



**December 15, 2014**

Alex Bolton, Chair  
Joint Review Panel for the Pierre River Mine Project

Canadian Environmental Assessment Agency  
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By email: [Shell.Reviews@ceaa-acee.gc.ca](mailto:Shell.Reviews@ceaa-acee.gc.ca)

**Re: Absence of Métis Local 1909 rights and interests reflected in EA for Shell PRM Project (CEAA Registry Number 59539).**

Dear Mr. Alex Bolton,

This letter is issued to the Joint Review Panel (“JRP”) in response to the November 19, 2014, Notice of Panel Request for Written Comment<sup>1</sup> and raises several concerns with the proposed Shell Canada Energy (“Shell”) Pierre River Mine (“PRM”) Project and the related Environmental Impact Statement (“EIS”). The Aboriginal rights and interests of Métis Local 1909 extend across the local and regional study areas identified in the EIS, yet this document and related information (e.g. responses to Joint Review Panel (“JRP” or “Panel”) Supplemental Information Requests (“SIRs”) from October 2013) neither make reference to our organization nor examine any potential project or cumulative effects on our Aboriginal rights and interests. The complete absence of consideration of Métis Local 1909 Aboriginal rights and interests in the EA process to date is a serious oversight in the Crown’s responsibilities towards Aboriginal peoples in Canada. Compounding this problem is the fact that neither an agent of the Crown nor the Proponent has meaningfully consulted Métis Local 1909 about the proposed Project to date. While the “federal government has identified [Métis Local 1909] for consultation related to the environmental assessment for the [Shell PRM] Project”<sup>2</sup>, Shell has not reached out to Métis Local 1909 to engage with us at all. It is critical that these major information and procedural gaps are filled. Our information must be integrated into the EIS and our concerns must shape the EA process before the Panel phase begins. This is a required first step in the Crown meetings its responsibilities to consult with, and as

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<sup>1</sup> Letter from the JRP to Review Participants re: Notice of Panel Request for Written Comments dated November 19, 2014. Retrieved from: <http://www.ceaa-acee.gc.ca/050/documents/p59539/100530E.pdf>

<sup>2</sup> Page 4, Proposed - Aboriginal Consultation Plan for the Environmental Assessment of the Proposed Shell Pierre River Mine Project for Lakeland Métis Local 1909, May 2013.



necessary accommodate, Métis Local 1909 for any adverse impacts caused by this Project on our Aboriginal rights and related interests.

There is time to ensure these responsibilities are met before Shell provides responses to Round 2 SIR to the Panel in 2015. Shell has requested the environmental assessment (“EA”) process be suspended<sup>3</sup> and, since this time, has provided several quarterly updates on progress in relation to work aimed at addressing these SIRs. In their latest updates<sup>4,5</sup>, Shell indicates they are continuing work on:

- a) A revised mine plan, including field activities, coordination with Shell PRM, reassessment of tailings disposal area location;
- b) “Collaborations” with government and Aboriginal groups on EA methods (i.e. regional study area sizing, assessing effects on Aboriginal culture and heritage);
- c) Consultation activities with Aboriginal groups; and
- d) Traditional land use (“TLU”) studies being completed by Métis groups (Métis Local 1909 is absent from this list of Métis groups Shell is working with).

In its letter from November 13, 2014, Shell indicates they will let the JRP know when to expect responses to Round 2 SIRs by February 11, 2015.

Métis Local 1909 feels it is imperative that Shell’s response to Round 2 SIRs be complete. However, it is not clear how Shell can respond to Round 2 SIR#19 (p.13) at this time without any baseline information on Métis Local 1909 traditional use or other values. In reference to Section 5(1)(c) of the *Canadian Environmental Assessment Act* (2012), this SIR requires the Proponent to “provide the assessment of the PRM Project effects on Aboriginal culture and heritage”. The *Act* also requires consideration of health and socio-economic conditions and traditional use information. Information provided by Shell to date is not sufficient to determine the significance of adverse effects to Aboriginal rights and interests, let alone information necessary to understand measures to mitigate these effects.

