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INDUSTRY RELATIONS CORPORATION**

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September 9, 2014

Pierre River Mine Project Joint Review Panel
Canadian Environmental Assessment Agency
160 Elgin Street, 22nd Floor
Place Bell Canada
Ottawa, ON K1A 0H3

Via email: shell.reviews@ceaa.acee.gc.ca

Attention: Mr. Alex Bolton – Joint Review Panel Chairman

Dear Mr. Bolton,

**RE: Shell Pierre River Mine Hearing
Methods for RSA Selection and for Cultural Assessment**

We respectfully submit, for your consideration, these comments on Shell's suggestions regarding RSA, cultural assessment and ruling on methodology for those matters in advance.

On pp. 2-3 of its May 14th letter, Shell states:

One key issue raised by the JRP in the R2 SIRs is the size of the Regional Study Area ("RSA") for the PRM project. No specific guidance has been provided by provincial or federal regulators on how to appropriately size a terrestrial RSA... The methodology used to develop the terrestrial RSA for the PRM EIA has been used for multiple EIAs in the oil sands region, including Shell Jackpine Mine – Phase 1, Canadian Natural Horizon Project, Suncor Voyageur Project, Shell Muskeg River Mine Expansion, and Suncor Voyageur South Project. The terrestrial RSAs developed for those projects were not substantially challenged and have been found to be reasonable by the regulators in each of the noted applications...

The RSA used in the PRM EIA was discussed with regulators prior to EIA submission, and throughout the regulatory process to date, and no substantial concerns from regulators were raised about the size of the terrestrial RSA; however, the JPME Decision Report and subsequent PRM R2 SIRs have made it clear that this approach to study area sizing is not acceptable to the JRP. Unfortunately, very little specific direction has been provided to allow Shell to develop an alternative RSA that is scientifically defensible."

ACFN was pleased that the PRM Panel has recognized that the past approach is not protective of the environment and we are surprised Shell would cite the appropriateness of past EIA practice given the mounting evidence that the adverse effects of oil sands development in the Lower Athabasca region (including ACFN's traditional territory) are greater than predicted in past EIAs, as shown in recent reports, studies and health advisories.¹ The impacts described in the cited reports and research papers are examples of impacts that flow from projects already approved, some of which were predicted to have "no significant adverse impact".

With the growing local concerns about, as well as international scrutiny of, Canada and Alberta's management of the environmental effects of oil sands development it seems there is pressing need to revise the approach to oil sands EIAs so that decision-making, monitoring and management are based on more credible information. Luckily, much work exists to guide improvements to EIA practice. While Shell says that "very little specific direction has been provided", we note that the submissions by interveners, including ACFN, in the JME hearing, as well as the SIR submissions by ACFN and CEAA for the PRM process *are* detailed and provide a great deal of information that can be taken as guidance on setting an appropriate RSA.

Shell goes on in page 3 of its May 14th letter to announce its intention "to collaborate with, and solicit feedback from, relevant federal and provincial regulators to determine appropriate methodologies" to address what Shell calls the "limited guidance" on the RSA issue. Shell suggests meeting with relevant regulators, and then presenting a methodology to the JRP for consideration whereupon the JRP may invite public comment prior to providing a ruling on the appropriateness of the methodology. Shell also states its intent to follow the same process with respect to the issue of assessment of effects on Aboriginal culture and heritage, with the addition of engaging "Aboriginal groups impacted by PRM to solicit their feedback on an appropriate methodology" for this assessment.

ACFN has consistently raised methodological issues as part of sufficiency reviews on Shell's JME and PRM projects since at least 2011. We have provided extensive input to Shell on methodology, and even proposed to work collaboratively with Shell on the cultural assessment for JME. Our input was ignored, in large part, by Shell and our attempts to work constructively with Shell were rebuffed.

We agree with the JRP's previously stated position that methodological issues are best dealt with at the hearing, rather than in advance. Yet, given the recurring issues with

¹ 2011, Report of the Auditor General, Chapter 2, Assessing Cumulative Environmental Effects of Oil Sands Projects. Online: http://www.oag-bvg.gc.ca/internet/english/parl_cesd_201110_02_e_35761.html; Kurek et al., *Legacy of a half century of Athabasca oil sands development recorded by lake ecosystems*. Proceedings of the National Academy of Science, January 29, 2013, vol. 110, no.5. at 1763 [Kurek Study]. Kirk et al., *Landscapes and Waterbodies of the Athabasca Oil Sands Region*. Journal of Environmental Science and Technology, Just Accepted Manuscript, May 29, 2014. [Kirk Study].; TAB D17.

Shell's methodology, we see the need to make some changes in approach to ensure accurate information is before the Panel.

Our input on Shell's cultural assessment has consistently emphasized the need to ensure that the Aboriginal community's experiences with, and views on, impacts are considered in the assessment and the need to ensure that the assessment is conducted by experts with sufficient knowledge of Aboriginal cultures and communities, in part gained through lived experience in Aboriginal communities. This points to the need to ensure that Aboriginal communities are in the driver's seat, so to speak, of any assessments on their cultures and rights.

We would like to suggest that the JRP might instead consider endorsing an approach whereby cultural assessments are based on culture-specific terms of reference established by each affected Aboriginal group, who will then each have the opportunity to evaluate whether Shell's work has met their specific terms of reference, and Shell will be required to ensure that each Aboriginal group is satisfied that its assessment meets the ToR, prior to submission of the assessment to the Panel. An alternate approach could be to have an independent third party, with appropriate expertise, conduct this assessment, in consultation and collaboration with the potentially affected Aboriginal groups. Of course, appropriate funds for this work would have to be arranged (perhaps through a cost order to Shell).

Ultimately, we fear that no matter what methodology is used by Shell, it can be manipulated to assist them demonstrating that there are no significant or immitigable impacts.

We anticipate the Panel's awareness of and sensitivity to the importance of the Aboriginal perspective in relation to the matters discussed above and thank you for considering our input.

Sincerely,

<original signed by>

Lisa King
Director

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