the Fort McMurray Area*, Joint Panel Report, [AEUB Decision No. 2007-013](#) (27 February 2007) [Joint Panel Report, EUB Decision 2007-013].

¹³⁶ *Pembina Institute for Appropriate Development v Canada (Attorney General)*, [2008 FC 302](#).

Seven Indigenous groups made submissions for the Joint Review Panel's report.¹³⁷ With the exception of the Deninu Kue First Nation and the Wood Buffalo Métis Association, each of the participating groups reached full or partial agreements with Imperial Oil.¹³⁸ In addition, the Government of Alberta signed Non-Assertion of Rights Agreements with Athabasca Chipewyan First Nation, Mikisew Cree First Nation ("MCFN"), and Fort McKay Industrial Relations Corporation, which allowed the signatories to resolve issues related constitutional rights claims in forums or proceedings other than the Joint Review Panel hearing.¹³⁹ However, the three First Nation Non-Assertion of Rights Agreement signatories all maintained that they had outstanding concerns which needed to be addressed.¹⁴⁰ MCFN went so far as to request a delay of the project until its outstanding concerns were addressed.¹⁴¹ The Joint Review Panel concluded that Imperial Oil was still expected to abide by its commitments in the agreements and to continue consultation and communication efforts throughout the life of the project, meaning that Indigenous acceptance of the project was not unconditional, and formal opposition was still an inherent possibility.¹⁴² Ultimately, this conclusion meant that Imperial Oil and the Indigenous participants were left to attempt to negotiate solutions to the Indigenous participants' concerns.

The Indigenous participants raised several environmental concerns, including concerns about water quality and use, water flow and flow standards, water withdrawals, permanent loss of wetlands, issues related to cumulative effects assessments, ecosystem integrity of the Athabasca River, tailings process and end pit lakes, water quality and use, and liability from unknown final landscape and ecological function.¹⁴³ The Indigenous participants also raised rights-based concerns about taking up of traditional lands and resources, inability to exercise section 35 rights, lack of consultation, need for separate consultation before any further development, and long term effects on traditional land uses and culture.¹⁴⁴ Further practical concerns from the Indigenous participants included concerns about feasibility of reclamation commitments and integration, lack of financial security, lack of transparency about liability calculation, impacts on habitat, waterfowl and other migratory birds, wildlife and traditional foods, air pollution, impacts on fish and related human health impacts.¹⁴⁵

¹³⁷ These groups were Athabasca Chipewyan First Nation, Clearwater River (Paul) Cree Band, Deninu Kue First Nation, Fort McKay First Nation Industrial Relations Corporation, Mikisew Cree First Nation, Wood Buffalo First Nation and Wood Buffalo Elders Society, and Wood Buffalo Métis Association.

¹³⁸ *Joint Panel Report, EUB Decision 2007-013, supra* note 136, at 18-19.

¹³⁹ *Ibid*, at 19.

¹⁴⁰ *Ibid*, at 18.

¹⁴¹ *Ibid*, at 18.

¹⁴² *Ibid*, at 19.

¹⁴³ *Ibid*, at 18-19, 42, 44, 61-64, 66-68, 75, 78-79, 87.

¹⁴⁴ *Ibid*, at 12, 89-90, 94.

¹⁴⁵ *Ibid*, at 46-48, 51, 53, 55-56, 61-64, 66-68, 75-76, 96-97.

TABLE REF. NO. 20: ATHABASCA CHIPEWYAN FIRST NATION V ALBERTA (MINISTER OF ENERGY), 2009 ABQB 576

The Athabasca Chipewyan First Nation brought an application for judicial review before the Alberta Court of Queen's Bench on the grounds that the Minister of Energy failed to consult with the First Nation prior to granting certain oil sands leases in the vicinity of the Poplar Point Reserve.¹⁴⁶ The Minister and the leaseholder brought a motion to dismiss the application on the grounds that it was brought outside of the six-month limitation period for judicial review.¹⁴⁷ Further, the Minister argued that no consultation was required with respect to the granting of mineral leases on the basis that the granting of mineral leases did not result in the taking up of land under the terms of Alberta's historical treaties.¹⁴⁸ The Court declined to make a determination on the question of whether the granting of a mineral lease was a taking up of Treaty lands.¹⁴⁹ The Court determined that the limitation period commenced on the day that the notice of the granting of the leases was posted on the Aboriginal Community Link and therefore that the limitation period had expired.¹⁵⁰ The Alberta Court of Appeal upheld the lower court decision in *Athabasca Chipewyan First Nation v Alberta (Minister of Energy)*, 2011 ABCA 29.¹⁵¹

TABLE REF. NO. 23: PEMBINA INSTITUTE, CANADIAN ABORIGINAL CONCERNS WITH OIL SANDS (2010)

In 2010, the Pembina Institute released a briefing note summarizing key issues, resolutions, and legal activities resulting from Indigenous concerns with the oil sands.¹⁵² The note observes that Indigenous concerns in the past were primarily related to health impacts, water quality and diversions, wildlife populations, and air quality, whereas increasingly, Indigenous concerns were about consultation and protection of section 35 rights.¹⁵³

The examples provided in the note included the following:

¹⁴⁶ *Athabasca Chipewyan First Nation v Alberta (Minister of Energy)*, [2009 ABQB 576](#), at para 1.

¹⁴⁷ *Ibid*, at para 2.

¹⁴⁸ *Ibid*, at para 9.

¹⁴⁹ *Ibid*, at para 71.

¹⁵⁰ *Ibid*, at paras 74-75.

¹⁵¹ *Athabasca Chipewyan First Nation v Alberta (Minister of Energy)*, [2011 ABCA 29](#), at para 35.

¹⁵² Pembina Institute, [Briefing Note: Canadian Aboriginal Concerns with Oil Sands: a compilation of key issues, resolutions and legal activities](#), (September 2010).

¹⁵³ *Ibid*, at 1.

- Treaties 6, 7 and 8 First Nations of Alberta (44 First Nations in total) issued a resolution in 2008 citing violation of section 35 rights and calling for an oil sands moratorium until watershed management and resource development plans are put in place (Keepers of the Athabasca, Unanimous passing of No New Oil Sands Approvals resolution at the Assembly of Treaty Chiefs Meeting, press release (25 February 2008), online: <<http://www.aenweb.ca/node/2131>>;¹⁵⁴
- The Assembly of First Nations (representing 630 First Nations in total) issued a resolution in 2008 in support of the Treaty 6, 7 and 8 First Nations resolution, citing failure to discharge the duty to consult and accommodate (“Support for the treaty no. 6, treaty no. 7 & treaty no. 8 first nations in their opposition to the lack of consultation by resource development industries, particularly oil and gas” Resolution 69, carried by consensus (9-11 December 2008));¹⁵⁵
- The Dene Nation issued a resolution in 2009 calling for a halt to oil sands expansion, for emergency, recovery and mitigation planning, cumulative effects analysis (Dene Nation, Alberta Tar Sands Motion #09/010-006 (Assembly of First Nations Regional Office, Arctic Athabaskan Council, Yellowknife Office) 16-19 February 2009);¹⁵⁶
- Duncan's and Horse Lake First Nations both successfully intervened in *Rio Tinto Alcan Inc., et al v Carrier Sekani Tribal Council* (later styled as [2010 SCC 43](#), [2010] 2 SCR 650) based on their concerns with oil sands development;¹⁵⁷
- Athabasca Chipewyan First Nation sought judicial review of four oil sands tenures granted by Alberta, citing failures to consult and accommodate (see Table Ref. No. 20: Athabasca Chipewyan First Nation v Alberta (Minister of Energy), [2009 ABOB 576](#));¹⁵⁸
- Athabasca Chipewyan First Nation, Beaver Lake Cree Nation and Enoch Cree Nation launched a judicial review application in 2010 against Canada and the Minister of the Environment with a view to forcing caribou habitat protection prior to any oil sands developments being approved (later styled as *Adam v Canada (Environment)*, [2011 FC 962](#), [2013] 2 FCR 201; see Table Ref. No. 27);¹⁵⁹ and
- Beaver Lake Cree Nation sought damages and injunctive relief for cumulative effects and subsequent violation of section 35 rights as a result of over 15,000 approvals from Canada and Alberta.¹⁶⁰

¹⁵⁴ *Ibid*, at 5.

¹⁵⁵ *Ibid*.

¹⁵⁶ *Ibid*, at 6.

¹⁵⁷ *Ibid*.

¹⁵⁸ *Ibid*, at 7

¹⁵⁹ *Ibid*, at 7-8.

¹⁶⁰ *Ibid*, at 7. In a procedural decision (*Lameman v Alberta*, [2013 ABCA 148](#), at para 5) the Alberta Court of Appeal noted that Beaver Lake Cree Nation’s suit actually impugned over 300 oil and gas projects, comprising some 19,000 individual Crown approvals. Beaver Lake Cree Nation had spent roughly \$3 million on legal fees in the suit between 2008 and 2020, half from its own funds (see *Anderson v Alberta (Attorney General)*, [2020 ABCA 238](#) at para 3).