This letter aims to initiate engagement between Métis Local 1909 and the JRP and offers preliminary comments on the following information that was only recently considered:

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<sup>3</sup> Letter of notice to Review Participants from the Joint Review Panel re: Notice of Panel Request for Written Comments dated November 19, 2014, Retrieved from: <http://www.ceaa-acee.gc.ca/050/documents/p59539/100530E.pdf>

<sup>4</sup> Letter to CEAA from Shell re: Quarterly Update for the Pierre River Mine Project Canadian Environmental Assessment Registry No. 59539, dated August 13, 2014, Retrieved from: <http://www.ceaa-acee.gc.ca/050/documents/p59539/99706E.pdf>

<sup>5</sup> Letter to the Joint Review Panel from Shell re: Quarterly Update for the Pierre River Mine Project Canadian Environmental Assessment Registry No. 59539, dated November 13, 2014, Retrieved from: <http://www.ceaa-acee.gc.ca/050/documents/p59539/100518E.pdf>



- Environmental Impact Statement, Section 8.3 Traditional Knowledge and Land Use (2007);
- Initial responses to SIRs, Appendix 3.8 Traditional Land Use Environmental Setting Report Update (October 2013);
- JRP Round 2 SIRs (March 18, 2014); and,
- Shell quarterly updates (May 13, 2014, August 13, 2014, and November 13, 2014).

This letter is a direct response to the specific Panel request for comment on EA methods issued November 19, 2014. The information above was subject to a very focused review in consideration of Métis Local 1909 members' rights and interests. As the list above indicates, the review focused on traditional use and knowledge and did not directly consider other values also critical to understanding the potential for significant adverse effects on Métis Local 1909 rights and interests, such as wood bison, caribou, moose, furbearers, fish and fish habitat, water quality and quantity, rare or threatened species or ecological communities, social conditions, health effects, economic development, cumulative effects, among other values. Métis Local 1909 has been unable to complete any assessment of these other relevant VCs and issues areas because we have not been funded to meaningfully engage in the EA process to date. Because this letter is the result of a focused review (rather than a comprehensive one), it is critical that this letter not be considered to be a comprehensive description of Métis Local 1909 rights and interests. This preliminary letter is the result of limited funding available from CEAA to participate in the process. A more robust description of concerns can only be developed when Shell and/or the JRP provide adequate resources for Métis Local 1909 to meaningfully engage in this process.

The remainder of this letter is organized into key themes based on this focused review and the resulting concerns, with references made to specific documents reviewed.

### **1. Appropriateness of EA methodology question is premature**

On November 19, 2014, the JRP asked review participants to provide comments on regional study area (RSA) sizing and assessment of effects on Aboriginal culture and heritage<sup>6</sup>. In this letter, the JRP asks that these comments be submitted no later than December 15, 2014, indicating "the Panel may consider conducting a pre-hearing

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<sup>6</sup> Letter of notice to Review Participants from the Joint Review Panel re: Notice of Panel Request for Written Comments dated November 19, 2014, Retrieved from: <http://www.ceaa-acee.gc.ca/050/documents/p59539/100530E.pdf>



process, if there appears to be an interest or a need for such a process” (p.2). Before Métis Local 1909 may determine whether or not a pre-hearing is required, more information is needed. Ultimately the scope of the EA process has been too narrow, effectively excluding Métis Local 1909 traditional use, knowledge, Aboriginal rights and other interests. While Métis Local 1909 is aware of several members with historic and active interests in the proximate area to the Project, we have not been provided any resources with which to conduct research into the extent or character of our members’ traditional use, knowledge, or interests in relation to the proposed Project. What is required before Métis Local 1909 can provide comment is, at the very least, an initial understanding of member traditional use and knowledge in the vicinity of the Project. As such, this request for comment on EA methods is premature for our Local.

To explain, the RSA and any detailed effects assessment methodology will depend upon the results of an initial scoping exercise; that is, at least a basic understanding of the extent and quality of the values under examination and how vulnerable they are to proposed physical works and activities proposed by the Proponent. Such project interactions cannot be determined without any semblance of a relevant contextual baseline for the relevant VCs. Once Métis Local 1909 have this understanding, we may find the RSA to be lacking and request it extend (for example) further north than what has been proposed by Shell<sup>7</sup>.

At this time, Métis Local 1909 knows of at least one member who “uses the area to the north of the RSA for traditional land use” (p.6). The spatial extent and magnitude of the effect on this and other members’ activities will depend in part on the distribution, abundance and status (e.g., population health) of the values listed on page 6 of the Round 2 SIRs, from (i) moose to (v) migratory birds. However, biophysical indicators as a replacement for appropriate indicators for assessing traditional use (e.g. sufficiency of resources) is not appropriate. Meaningful Aboriginal rights practice is sustained not only through presence of wildlife, but many interrelated factors that have not been considered by the Proponent. Questions that must be asked of Shell include: What are the potential effects of the Project on lands and resources required to sustain the meaningful practice of Métis Aboriginal rights? What quality and quantity of resources are required for maintaining subsistence, cultural, and intergenerational needs?