TABLE REF. NO. 25: MACKENZIE GAS PIPELINE PROJECT

The Mackenzie Gas Pipeline Project had been proposed in 2000, and the proponents applied to the National Energy Board (“NEB”) for approval in 2004. The Inuvialuit Regional Corporation, the Gwich’in Tribal Council and the Sahtu Pipeline Trust, who together formed the Aboriginal Pipeline Group, had a one-third ownership interest in the project. These Indigenous groups had formed due to land claims negotiations resulting from the recommendations of the 1977 Report of the Mackenzie Valley Pipeline Inquiry to put a moratorium on Mackenzie Valley pipeline development until Indigenous land claims had been settled.¹⁶¹ However, the Aboriginal Pipeline Group did not include the Dehcho First Nations, whose land claim was not yet resolved, and whose traditional territory overlapped with the Dene Tha’ in Alberta. The Dene Tha’ sought to participate in the various stages of the project’s engagement planning and at the NEB and Joint Review Panel hearings, but was largely not included.

Dene Tha’ First Nation sought judicial review of the establishment of the regulatory process on the basis of a failure to consult and accommodate.¹⁶² The Federal Court found that the duty to consult and accommodate was triggered when the initial Cooperation Plan, which established the framework for the environmental review process, was instituted, because it was at this point that the eventual impacts on section 35 rights were contemplated.¹⁶³ The Federal Court also found that the Crown took essentially no steps to consult with the Dene Tha’ over that period with respect to the development of the regulatory process.¹⁶⁴

The Federal Court ordered the Crown to consult and ordered that the Joint Review Panel refrain from considering the project until the Crown had properly consulted.¹⁶⁵ The Dehcho First Nations also launched separate litigation alleging that Canada had failed to adequately consult, but the parties came to a settlement agreement.¹⁶⁶

The Dene Tha’ and the Crown subsequently entered into a consultation protocol, while the Crown simultaneously appealed the Federal Court’s decision.¹⁶⁷ The Federal Court’s decision was upheld on appeal to the Federal Court of Appeal.¹⁶⁸

¹⁶¹ See Mr. Justice Thomas R. Berger, *Northern Frontier Northern Homeland; The Report of the Mackenzie Valley Pipeline Inquiry*, [Vol 1](#) (Ottawa: Supply and Services Canada, 1977), at 196, and [Vol 2](#) (*Terms and Conditions*).

¹⁶² *Dene Tha’ First Nation v Canada (Minister of Environment)*, [2006 FC 1354](#).

¹⁶³ *Ibid*, at paras 100, 107-110.

¹⁶⁴ *Ibid*, at paras 42, 44, 46-50, 113-118.

¹⁶⁵ *Ibid*, at paras 132-133.

¹⁶⁶ *Ibid*, at para 69; See also *Deh Cho First Nations v Canada*, [2006 FC 1318](#), at para 1, and *Norwegian v Canada (Minister of Environment)*, [2005 FC 374](#), at paras 2, 5.

¹⁶⁷ Canada, Dene Tha’ First Nation, [Annex Two to Settlement Agreement: Federal Authorizations Consultation Protocol](#).

¹⁶⁸ *Canada (Environment) v Imperial Oil Resources Ventures Ltd.*, [2008 FCA 20](#) at paras 8-12.

Dene Tha' and Dehcho concerns were only briefly mentioned in the subsequent Joint Review Panel and NEB reports.¹⁶⁹ The project was finally dropped in 2017 as uneconomical, after years of delay.

TABLE REF. NO. 26: TOTAL E&P JOSLYN LTD., JOSLYN NORTH MINE PROJECT (ERCB DECISION NO. 2011-005)

In February 2006, Total E&P Joslyn Ltd. ("Total") applied for approval of the Joslyn North Mine Project.¹⁷⁰ In 2008, the Energy Resources Conservation Board ("ERCB") and the federal Minister of the Environment established a Joint Review Panel with respect to the Project.¹⁷¹ A public hearing on the application was held in September to October, 2010.¹⁷²

The Athabasca Chipewyan First Nation ("ACFN") originally objected to the project but withdrew its objection prior to the hearing.¹⁷³ The ACFN provided a written submission to the Joint Review Panel in which it raised concerns or made recommendations with respect to:

- the need for wildlife corridors and the re-establishment of wildlife habitat in the post-closure landscape;¹⁷⁴
- impacts on wildlife including moose, muskrat, beaver and bison;¹⁷⁵
- water withdrawals from the Athabasca River and water levels in the Peace-Athabasca delta;¹⁷⁶
- impacts on water quality;¹⁷⁷
- impacts of cumulative effects on their use of traditional lands;¹⁷⁸ and
- reclamation.¹⁷⁹

The Mikisew Cree First Nation ("MCFN") originally objected to the project but entered into an agreement with Total, withdrew its objection, and withdrew a notice of constitutional question prior to

¹⁶⁹ See Joint Review Panel for the Mackenzie Gas Project, *Foundation for a Sustainable Northern Future: Report of the Joint Review Panel for the Mackenzie Gas Project*, [Vol 1](#) (December 2009), at 234, 242-244, 291, and [Vol 2](#); see also National Energy Board, *Respecting all voices: Our journey to a decision*, [Vol 1](#) (Calgary: National Energy Board, 2010) at 11, 18-19.

¹⁷⁰ Energy Resources Conservation Board, *Report of the Joint Review Panel: Joslyn North Mine Project, Total E&P Joslyn Ltd., Alberta*, [ERCB Decision No. 2011-005](#) (27 January 2011), at 1.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ *Ibid.*, at 13.

¹⁷⁴ *Ibid.*, at 35.

¹⁷⁵ *Ibid.*, at 89.

¹⁷⁶ *Ibid.*, at 96.

¹⁷⁷ *Ibid.*, at 100.

¹⁷⁸ *Ibid.*, at 107.

¹⁷⁹ *Ibid.*, at 126.

the hearing.¹⁸⁰ The MCFN provided a written submission to the Joint Review Panel in which it raised concerns or made recommendations with respect to:

- impacts on traditionally harvested plants;¹⁸¹
- impacts on traditional land uses;¹⁸²
- cumulative effects on wildlife;¹⁸³
- water withdrawals from the Athabasca River and water levels in the Peace-Athabasca delta;¹⁸⁴
- impacts on water quality;¹⁸⁵
- impacts of cumulative effects on their use of traditional lands;¹⁸⁶ and
- reclamation.¹⁸⁷

The Fort McKay First Nation and Métis Local #63 (together, “Fort McKay”) originally objected to the project but entered into an agreement with Total, withdrew its objection, and withdrew a notice of constitutional question prior to the hearing.¹⁸⁸ Fort McKay provided a written submission to the Joint Review Panel in which it raised concerns or made recommendations with respect to:

- impacts on wildlife;¹⁸⁹
- impacts on wetlands and rare plants;¹⁹⁰
- cumulative impacts on traditional land uses;¹⁹¹
- water withdrawals from the Athabasca River;¹⁹² and
- health risks.¹⁹³

The Non-Status Fort McMurray Band Descendants and Clearwater River Band No. 175 (“Clearwater”) objected to the project and provided evidence to the hearing.¹⁹⁴ Clearwater expressed concerns or made recommendations with respect to:

¹⁸⁰ *Ibid*, at 7, 13.

¹⁸¹ *Ibid*, at 49.

¹⁸² *Ibid*, at 74.

¹⁸³ *Ibid*, at 88.

¹⁸⁴ *Ibid*, at 96.

¹⁸⁵ *Ibid*, at 100.

¹⁸⁶ *Ibid*, at 107.

¹⁸⁷ *Ibid*, at 126-127.

¹⁸⁸ *Ibid*, at 7, 13.

¹⁸⁹ *Ibid*, at 35, 89.

¹⁹⁰ *Ibid*, at 49-50.

¹⁹¹ *Ibid*, at 74-75, 106-107, 121.

¹⁹² *Ibid*, at 95.

¹⁹³ *Ibid*, at 116.

¹⁹⁴ *Ibid*, at 14.

- impacts on wildlife;¹⁹⁵
- impacts on water quality;¹⁹⁶
- impacts on groundwater;¹⁹⁷
- impacts on fish;¹⁹⁸
- impacts on air quality;¹⁹⁹ and
- impacts on traditional foods.²⁰⁰

The Joint Review Panel stated that it would give little weight to the evidence of ACFN, MCFN and Fort McKay as they had withdrawn their opposition to the project and did not provide any witnesses to speak to their written submissions.²⁰¹ The ERCB set twenty conditions on the approval of the project. One condition required that Total prepare a wildlife mitigation plan prior to clearing any vegetation.²⁰² Other conditions did not address the First Nations' outstanding concerns. The Joint Review Panel made seventeen non-binding recommendations, including recommendations with respect to a wildlife mitigation plan and plans to address water quality issues.²⁰³

TABLE REF. NO. 27: ADAM V CANADA (MINISTER OF ENVIRONMENT), 2011 FC 962

The Athabasca Chipewyan First Nation, Beaver Lake Cree First Nation and Enoch Cree Nation brought an application before the Federal Court asking the Court to:

- (a) issue an Order declaring the Federal Minister of Environment had failed to prepare a recovery strategy for boreal caribou within the time period required by subsection 42(2) of the Species at Risk Act, SC 2002, c 29 ("SARA");
- (b) an Order compelling the Minister to prepare a recovery strategy as required by SARA; and
- (c) an Order declaring that the Minister's failure to recommend an emergency protection order for boreal caribou in northeastern Alberta, pursuant to subsection 80(2) of SARA was unlawful or unreasonable.²⁰⁴

¹⁹⁵ *Ibid*, at 35.

¹⁹⁶ *Ibid*, at 56.

¹⁹⁷ *Ibid*, at 61.

¹⁹⁸ *Ibid*, at 64.

¹⁹⁹ *Ibid*, at 69.

²⁰⁰ *Ibid*, at 117.

²⁰¹ *Ibid*, at 17.

²⁰² *Ibid*, at 156.

²⁰³ *Ibid*, at 157-159.

²⁰⁴ *Adam v Canada (Minister of Environment)*, [2011 FC 962](#), at para 2.

Two environmental organizations, the Alberta Wilderness Association and the Pembina Institute for Appropriate Development, brought a similar but separate application that was consolidated with the First Nations' application.²⁰⁵

A 2008 scientific review of the boreal caribou population and habitat determined that the numbers of caribou in the seven herds in northeastern Alberta were insufficient for these populations to be self-sustaining.²⁰⁶ The Minister's decision to not issue an emergency protection order conceded that achieving population recovery for the Alberta herds would be extremely challenging.²⁰⁷ The First Nation applicants argued that the Minister had unlawfully and unreasonably failed to consider the impact of the decline in the population of the seven herds on the First Nations' Treaty rights and the Crown's obligation to act honourably in its dealings with Aboriginal peoples.²⁰⁸ It was unchallenged that the First Nations had traditionally hunted boreal caribou as an integral part of their traditional way of life.²⁰⁹ The Court agreed and set aside the Minister's decision to not issue an environmental protection order.²¹⁰ The Court deferred a decision with respect to the Recovery Strategy as the Minister committed to post the recovery strategy within the following five weeks.²¹¹

The proposed Recovery Strategy was posted by the Minister four weeks following the Court decision.²¹² The proposed Recovery Strategy identified roads, seismic lines, well sites and other disturbances associated with oil and gas development as threats to the habitat of boreal caribou.²¹³

On January 13, 2012, the Minister issued his reconsideration decision with respect to the emergency protection order and again determined that there was no imminent threat to the survival or recovery of boreal caribou and decided not to recommend an emergency protection order.²¹⁴ This decision was not challenged by the First Nations.

²⁰⁵ *Ibid*, at para 9.

²⁰⁶ *Ibid*, at para 14.

²⁰⁷ *Ibid*, at paras 19-20.

²⁰⁸ *Ibid*, at paras 30-31.

²⁰⁹ *Ibid*, at para 33.

²¹⁰ *Ibid*, at para 35.

²¹¹ *Ibid*, at para 73.

²¹² Environment Canada, [Recovery Strategy for the Woodland Caribou, Boreal population \(*Rangifer tarandus caribou*\) in Canada](#), (26 August 2011).

²¹³ *Ibid*, at 10-11.

²¹⁴ Environment Canada, ["Public Notice on the Minister of Environment's Reconsideration of the Emergency Order for Boreal Caribou"](#) (8 March 2012).

TABLE REF. NO. 31: SHELL CANADA ENERGY, JACKPINE MINE EXPANSION PROJECT (2013 ABAER 011)

Shell Canada Energy (“Shell”) proposed the Jackpine Mine Expansion and began consultations with Indigenous groups in 2007, and the Joint Review Panel for the project, comprised of the Alberta Energy Regulator and the Canadian Environmental Assessment Agency, was established in 2011. Between 2011 and 2013, the Joint Review Panel conducted the environmental assessment for the project and developed recommendations for Canada and Alberta. The Joint Review Panel released its report in 2013²¹⁵, and Canada and Alberta approved the project on December 6th of the same year.

Seven Indigenous groups made submissions to the Joint Review Panel.²¹⁶ Five of those Indigenous groups either opposed the project outright or at least requested the approval be postponed until the Crown fulfilled its duty to consult and accommodate,²¹⁷ and all Indigenous participants requested numerous conditions related to mitigation, consultation and accommodation.²¹⁸

Mikisew Cree First Nation, Fort McKay First Nation and Fort McKay Métis Community Association all signed agreements with Shell and withdrew their project-specific objections before the panel hearings.²¹⁹ However, these three groups, along with the other four Indigenous groups participating, still made extensive submissions detailing their concerns and recommendations for the Joint Review Panel’s report.

The Indigenous participants raised numerous detailed concerns about the adequacy of consultation, impacts on section 35 rights, environmental disruption, socioeconomic impacts, Shell’s proposed mitigation measures and the methodologies²²⁰ behind Shell’s studies, and broader cumulative impacts. More specifically, the Indigenous participants raised concerns that:²²¹

²¹⁵ Alberta Energy Regulator and Canadian Environmental Assessment Agency, *Report of the Joint Review Panel; Shell Canada Energy Jackpine Mine Expansion Project*, [2013 ABAER 011](#) (9 July 2013) [*Jackpine Expansion Report*].

²¹⁶ *Ibid*, at 15-17, paras 73-82. The Indigenous participants included Athabasca Chipewyan First Nation, Mikisew Cree First Nation, Fort McKay First Nation and Fort McKay Métis Community Association, Fort McMurray First Nation, Non-Status Fort McMurray and Fort McKay First Nation, Clearwater River Paul Cree Band, and Métis Nation of Alberta (Region 1) and individuals and groups named together with Region 1. Several members of the public with affiliations to participating Indigenous groups also participated.

²¹⁷ These five groups were Athabasca Chipewyan First Nation, Fort McKay First Nation and Fort McKay Métis Community Association, Fort McMurray First Nation, Non-Status Fort McMurray and Fort McKay First Nation, and Clearwater River Paul Cree Band.

²¹⁸ *Jackpine Expansion Report*, *supra* note 216, Appendix 8 at 390-400.

²¹⁹ *Ibid*, at para 1271.

²²⁰ *Ibid*, at paras 1230-1235, 1257.

²²¹ *Ibid*. These detailed concerns are spread throughout the report, and are partly summarized at paras 73-82, 1307, 1495, 1562, 1670.

- consultation by the proponent, Canada and Alberta was insufficient, especially with regards to cumulative impacts to section 35 rights, and that the Cumulative Environmental Management Association process and the consultations on the Lower Athabasca Regional Plan were insufficient;²²²
- the project would significantly disrupt Indigenous traditional land use;²²³
- reclamation would not occur for many years, or would not be possible;²²⁴
- proposed mitigation measures (including a compensation lake) were insufficient to mitigate the adverse impacts on the Indigenous groups' interests;²²⁵
- there would be significant and possibly irreversible adverse effects to ground water and water quality, water levels, noise effects, air quality, fish, bison habitat, caribou, birds and migratory birds, and ancestral burial sites, wetlands, old-growth forests, traditional plant potential areas and migratory birds;²²⁶ and
- the project could have adverse social impacts including impacts to traffic safety, quality of life, living conditions at work-camps, health service resources, and community fragmentation.²²⁷

The Joint Review Panel accepted that there would be significant environmental effects of the kinds described by the Indigenous participants' concerns, and that there would be adverse impacts on traditional land use.²²⁸ The Panel still recommended approval of the project, with 88 recommendations to Canada and Alberta and 22 conditions for the proponent.²²⁹ The Panel also found that it did not have jurisdiction to rule on the adequacy of consultation and accommodation.²³⁰

After the project was approved, Athabasca Chipewyan First Nation ("ACFN") and the Métis Nation of Alberta (Region 1) ("MNA-R1") remained opposed to the project, and two separate legal proceedings challenging the project were launched. ACFN applied to the Federal Court for judicial review of Canada's decision to approve the project based on a failure to adequately consult and accommodate.²³¹ Both ACFN and the MNA-R1 (along with several MNA-affiliated individuals and

²²² *Ibid*, at paras 727, 1317-1321, 1324-1326, 1330, 1330, 1333-1351, 1353-1357, 1457, 1463, 1504, 1506-1507, 1510-1512, 1517-1528, 1539, 1568-1569, 1572-1574, 1621-1622, 1624-1625, 1628-1629, 1686-1692, 1696-1717.

²²³ *Ibid*, at paras 1367-1369, 1578, 1630-1631, 1634-1640, 1643-1653.

²²⁴ *Ibid*, at paras 1380-1381, 1443, 1632.

²²⁵ *Ibid*, at paras 1358-1366, 1401.

²²⁶ *Ibid*, at paras 1389-1398, 1404-1413, 1416-1427, 1540-1541, 1581-1588, 1591-1595, 1597.

²²⁷ *Ibid*, at paras 1144, 1156, 1429-1456.

²²⁸ *Ibid*, at paras 9, 22-37.

²²⁹ *Ibid*, at paras 8, 16.

²³⁰ *Ibid*, at paras 63-64.