Any effects assessment must be concerned with sufficient quantity and quality of resources (and the ecological function that sustains them) to maintain minimum traditional use activities. Distribution of these resources is also critical to understand any adverse effects on the interconnectedness of use in these areas, which includes examination of how members might use the same area for hunting,

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<sup>7</sup> p.5, JRP round 2 SIRs to Shell dated March 18, 2014, Retrieved from: <http://www.ceaa-acee.gc.ca/050/documents/p59539/98510E.pdf>



trapping, fishing, and spiritual purposes. Nevertheless, it is too soon to meaningfully comment on the proposed methodology. Only once Métis Local 1909 has been provided adequate resources to properly understand our members' use and knowledge of the area can comments be meaningfully provided. It is thus critical that a traditional use and knowledge study be undertaken to inform the EA, prior to any JRP pre-hearing taking place to rule on the appropriate size of the RSA.

Shell has indicated that they agree with Métis Local 1909 on the fact that any pre-hearing is premature, it is critical that information on Métis Local 1909 be collected and provided to the JRP before the EA process proceed further. As highlighted throughout, the information on the EA record is far from complete.

## **2. Impacts on members' traditional use is not understood for the EA process**

Métis Local 1909 has used the severely limited funds at its disposal to commission a review of previous project-specific traditional use studies undertaken for proposals south of the proposed Shell PRM Project.<sup>8</sup> In this review, it was found even with a small and non-Shell PRM Project specific set of data that:

- a) Métis Local 1909 members have historically used and currently use the resources and lands in the vicinity of the proposed Project; and
- b) Available use information in this area is incidental and not representative of actual use of the area.

In other words, the available secondary TLU data is indicative of potential higher intensity and extent of Métis Local 1909 members' values and interests in the proposed Project area, but by no means can be considered sufficient as an information base in and of itself for the purposes of this EA.

The authors recommended that a Shell PRM Project-specific use and knowledge study be undertaken to understand the potential impacts of the proposed Project on Métis Local 1909 rights and interests.

Despite the fact that Métis Local 1909 rights and interests are likely to be impacted by the proposed Project, neither the Crown nor Shell have informed us of the EA process or the proposed Project. Upon a brief scan of the Environmental Impact Statement ("EIS") of December 2007, it is clear that Métis Local 1909 rights and interests were not considered.

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<sup>8</sup> Galbraith, L and MacDonald, A. (2014, December 5). Gaps in TLU and TK Information in Relation to the Proposed Shell Pierre River Mine. Internal memo sent to Métis Local 1909 from The Firelight Group Research Cooperative.



Since the EIS submission, the Métis Nation of Alberta Region One has stated it “believes that other Métis groups could potentially be affected” by Project and cumulative effects, a fact that is reiterated by the JRP on page 11 of Round 2 SIRs. The JRP has asked Shell to update their Project and cumulative effects assessment (including “traditional land use, cultural heritage, historical or archaeological sites and Aboriginal rights”) in order “to include information on each Métis group that could potentially be affected” (p.11). They have asked that Shell make “reasonable efforts to gather additional information from potentially affected Métis groups” and “integrate the information” into the assessment (p.11). Even after this gap was clearly identified, Shell has not made any independent effort to reach out to our Local.

Furthermore, Métis Local 1909 was not invited to Shell’s full day multi-stakeholder workshop planned for November 20, 2104. As outlined in Shell’s latest quarterly update<sup>9</sup>, the workshop aimed to discuss methodology of cultural effects assessment. Despite Métis Local 1909 interest in this methodology, no effort has been made to consider our concerns and interests in any part of the EA to date. As such, Métis Local 1909 rights and interests are not likely to be considered in Shell’s upcoming responses to Round 2 Supplemental Information Requests (“SIRs”). At this time, Shell has not made “reasonable efforts” to gather information from Métis Local 1909 and, thus, the procedural and substantive requirements of the Crown’s duty to consult will not be satisfied.

### **3. Inadequate capacity to meaningfully participate in the EA**

To begin addressing this JRP request, Métis Local 1909 requires financing to:

- a) Undertake a Project-specific traditional use and knowledge study; and
- b) Review regulatory documents developed by the JRP, regulators, and the Proponent.

At this time, however, Métis Local 1909 does not have the financial resources needed to undertake baseline research on traditional use and knowledge, let alone undertake a characterization of effects or significance of project and cumulative effects on our rights and interests. Nor do we have the necessary resources to undertake a review of the EIS in full and comment on any issue-specific concerns we might have like wildlife, water quality and quantity, fish and fish habitat, let alone cumulative effects. Métis Local 1909 has been provided with very limited capacity funding from CEAA. This funding has merely allowed us to respond to this Panel request and review our existing, non-Shell PRM Project-specific traditional use

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<sup>9</sup> Letter from Shell to JRP re: Quarterly Update for the Pierre River Mine Project CEAA Registry No. 59539, dated November 13, 2014.



studies. Even this initial work has left us with inadequate budget for reviewing upcoming responses to the JRP's Round 2 SIRs or participating in the Panel phase of the EA process.