²³¹ *Adam v Canada (Environment)*, [2014 FC 1185](#) [Adam].

groups) also applied to the Alberta Court of Appeal for judicial review of the Panel's finding that it had no jurisdiction to rule on the adequacy of the consultations.²³²

Despite the Federal Court's finding that the Crown had sufficiently consulted and accommodated, ACFN highlighted that the Crown failed to address several of its concerns and failed to adopt several of its accommodation proposals.²³³ The Federal Court also accepted that, despite the Crown's consultation and accommodation measures, the project would still adversely affect the ACFN, stating:

The Project would destroy a large part of the ACFN's traditional lands and might also impinge upon the maintenance of their culture and way of life. Some of the harm to the ACFN is potentially irreversible or has not been mitigated through means of proven efficacy.²³⁴

The Alberta Court of Appeal also noted that the Panel had refused to engage with the issue raised by ACFN and the MNA-R1 of whether the Crown failed to adequately consult and accommodate, thereby leaving a significant area of concern unaddressed.²³⁵

TABLE REF. NO. 33: NORTHERN GATEWAY PIPELINES LIMITED PARTNERSHIP, ENBRIDGE NORTHERN GATEWAY PROJECT

Northern Gateway Pipelines Limited Partnership ("Northern Gateway"), a subsidiary of Enbridge Inc., proposed the Enbridge Northern Gateway Project in 2008. The Joint Review Panel for the project was established in 2010. The National Energy Board held public consultations on the project in 2012-2013, wherein most participants, including First Nations, opposed the project. The Harper government approved the project in June 2014.

Consultations by Northern Gateway and the Crown took place beginning in 2014 with over 80 Indigenous groups from Alberta and British Columbia. The Joint Review Panel summarized the consultation process and outcomes in its 2013 Report of the Joint Review Panel for the Enbridge Northern Gateway Project, Vol 2.²³⁶ The Report details many concerns raised by the Indigenous participants, both in terms of the depth of consultation and in terms of the potential impacts on traditional resources, culture, Aboriginal and Treaty rights and community health, as summarized in

²³² *Métis Nation of Alberta Region 1 v Joint Review Panel*, [2012 ABCA 352](#) [*Métis Nation of Alberta*].

²³³ *Adam*, *supra* note 232 at paras 26-30, 73-106.

²³⁴ *Ibid*, at para 71.

²³⁵ *Métis Nation of Alberta*, *supra* note 233, at para 9. The Court found that the decision to refuse to engage with the issue was within the Panel's discretion according to the agreement which created the Panel – see paras 6, 13, and 26.

²³⁶ Joint Review Panel for the Enbridge Northern Gateway Project, *Considerations: Report of the Joint Review Panel for the Enbridge Northern Gateway Project*, [Vol 2](#), (20 December 2013).

the Table in Appendix 1 of this report.²³⁷ The Joint Review Panel found that the project should proceed, subject to over 200 conditions (listed in Appendix 1 of the Joint Review Panel Report).²³⁸ Many of these conditions involved further discussions and consultation efforts vis a vis Indigenous groups to address their concerns.²³⁹

However, Indigenous groups remained concerned with the depth of consultation undertaken by the federal and British Columbia governments, and therefore an Indigenous coalition launched an application for judicial review at the Federal Court of Appeal and an application for judicial review at the British Columbia Supreme Court, both alleging that the federal and provincial Crowns, respectively, had failed to discharge the duty to consult and accommodate.²⁴⁰

The Federal Court of Appeal found that the federal Crown failed to discharge the duty to consult and accommodate because it provided only a “brief, hurried and inadequate” consultation opportunity during Phase IV of the consultation framework for the project.²⁴¹ The Federal Court of Appeal found that the consultation was arbitrarily too short²⁴² and did not take enough information into account to adequately have engaged in dialogue.²⁴³ The Federal Court of Appeal stated:

Missing was any indication of an intention to amend or supplement the conditions imposed by the Joint Review Panel, to correct any errors or omissions in its Report, or to provide meaningful feedback in response to the material concerns raised. Missing was a real and sustained effort to pursue meaningful two-way dialogue. Missing was someone from Canada’s side empowered to do more than take notes, someone able to respond meaningfully at some point.²⁴⁴

Canada also failed to provide enough information about its assessment of the strength of the asserted section 35 rights, and failed to provide or adopt sufficient reasons for determining whether the duty had been discharged.²⁴⁵

²³⁷ *Ibid.* See 26-47, 297-311 in particular.

²³⁸ *Ibid.*, at 6.

²³⁹ *Ibid.* See for example conditions 53-56 at 374-375.

²⁴⁰ *Gitxaala Nation v Canada*, [2016 FCA 187](#), [2016] 4 FCR 418 [*Gitxaala Nation*]; *Coastal First Nations v British Columbia (Environment)*, [2016 BCSC 34](#), 85 BCLR (5th) 360 [*Coastal First Nations*].

²⁴¹ *Gitxaala Nation*, *supra* note 241, at paras 325-332.

²⁴² *Ibid.*, at paras 251-252: the Crown had authority under s 54(3) of the *National Energy Board Act*, RSC 1985, c N-7, to extend the deadline, and an extension would have allowed for sufficient consultation, but the Crown failed to even consider such an extension.

²⁴³ *Ibid.*, at para 279.

²⁴⁴ *Ibid.*

²⁴⁵ *Ibid.*, at paras 308, 324.

Ultimately the Federal Court of Appeal quashed the Order in Council, and the federal government chose not to conduct any further consultations and withdrew its support for the project.

At the British Columbia Supreme Court, the British Columbia government was also found to have failed to discharge its duty to consult and accommodate. The Court found that the British Columbia government had tied its own hands by entering into the limited-scope Equivalency Agreement between the British Columbia Environmental Assessment Office and the National Energy Board, and had therefore failed to undertake consultation prior to its rights-affecting decision not to exit the Agreement.²⁴⁶ The Court went so far as to find that the British Columbia government had pushed its own spill response as a solution to Indigenous concerns in a manner that was “paternalistic” and “discredited”, and which “offended” the Indigenous participants.²⁴⁷

TABLE REF. NO. 41: O’CHIESE FIRST NATION V ALBERTA ENERGY REGULATOR, 2015 ABCA 348

The O’Chiese First Nation (“OFN”) sought leave to appeal two decisions of the Alberta Energy Regulator (“AER”) to deny regulatory appeals of AER decisions.²⁴⁸ In 2014 and 2015, the AER approved two applications by Shell for certain natural gas pipelines.²⁴⁹ The OFN subsequently sought regulatory appeal of the two approvals.²⁵⁰ On July 9, 2015, the AER denied the two applications for regulatory appeal on the grounds that OFN was not directly and adversely affected by the approvals.²⁵¹ The OFN sought permission to appeal the denials to the Alberta Court of Appeal.²⁵²

The Alberta Court of Appeal upheld the AER decisions on the basis that the matter was a question of mixed fact and law and therefore not subject to appeal pursuant to subsection 45(1) of the Responsible Energy Development Act, SA 2012, c R-17.3.²⁵³ Further, the Court found that both the Responsible Energy Development Act and the Public Lands Act, RSA 2000, c P-40, required that a party seeking appeal must be directly and adversely affected by the decision in question.²⁵⁴ The OFN had filed no evidence of how they were directly and adversely affected by the decisions, relying instead on

²⁴⁶ *Coastal First Nations*, *supra* note 241, at paras 209-13.

²⁴⁷ *Ibid*, at para 209.

²⁴⁸ *O’Chiese First Nation v Alberta Energy Regulator*, [2015 ABCA 348](#), at paras 2-3.

²⁴⁹ *Ibid*, at paras 6, 12, 20.

²⁵⁰ *Ibid*, at paras 13, 20.

²⁵¹ *Ibid*, at para 21.

²⁵² *Ibid*, at para 23.

²⁵³ *Ibid*, at para 25.

²⁵⁴ *Ibid*, at paras 30-31, 34-35.

an argument that any development within the O’Chiese First Nation Consultation Area, as defined by the Department of Aboriginal Affairs for the Government of Alberta, was a de facto direct and adverse impact.²⁵⁵ The Court held that OFN was obliged to present some evidence that it was directly and adversely affected. The Court denied the application for leave to appeal. Leave to appeal to the Supreme Court of Canada was subsequently denied.²⁵⁶

TABLE REF. NO. 75: MÉTIS NATION OF ALBERTA ASSOCIATION FORT MCMURRAY LOCAL COUNCIL 1935 V ALBERTA, 2016 ABQB 712

The Métis Nation of Alberta Association Fort McMurray Local Council 1935 (“Métis Local 1935”) brought an application for judicial review of certain decisions of the Aboriginal Consultation Office (“ACO”) that the duty to consult with Métis Local 1935 was not triggered by certain oil sands development applications.²⁵⁷

The applications in question were three applications for oil sands exploration permits, the renewal of a Water Act licence for an oil sands development and an application for a new oil sands in situ project.²⁵⁸

The Alberta Court of Queen’s Bench determined:

- (a) the ACO failed to demonstrate that it fully and fairly considered the information and evidence that Métis Local 1935 had provided in response to an Information Request from the ACO;²⁵⁹ and
- (b) the ACO failed to provide sufficient time to Métis Local 1935 to respond to the Information Request and failed to provide clear deadlines within its process.

In summary, the Court found that the ACO had breached the duty of procedural fairness owed to Métis Local 1935 and quashed the ACO decisions with respect to consultation.²⁶⁰

Subsequent to the Court decision, the Government of Alberta established a “Credible Assertion Process” in which the Executive Director of the Stewardship and Policy Integration Branch (“SPI”) of the

²⁵⁵ *Ibid*, at paras 37, 42.

²⁵⁶ *O’Chiese First Nation v Alberta Energy Regulator*, [SCC Decision No. 36801](#) (2 June 2016).

²⁵⁷ *Métis Nation of Alberta Association Fort McMurray Local Council 1935 v Alberta*, [2016 ABQB 712](#), at para 1.

²⁵⁸ *Ibid*, at para 9.

²⁵⁹ *Ibid*, at paras 191-203.

²⁶⁰ *Ibid*, at paras 222-225.

Ministry of Indigenous Relations would make a decision as to whether a Métis organization had raised a credible assertion of Aboriginal rights that may be impacted by the proposed project.²⁶¹ On January 2, 2018, the Executive Director of the SPI found that Métis Local 1935 had not made a credible assertion in that Métis Local 1935 had not demonstrated that there was a Métis community in Fort McMurray whose rights would be impacted by the project or that Métis Local 1935 had the authority to represent that community.²⁶² An application for judicial review of the credible assertion decision was filed by Métis Local 1935 but subsequently discontinued.²⁶³

TABLE REF. NO. 82: TRANSCANADA PIPELINES LIMITED, ENERGY EAST ASSET TRANSFER AND EASTERN MAINLINE PROJECT

Sixty-five First Nations and six Tribal councils representing a total of thirty-six First Nations participated in early consultations and reviewed the draft consultation approach with respect to TransCanada PipeLines Limited's ("TransCanada") Energy East Asset Transfer application. Fifteen Indigenous groups also engaged with the related Eastern Mainline project as of October 2014.²⁶⁴ These Indigenous groups raised concerns about impacts to lands subject to a land claim,²⁶⁵ lack of capacity funding,²⁶⁶ possible effects on watersheds in traditional territories,²⁶⁷ possible burial sites,²⁶⁸ possible environmental impacts on the community's drinking water, lands, endangerment to fish and wild game, archaeology, pipeline safety, impacts on Aboriginal heritage and cultural values and on endangered species,²⁶⁹ mitigation, and job opportunities.²⁷⁰

According to the May 2016 Energy East Project Consolidated Application, one hundred sixty-six Indigenous communities from across the prairie provinces, Ontario, Quebec, New Brunswick and Nova

²⁶¹ *Métis Nation of Alberta Association Fort McMurray Métis Local Council 1935 v Alberta*, [2021 ABOB 282](#), at paras 9-13 (see Table Re. No. 128).

²⁶² *Ibid*, at para 15.

²⁶³ *Ibid*, at paras 17-18.

²⁶⁴ TransCanada PipeLines Limited, *Eastern Mainline Project Application*, [Vol 1, Section 8](#) (October 2014), at 8-1, 8-5. Links to the application's several parts are available online: <https://apps.cer-rec.gc.ca/REGDOCS/Item/View/2996097>.

²⁶⁵ *Ibid*, at 8-15.

²⁶⁶ *Ibid*, at 8-16.

²⁶⁷ *Ibid*, at 8-16, 8-17. This concern was in respect of an area related to the Energy East project, not the Eastern Mainline project area.

²⁶⁸ *Ibid*, at 8-17.

²⁶⁹ *Ibid*, at 8-17, 8-18

²⁷⁰ *Ibid*, at 8-19, 8-20.

Scotia, had engaged with the Energy East project since April 2013.²⁷¹ The participating First Nations raised many concerns and issues, including:²⁷²

- pipeline safety, the nature of the product and the potential effects of a spill or other emergencies, and community participation in environmental protection and emergency response;
- valve placement;
- adequacy of project engagement and Crown consultation;
- potential effects of the project on treaty, Aboriginal rights and title, and on traditional land and resource use;
- potential effects of the project on watercourses, native prairie and heritage resources;
- involvement in construction monitoring and reclamation plans;
- economic development and participation, including capacity funding, community investment, employment, training and vendor opportunities during construction and operations, and opportunities for project revenue sharing;
- potential effects of the project on the environment, including on surface and groundwater quality, fish, traditional and commercial fishing, marine shipping, tourism, wildlife, traditional land and resource use activities and community interests, species at risk, invasive species, and on the health of community members; and
- the need for abandonment and decommissioning plans and corporate responsibility for all TransCanada facilities within the region over the lifetime of the project.

Indigenous participants also raised serious concerns with respect to the National Energy Board's ("NEB") consultation and engagement processes, including the Enhanced Indigenous Engagement Process ("EIEP"). These concerns included the lack of participation funding,²⁷³ conflicts of interest

²⁷¹ Energy East Pipeline Ltd., *Consolidated Application*, [Vol 10, Section 1 \(Aboriginal Engagement\) \(May 2016\)](#), at 1-1. Links to the application's several parts are available online: <<https://apps.cer-rec.gc.ca/REGDOCS/Item/View/2995824>>.

²⁷² *Ibid*, [Vol 10, Section 6 \(Engagement Program Outcomes\)](#) at 6-2 to 6-5.

²⁷³ For examples see these letters from Indigenous participants:

[Algonquins of Ontario](#), at 6;

[Frog Lake First Nation](#), at 1. This letter also details concerns about surface water quality, aquatic resources and fisheries, vegetation and wetlands, wildlife, cumulative effects, monitoring and follow-up, and spills (at 2);

[Eagle Lake First Nation](#), at 1. See also a [subsequent letter](#) of 20 June 2016

[Métis Nation of Ontario](#);

[Métis Nation of Ontario Region 1](#), at 1-3;

[Métis Nation of Ontario Region 2](#), at 1-3;

[Métis Nation of Ontario Region 3](#), at 1-3;

[Métis Nation of Ontario Region 5](#), at 1-3;

[Métis Nation of Ontario Region 6](#), at 1-2.

among NEB commissioners,²⁷⁴ limited scope in the draft list of issues and in the EIEP,²⁷⁵ prematurity of invitations to comment, contradictory timelines, unnecessarily adversarial and formalistic processes,²⁷⁶ and the overall insincerity of the NEB process.²⁷⁷

Indigenous opposition was widespread, with several Indigenous groups from areas along most of the pipeline route publicly opposing the project, including the Assembly of First Nations of Quebec and Labrador,²⁷⁸ the Iroquois Caucus and the Mohawks of Kanehsatà:ke,²⁷⁹ the Assembly of Manitoba Chiefs, the Grand Chief of Treaty 3 and the Wolastoq Grand Council,²⁸⁰ as well as many individual Indigenous nations and activists.²⁸¹ Aroland First Nation and Ginoogaming First Nation also sought a declaration by the Ontario Superior Court of Justice that the duty to consult had been triggered by invasive testing along the Eastern Mainline route.²⁸²

There were also allegations of reasonable apprehensions of bias for several NEB panel members. These panel members subsequently recused themselves. The project stalled, and TransCanada ultimately withdrew the applications for both Energy East and the Eastern Mainline on October 5th, 2017.

²⁷⁴ See this letter from [First Nations of Quebec and Labrador Sustainable Development Institute](#).

²⁷⁵ See these letters from Mi'gmaq'el Tplu'tagnn Inc. and from counsel for a group of participating Indigenous groups online: [Letter dated 28 July 2017](#), at 2; [Letter dated 30 May 2017](#).

²⁷⁶ See this letter from [Temagami First Nation](#); also see this letter from [Gichi Ozhibi'ige Ogaamic \(Grand Council of Treaty #3\)](#) at 2-4.

²⁷⁷ For example, see [this letter from counsel for several Indigenous participants](#); also see this letter from [Pheasant Rump Nakota First Nation](#); also see this letter from [Asini Wachi Nehiyawak Traditional Band](#).

²⁷⁸ Assembly of First Nations of Quebec and Labrador, News Release, "[First Nations of Quebec officially oppose Energy East pipeline](#)" (15 June 2016).

²⁷⁹ Philip Authier, "Mohawks Threaten to Block Energy East; Says Project is Threat to Their Way of Life", *Montreal Gazette* (14 March 2016), online: <https://montrealgazette.com/news/quebec/mohawks-threaten-to-block-energy-east-says-project-is-threat-to-their-way-of-life>.

²⁸⁰ Brent Patterson, "Wolastoq Nation Joins Treaty 3, AMC & Kanehsatà:ke Mohawks in Opposing Energy East", *The Council of Canadians* (2016), online: <https://canadians.org/analysis/wolastoq-nation-joins-treaty-3-amc-kanehsatake-mohawks-opposing-energy-east>; see also Trina Roache, "Grand Council in New Brunswick says no to Energy East Pipeline", *APTN National News* (8 February 2016) online: <https://www.aptnnews.ca/national-news/grand-council-in-new-brunswick-says-no-to-energy-east-pipeline/>.

²⁸¹ See an example of organized opposition involving Idle No More and several individual First Nations online: <https://idlenomore.ca/gathering-against-energy-east/>.

²⁸² *Aroland First Nation v Transcanada Pipelines Limited*, [2018 ONSC 4469](#), at para 1.