#### **4. EIS out of conformance with CEAA 2012 and SIR#19 at this time**

It must be pointed out that impacts on Métis Local 1909 interests, such as culture, must be considered in any effects assessment required under the *Canadian Environmental Assessment Act* (2012, s. 5(1)(c)(i) and (ii)). Métis Local 1909 respectfully requests that our rights and interests be seriously considered in this regulatory process, including (but not limited to): likely project and cumulative effects on knowledge and use, culture and heritage, socio-economics, as well as tailoring potential economic benefits and opportunities to our members. Our members' rights and interests will be put at risk if the proposed Shell PRM Project were to proceed without the necessary information collection and assessment of Métis Local 1909 traditional use, socio-economic, and cultural values. A meaningful response to Round 2 SIR#19 would go a long way to begin addressing our concerns.

In the cover letter for the Draft Aboriginal Consultation Plan for Métis Local 1909 in relation to the proposed PRM Project (May, 2013), the Canadian Environmental Assessment Agency states that the "Government of Canada is aware that the proposed Project is located within an area where ML 1909 members may undertake traditional activities". As such, Shell should be aware of the potential Project interactions with Métis Local 1909 rights and interests. Despite this clear recognition by the Crown, no effort has been made by Shell, to date, to collect or understand our rights and interests as it relates to the proposed Project.

#### **5. Request to participate in biophysical studies**

Some Métis Local 1909 members have voiced interest in participating in and contributing to studies on biophysical values, such as those on wood bison. On page 6 of the JRP Round 2 SIRs, the JRP calls upon Shell to update its habitat suitability model for wood bison using various sources of information including indigenous knowledge. Our membership collectively holds traditional use and knowledge information that is critical to informing any baseline studies undertaken by consulting biologists or existing government research, as well as informing baseline data, effects characterization, and mitigation. At this time, no effort has been made by Shell to engage with Métis Local 1909 to define acceptable approaches to engaging with members to participate in this work. Specifically, any participation in biophysical studies where traditional knowledge might be collected would require serious discussion on how this knowledge would be collected and interpreted in the EA.



The Panel goes on to state that further baseline and assessment of Project and cumulative effects on wood bison should be used by Shell in order to “determine potential effects of displacement of bison on traditional use of the Ronald Lake herd” (p.8). Métis Local 1909 agrees that rigorous biophysical analyses are crucial for determining cumulative effects on access to resources for traditional use purposes, however, the understanding Project and cumulative effects on traditional use are as much informed by changes in ability to access resources from existing use areas and changes in perceived quality of resources. As such, research on traditional use and knowledge is just as crucial as field studies on the biophysical values for informing any effects assessment. Métis Local 1909 looks forward to reviewing Shell’s responses to Round 2 SIRs.

## **Closure**

Métis Local 1909 is committed to engaging with Shell and the regulators in a constructive and collaborative manner to address these and other concerns. However, the EA process has not considered how the Project has the potential to have adverse effects on Métis Local 1909’s rights and interests. It is the view of the Métis Local 1909 that if Shell and the Crown do not offer adequate time and funding for Métis Local 1909 to participate meaningfully in the EA process, they are putting Métis Local 1909 members’ rights and interests in grave risk.

To begin addressing some of Métis Local 1909 preliminary concerns regarding the EA process, we request the following:

- a) The scope of the EA must be expanded to include Métis Local 1909 rights and interests, which requires the following:
  - a. Financing for Métis Local 1909 to participate in the JRP EA process, including a technical review and response to Round 2 SIR responses, preparation and participation in JRP hearings, and preparation of final comments;
  - b. An independent, PRM Project-specific traditional use and knowledge study is developed in collaboration with Métis Local 1909 to meaningfully inform EA methods, baseline, effects characterization, significance estimates, and mitigation measures;
- b) The scope change, and the information that is gathered following this scope change, must be meaningfully incorporated into any Round 2 SIR responses before any pre-hearing is held on appropriate RSA sizing and EA methodology and before any JRP hearings; and,





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- c) An opportunity for our members to participate in biophysical studies with Métis Local 1909 involvement in ensuring any traditional knowledge is used appropriately.

Sincerely,

**Original Signed**

Melina Scoville, President  
Métis Nation of Alberta, Local 1909

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CC: Janice Elliot, Vice President, Métis Nation of Alberta, Local 1909  
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