TABLE REF. NO. 90: ATHABASCA CHIPEWYAN FIRST NATION V ALBERTA, 2018 ABQB 262; ATHABASCA CHIPEWYAN FIRST NATION V ALBERTA, 2019 ABCA 401

The Athabasca Chipewyan First Nation (“ACFN”) brought an application before the Alberta Court of Queen’s Bench for judicial review of a decision of the Aboriginal Consultation Office (“ACO”) that a duty to consult with the ACFN was not triggered with respect to the proposed Grand Rapids pipeline project.²⁸³ The ACFN had expressed concerns with the project in a Statement of Concern and the Alberta Energy Regulator (“AER”) granted standing to the ACFN based on the Statement of Concern.²⁸⁴ However, the ACO ultimately decided that there was no duty to consult the ACFN with respect to the project. The ACFN argued that the ACO had relied solely on a disputed mapping project to determine the duty to consult.²⁸⁵ The Court ultimately determined that the ACO considered other evidence, in addition to the map, in determining the duty to consult.²⁸⁶

However, the Court also determined that once the ACO was aware that there was a conflict with the ACFN over whether the duty to consult was triggered or not, this engaged a duty of procedural fairness.²⁸⁷ The Court made a declaration to that effect.²⁸⁸ However, since the ACFN had not challenged the ultimate approval decision or the adequacy of consultation, the Court declined to make any further declarations as they would have no practical effect. The Court also declined to make a declaration with respect to whether the duty to consult was triggered in this matter or what evidence was necessary to trigger it.²⁸⁹

The ACFN appealed the Alberta Court of Queen’s Bench declarations that the ACO had the authority to decide whether the Crown’s duty to consult was triggered and that the taking up of land by the Crown in a treaty area does not, by itself, adversely affect treaty rights.²⁹⁰ The Alberta Court of Appeal confirmed that the ACO is part of the Ministry of Indigenous Relations and exists to assist the Minister in discharging the obligations of the Crown, including determining whether the duty to consult is triggered in a specific situation.²⁹¹ The Court of Appeal also confirmed that a taking up of land within

²⁸³ *Athabasca Chipewyan First Nation v Alberta*, [2018 ABQB 262](#), at para 1.

²⁸⁴ *Ibid*, at paras 21, 24.

²⁸⁵ *Ibid*, at paras 75-90.

²⁸⁶ *Ibid*, at para 93.

²⁸⁷ *Ibid*, at paras 115-119.

²⁸⁸ *Ibid*, at para 122.

²⁸⁹ *Ibid*, at para 121.

²⁹⁰ *Athabasca Chipewyan First Nation v Alberta*, [2019 ABCA 401](#), at para 1.

²⁹¹ *Ibid*, at paras 47, 49, 52.

the treaty area was not, by itself, sufficient to trigger a duty to consult. It must also be demonstrated that the taking up may have an adverse effect on the ACFN's right to hunt, fish and trap.²⁹²

TABLE REF. NO. 92: PROSPER PETROLEUM LTD., PROSPER RIGEL SAGD PROJECT (2018 ABAER 005)

The Alberta Energy Regulator ("AER") reviewed and approved the Prosper Rigel SAGD project in 2018. Six Indigenous groups sought to participate in the review, namely Fort McKay First Nation ("FMFN"), Fort McKay Métis, Mikisew Cree First Nation, Athabasca Chipewyan First Nation, Fort Chipewyan Métis Local 125, and Fort McMurray Métis Local 1935.²⁹³ However, only FMFN and the Fort McKay Métis participated in the AER hearing.

Both FMFN and the Fort McKay Métis filed a joint statement of concern and separate statements of concern with respect to the various approvals sought by the proponent.²⁹⁴ The Fort McKay Métis raised concerns about the negative effects of noise, odour, visual disturbance, and increased road access on traditionally harvested animals and section 35 rights, as well as the potential impacts on surface water quality.²⁹⁵ FMFN raised concerns about the inadequacy of the Lower Athabasca Regional Plan ("LARP") process and the development of the Moose Lake Access Management Plan ("MLAMP"), restriction of trail access, and potential negative impacts to hunting and trapping caused by project noise and activity and increased public access, and impacts on section 35 rights.²⁹⁶ In both cases, the AER dismissed the Indigenous group's evidence and concerns as too general.²⁹⁷

During the review process, FMFN was also concerned that the AER would review the project without considering the honour of the Crown, and without halting the project until FMFN completed its negotiations with Alberta on the development of the MLAMP.²⁹⁸ FMFN raised an additional concern about potential bias among Commissioners on the AER panel.²⁹⁹

Once the AER approved the project, FMFN successfully appealed the AER's approval at the Alberta Court of Appeal on the grounds the AER erred by failing to consider the honour of the Crown and

²⁹² *Ibid*, at paras 53-61.

²⁹³ See the AER's letter dated [March 16, 2017](#).

²⁹⁴ Alberta Energy Regulator, *Prosper Petroleum Ltd., Rigel Project*, [2018 ABAER 005](#) (12 June 2018), at para 66.

²⁹⁵ *Ibid*, at paras 75-76.

²⁹⁶ *Ibid*, at paras 91, 101, 104, 107, 110, 113-114, 118.

²⁹⁷ *Ibid*, at paras 81-85, 102, 106, 113-114, 119-122, 125-126, 130, 132.

²⁹⁸ See the AER's letters dated [16 August 2017](#) and [October 16 2017](#) providing reasons for the AER's exclusions of these considerations.

²⁹⁹ See the AER's letter dated [January 16, 2017](#) rejecting this concern.

refusing to delay approval of the project until the FMFN's negotiations with Alberta on the MLAMP were completed.³⁰⁰

Prosper withdrew the project applications on April 30, 2021.

TABLE REF. NO. 100: MIKISEW CREE FIRST NATION V CANADA, 2014 FC 1244; CANADA V MIKISEW CREE FIRST NATION, 2016 FCA 311; MIKISEW CREE FIRST NATION V CANADA, 2018 SCC 40

In *Mikisew Cree First Nation v Canada*, 2014 FC 1244, the Mikisew Cree First Nation (“MCFN”) challenged the Federal government’s failure to consult with respect to two omnibus bills that amended the Navigable Waters Protection Act, RSC 1985, c N-22, and the Fisheries Act, RSC 1985, c F-25 and replaced the Canadian Environmental Assessment Act, SC 1992, c 37 with the Canadian Environmental Assessment Act, 2012, SC 2012, c 19, s 52.³⁰¹ The effect of those amendments was to reduce the number of bodies of water which were required to be monitored by federal officials thereby affecting fishing, trapping and navigation.³⁰² The Federal Court found that development within the Treaty 8 territory, including oil exploration and development, had affected the usual vocations of the MCFN to hunt, fish and trap.³⁰³ The Court found that protections offered by the Navigable Waters Protection Act, Fisheries Act and Canadian Environmental Assessment Act helped to preserve MCFN’s right to carry out these usual vocations.³⁰⁴ However, the Court determined that the omnibus bills posed a risk to the treaty rights and triggered a duty to consult by reducing the number of waterways to which these restrictions applied, reducing fish habitat protections and reducing the types of projects to which environmental assessment would apply.³⁰⁵ The Court concluded that the duty to consult was triggered at the point at which the omnibus bills were introduced into Parliament.³⁰⁶

The Federal Court of Appeal overturned the lower court decision, finding that the matter was not within the jurisdiction granted to the Federal Court by sections 2(1), 18 and 18.1 of the Federal Courts Act, RSC 1985, c F-7, on the basis that the object of the application for judicial review was legislative in nature and challenged the various Ministers’ role as members of Parliament, which is excluded by the

³⁰⁰ *Fort McKay First Nation v Prosper Petroleum Ltd*, [2020 ABCA 163](#), at paras 3, 56-71.

³⁰¹ *Mikisew Cree First Nation v Canada*, [2014 FC 1244](#), at para 4.

³⁰² *Ibid.*

³⁰³ *Ibid.*, at para 86.

³⁰⁴ *Ibid.*

³⁰⁵ *Ibid.*, at paras 87-94.

³⁰⁶ *Ibid.*, at para 99.

Act.³⁰⁷ The Federal Court of Appeal further found that the legislative process, from the stage of policy development to the granting of royal assent to a bill, is a matter solely within the purview of Parliament and the constitutional separation of powers prevents judicial interference in that process.³⁰⁸

An appeal of the Federal Court of Appeal decision to the Supreme Court of Canada led to a plurality of decisions in *Mikisew Cree First Nation v Canada*, 2018 SCC 40, [2018] 2 SCR 765. The Court was unanimous that judicial review of the Crown in its legislative function was precluded by sections 2(1), 2(2), 18 and 18.1 of the Federal Courts Act.³⁰⁹ The Court was also unanimous that a First Nation could bring a post-facto challenge of enacted legislation on the grounds that the legislation infringed on Aboriginal or Treaty rights using the analysis in *R v Sparrow*, [1990] 1 SCR 1075.³¹⁰ The Court was also unanimous that consultation with First Nations on proposed legislation that may impact Aboriginal or Treaty rights may be a best practice that would be relevant to the *Sparrow* analysis.³¹¹ However, the Court split on the question of whether legislation could be challenged when it had an adverse effect on an Aboriginal or treaty right that did not rise to the level of infringement.³¹² However, this was not the challenge raised in this matter and the Court unanimously rejected the appeal on the grounds that it was incorrectly brought as a judicial review of the Ministers' role in developing legislation. A minority of the Court did acknowledge that the application for judicial review was brought in the context of amendments to environmental protections in the face of existing and proposed oil sands developments.³¹³

TABLE REF. NO. 111: TRANS MOUNTAIN PIPELINE ULC, TRANS MOUNTAIN EXPANSION PROJECT

Trans Mountain Pipeline ULC, a subsidiary of Kinder Morgan Canada Inc. ("Kinder Morgan"), proposed a pipeline expansion for the Trans Mountain pipeline in 2012. The National Energy Board ("NEB"), federal government, and proponent all undertook Indigenous consultations, and the federal cabinet approved the project in 2016. Despite signing over 90 benefit agreements with First Nations, and receiving 30 letters of support from First Nations, Indigenous opposition was and continues to be very significant, including amongst those who signed benefit agreements and wrote letters of support.

³⁰⁷ *Canada v Mikisew Cree First Nation*, [2016 FCA 311](#), at para 38.

³⁰⁸ *Ibid*, at para 60.

³⁰⁹ *Mikisew Cree First Nation v Canada*, [2018 SCC 40](#), [2018] 2 SCR 765, at paras 17-18, 54, 101, 148.

³¹⁰ *Ibid*, at paras 31, 60, 64, 126, 151, 154.

³¹¹ *Ibid*, at paras 48, 64, 145, 155.

³¹² *Ibid*, at paras 43, 136.

³¹³ *Ibid*, at paras 4, 6-7.

Over 140 Indigenous groups participated in the consultations, all of which are listed in Appendix 9 of the National Energy Board Report for the Trans Mountain Expansion Project.³¹⁴ The Report notes the extensive concerns expressed by Indigenous groups, including the inadequacy of consultation and participatory opportunities, as well as the impacts on section 35 rights and the possible biophysical, cultural, and health impacts of the project.³¹⁵

The federal government also appointed a ministerial panel to review the project, and the panel released its report in 2016. The ministerial panel report reiterated the concerns identified in the NEB report, and went even further by noting Indigenous groups, even those who signed benefit agreements, still had concerns and misgivings with the project.³¹⁶ The report highlighted how many Indigenous groups characterized the benefit agreements as bribes, often aimed at the most desperate communities and used for divide-and-conquer tactics.³¹⁷ Moreover, many Indigenous participants maintained their opposition despite signing such benefit agreements, because the benefit agreements were seen as a necessary evil while the project was likely a foregone conclusion.³¹⁸

After the federal government approved the pipeline in late 2016, several Indigenous legal challenges were launched in opposition to the project. Kinder Morgan ceased funding the project in April 2018, and the federal government purchased the project in May 2018.

Tsleil-Waututh Nation and a coalition including several other First Nations applied for judicial review of the Order in Council approving the project.³¹⁹ The Federal Court of Appeal found first that the federal cabinet unreasonably relied on the NEB report, which itself was insufficient because it excluded consideration of project-related marine shipping from the project's definition.³²⁰ With respect to taking Indigenous concerns into account, the Federal Court of Appeal also found that during Phase III consultations, the Crown failed to engage in a considered, substantive, and meaningful two-way

³¹⁴ National Energy Board, *Trans Mountain Expansion Project*, [Report OH-001-2014](#) (May 2016), at 515-517.

³¹⁵ *Ibid*, at 31-52.

³¹⁶ Ministerial Panel for the Trans Mountain Expansion Project, [Report from the Ministerial Panel for the Trans Mountain Expansion Project](#) (1 November 2016), at 35-41.

³¹⁷ *Ibid*, at 38-39.

³¹⁸ *Ibid*, at 38-39.

³¹⁹ The Squamish Nation also launched a separate, unsuccessful judicial review application to the Supreme Court of British Columbia (*Squamish Nation v British Columbia (Environment)*, [2018 BCSC 844](#)) alleging that British Columbia failed to provide the information underlying its strength of claim analysis, unreasonably accepted the NEB's deferral of essential information through project conditions, failed to consult with the Squamish Nation prior to changing its position before the NEB, failed to provide adequate reasons in relation to Squamish's concerns, and failed to consult with the Squamish Nation prior to deciding not to terminate the Equivalency Agreement, thereby accepting the NEB assessment for the purposes of provincial environmental assessment requirements.

³²⁰ *Tsleil-Waututh Nation v Canada (Attorney General)*, [2018 FCA 153](#), at paras 468-470, [2019] 2 FCR 3.

dialogue with Indigenous groups,³²¹ was unreasonably unwilling to consider accommodation measures and to depart from the NEB's conclusions,³²² and unreasonably held the view that it could not impose additional conditions on Trans Mountain³²³. The Crown was also found to have taken too long to communicate its assessment of the project's impacts on Indigenous groups.³²⁴ The Federal Court of Appeal thus quashed the Order in Council, ordered the NEB to reconsider its report taking project-related marine shipping into account, and ordered the Crown to re-do its Phase III consultations.³²⁵

The federal government re-approved the project in 2019 after the NEB revised their report and the Crown re-did their Phase III consultations. Several Indigenous groups remained unsatisfied with the renewed consultation, and continued to articulate their opposition. These unsatisfied groups launched an ultimately unsuccessful judicial review of the 2019 Order in Council re-approving the project.³²⁶

TABLE REF. NO. 115: TECK RESOURCES LIMITED, FRONTIER OIL SANDS MINE PROJECT

Teck Resources Limited ("Teck") applied to the Alberta Energy Regulator ("AER") for the Frontier Oil Sands Mine Project in 2011, and the Joint Review Panel issued its report for the project July 25, 2019.³²⁷ Twenty-four Indigenous groups participated in the review process.³²⁸ At least two Indigenous groups expressly opposed the project.³²⁹ Among the groups who signed agreements with Teck (a total of fourteen First Nations, several of which apparently did not participate in the review process, and at least ten Métis groups), at least eighteen had entered the regulatory process with objections or concerns which apparently had to be resolved through the agreements with Teck.³³⁰ Athabasca Chipewyan First Nation and Mikisew Cree First Nation's agreements with Teck were expressly

³²¹ *Ibid*, at paras 564-601, 649-752.

³²² *Ibid*, at paras 602-628.

³²³ *Ibid*, at paras 629-637.

³²⁴ *Ibid*, at paras 638-647.

³²⁵ *Ibid*, at paras 770-771; see also National Energy Board, *reconsideration of aspects of its OH-001-2014 Report as directed by Order in Council P.C. 2018-1177*, Report [MH-052-2018](#) (February 2019).

³²⁶ *Coldwater First Nation v Canada (Attorney General)*, [2020 FCA 34](#), [2020] 3 FCR 3.

³²⁷ Alberta Energy Regulator and Canadian Environmental Assessment Agency, *Report of the Joint Review Panel; Teck Resources Limited Frontier Oil Sands Mine Project*, [2019 ABAER 008](#) (25 July 2019) [*Teck JRP Report*].

³²⁸ *Ibid*, at Appendix 1.

³²⁹ *Ibid*, at para 4490.

³³⁰ *Ibid*, at paras 3173, 3477, 3602, 3762, 3911, 3920, 3939, 4000, 4121, 4136, 4142.

conditional on the federal and provincial governments carrying out certain recommendations related to smells, sounds, lights, and nighttime visibility of the project.³³¹

The Indigenous participants' concerns were extensive. Deninu K'ue First Nation, the Northwest Territories Métis Nation and Smith's Landing First Nation raised the concern that they had not been consulted or adequately engaged.³³² For these groups, the Joint Review Panel simply found that consultation was not required because there would be little or no impacts on these groups, or, in the case of the Northwest Territories Métis Nation, there was simply no conclusion about the adequacy of consultation.³³³ The Alberta Crown also concluded that the duty to consult and accommodate the Fort Chipewyan Métis Nation of Alberta Local 125 ("Métis Local 125") had not been triggered by the project because Métis Local 125 had provided insufficient information in the Crown's view.³³⁴ In response, Métis Local 125 launched an ultimately unsuccessful judicial review challenging the Crown's decision, and argued that the Crown had not done enough to independently gather sufficient facts while unjustifiably dismissing the facts provided by the Métis.³³⁵

The Indigenous participants raised many other project-specific, regional/cumulative, and section 35 rights-based concerns including:

- impacts on avian life and habitat within traditional territory,³³⁶
- destruction of habitat, traditional resources, medicines and harvesting areas, cabins, campsites, trails, and sites of cultural relevance;³³⁷
- regional cumulative effects and impacts on section 35 rights, and the lack of biodiversity management frameworks generally and under the Lower Athabasca Regional Plan ("LARP"), and the inadequacy of the LARP;³³⁸
- impacts on Wood Buffalo National Park World Heritage Site's environmental integrity and universal value, species at risk, migratory birds, methylmercury, bison, caribou, moose, water quality and quantity in the Peace-Athabasca river system, airborne contamination, the LARP's insufficient water quality data source, and consistency with the United Nations Declaration on the Rights of Indigenous Peoples;³³⁹

³³¹ *Ibid*, at paras 3173, 4304-4305.

³³² *Ibid*, at paras 70, 94, 103.

³³³ *Ibid*, at paras 3372, 4376, 4536-4537.

³³⁴ *Fort Chipewyan Métis Nation of Alberta Local #125 v Alberta*, [2016 ABQB 713](#), at paras 1, 69.

³³⁵ *Ibid* at paras 264-265.

³³⁶ *Teck JRP Report*, *supra* note 328, at paras 2295-2302, 2331.

³³⁷ *Ibid*, at paras 2096-2097, 2109-111, 2115, 2149, 2151, 3002, 4572.

³³⁸ *Ibid*, at paras 539-40, 2549, 2607.

³³⁹ *Ibid*, at paras 86-67, 1083-1084, 1339, 1815, 1818, 1828-1831, 1844, 1851-1854, 1859, 1873-1876, 1880, 1959-1961, 1963, 1971, 1976, 1980, 2012, 2053-2055, 2058-2059, 2495-2498, 2607, 3958.

- permanent impacts;³⁴⁰
- tailings in end-pit lakes;³⁴¹
- noise impacts on traditional land uses;³⁴²
- outstanding regional planning impacts on section 35 rights,³⁴³ and
- climate change impacts.³⁴⁴

Teck ultimately withdrew their application for the project in 2020. Teck ostensibly cancelled the project because of climate change concerns, but the cancellation took place during the blockades in solidarity with Wet'suwet'en First Nation, only days before the federal cabinet was expected to make a decision on the project.³⁴⁵

TABLE REF. NO. 125: ALBERTA WILDERNESS ASSOCIATION V CANADA (MINISTER OF ENVIRONMENT AND CLIMATE CHANGE), FEDERAL COURT DOCKET NO. T-175-19

In January 2019, the Athabasca Chipewyan First Nation and the Mikisew Cree First Nation, along with the Alberta Wilderness Association and the David Suzuki Foundation, brought an application for judicial review in the Federal Court alleging that the federal Minister of Environment and Climate Change failed to recommend a habitat protection order, as required by section 61(4) of the federal Species at Risk Act, SC 2002, c 29, for five herds of Boreal caribou impacted by oil sands development.³⁴⁶ Evidence submitted in support of the application demonstrated increasing disturbance of critical habitat of the five herds from oil and gas development and declining populations.

A settlement was reached in the matter, ultimately leading the federal Minister and the Province of Alberta to enter into a conservation agreement with respect to Boreal caribou.

³⁴⁰ *Ibid*, at paras 97, 3515-3516, 3719, 3843-3845, 3877, 4337, 4469, 4585.

³⁴¹ *Ibid*, at paras 354-357.

³⁴² *Ibid*, at para 921.

³⁴³ *Ibid*, at para 3211.

³⁴⁴ *Ibid*, at para 3382.

³⁴⁵ For an example of news coverage of the cancellation, see this news story: Amanda Connolly, "Teck Resources has abandoned its Frontier mine plan. Here are the factors being blamed", *Global News* (24 February 2020), online: <https://globalnews.ca/news/6588026/teck-frontier-oilsands-mine-cancelled/>.

³⁴⁶ Notice of Application, [Federal Court File No. T-175-19](#) (24 January 2019).

TABLE REF. NO. 128: MÉTIS NATION OF ALBERTA ASSOCIATION FORT MCMURRAY MÉTIS LOCAL COUNCIL 1935 V ALBERTA, 2021 ABQB 282

In 2019, Canadian Natural Resources Limited (“CNRL”) filed an application with the Alberta Energy Regulator (“AER”) respecting the integration of two previously approved oil sands mines.³⁴⁷ In September and October 2019, the Aboriginal Consultation Office (“ACO”) issued two decisions that no consultation was required with respect to the CNRL application since no new area or impacts were contemplated by the proposed integration.³⁴⁸ In December 2019, the Fort McMurray Métis Local Council 1935 (“Métis Local 1935”) filed a statement of concern with the AER with respect to the CNRL application expressing concerns respecting the potential impacts of the project on their asserted Aboriginal rights.³⁴⁹

In the spring of 2020, some questions had arisen as to whether the ACO’s “no consultation required” decision of October 2019 had considered the full scope of all of the approvals, amendments, licences and applications encompassed by the CNRL integration application.³⁵⁰ On October 30, 2020, the ACO issued a subsequent decision confirming that consultation was not required with any group with respect to the CNRL integration application.³⁵¹ Métis Local 1935 brought an application for judicial review of the October 30, 2020 ACO decision. Métis Local 1935’s primary argument was that the Crown or more specifically the ACO had failed to consider Métis Local 1935’s assertion of Aboriginal rights.³⁵² The Alberta Court of Queen’s Bench found that Métis Local 1935’s application for judicial review was a collateral attack on a previous decision of the Executive Director of the Stewardship and Policy Integration branch (“SPI”) of the Ministry of Indigenous Relations that Métis Local 1935 had not demonstrated that there was a Métis community in Fort McMurray whose rights would be impacted by the project or that Métis Local 1935 had the authority to represent that community, rather than an attack on the ACO decision that the project would not result in any new impacts on land or other environmental components.³⁵³ The Alberta Court of Queen’s Bench struck Métis Local 1935’s application for judicial review.³⁵⁴

³⁴⁷ *Métis Nation of Alberta Association Fort McMurray Métis Local Council 1935 v Alberta*, [2021 ABQB 282](#), at paras 20-21 [“*Métis Local Council 1935*”].

³⁴⁸ *Ibid*, at paras 22-24.

³⁴⁹ *Ibid*, at para 25.

³⁵⁰ *Ibid*, at para 31.

³⁵¹ *Ibid*, at para 34.

³⁵² *Ibid*, at paras 38-42.

³⁵³ *Ibid*, at paras 80, 84. See also the discussion re *Métis Nation of Alberta Association Fort McMurray Local Council 1935 v Alberta*, 2016 ABQB 712, *supra* note 258.

³⁵⁴ *Métis Local Council 1935*, *supra* note 348, at paras 84-85.

APPENDIX 3: SUMMARY LIST OF INDIGENOUS COMMUNITIES FILING STATEMENTS OF CONCERN

Indigenous Community (Total groups = 68)	Number of Statements of Concerns Submitted
Alexander First Nation	4
Alexis Nakota Sioux Nation	1
Anzac Métis Local #334 ("Anzac")	3
Athabasca Chipewyan First Nation ("ACFN")	32
Athabasca Landing Métis Local 2010	2
Bearspaw First Nation	1
Beaver Lake Cree Nation ("BLCN")	4
Bigstone Cree First Nation	2
Buffalo Lake Métis Local 2002	3
Cadotte Lake Métis	1
Chiniki First Nation	1
Chipewyan Prairie Dene First Nation ("CPDFN")	3
Clearwater River Band #175 ("CRPCB") and Non-status Fort McMurray band	12
Cold Lake First Nations ("CLFN")	7
Conklin Métis Local 193	2
Council of the Haida Nation	1
Dehcho First Nations (representing 9 Indigenous groups)	1
Dene Tha' First Nation	1
Deninu Kue First Nation	2
Driftpile First Nation	1
East Prairie Métis Settlement	2
Eden Valley Indian Reserve No. 216	1
Elizabeth Métis Settlement	2
Enoch Cree Nation	2
Ermineskin Cree Nation	1
Fishing Lake Métis Settlement	3
Fond du Lac First Nation	1
Fort Chipewyan Métis Local 125 ("Métis Local 125")	8
Fort McKay First Nation ("FMFN")	21
Fort McKay Métis Community Association ("FMMCA")	10
Fort McKay Métis Local 122	3

Indigenous Community (Total groups = 68)	Number of Statements of Concerns Submitted
Fort McKay Métis Local 63	4
Fort McMurray #468 First Nation ("FMMFN")	10
Fort McMurray Local Council 1935 ("Métis Local 1935")	15
Fort McMurray Métis Local 2020	1
Gitga'at First Nation	1
Gunn Métis Local #55	1
Heiltsuk Nation	1
Kát'odeeche First Nation	1
Kehewin Cree Nation	3
Kikino Métis Settlement	1
Kitasoo Band Council	1
Lac La Biche Historical Métis Community	1
Lac La Biche Métis Local 2097	1
Lakeland Métis Local 1909 ("Métis Local 1909")	8
McKay Métis Sustainability Centre ("MMSC")	8
Métis Nation of Alberta	4
Métis Nation of Alberta (Region 1) ("MNA-R1")	9
Metlakatla First Nation	1
Mikisew Cree First Nation ("MCFN")	24
Northwest Territory Métis Nation	1
O'Chiese First Nation ("OFN")	18
Old Massett Village	1
Onion Lake Cree Nation	2
Owl River Métis Local 1949 ("Métis Local 1949")	3
Papachase First Nations	1
Saddle Lake Cree Nation	1
Samson Cree Nation	1
Skidegate Band Council	1
Smith's Landing First Nation	1
Stoney Nakoda Nation	1
Wesley First Nation	1
Whitefish (Goodfish) Lake First Nation	2
Willow Lake Community Association	1
Willow Lake/Anzac Métis Local 780	1
Wood Buffalo First Nation ("WBFN")	8
Wood Buffalo Métis Association	1
Wuikinuxv Nation	1