



Métis Nation of Alberta – Region 1

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1/17/14

Pierre River Mine Joint Review Panel Secretariat
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RE: Public Comment by the Métis Nation pertaining to *Shell Pierre River Mine (PRM) Project Supplemental Information Requests Shell Canada for the Pierre River Mine Oil Sands Mine Project Application and Environmental Impact Assessment Report.*

Dear Joint Review Panel

The Métis Nation of Alberta Association Region 1 (MNA R1) is the association which represents the Métis people of Northeastern Alberta. The MNA R1 intervenes with various government agencies on behalf of members whose rights are at risk of infringement as a result of industrial development on traditional Métis territories.

The Métis Nation of Alberta Association (MNA) was established in 1928. It now represents the interests of 35,000 Métis members and with 96,865 Albertans who self-identify as Métis and new membership rules coming into effect, this number will undoubtedly rise.¹ The MNA is divided into six geographic zones or regions. Métis Nation of Alberta Association, Region 1 (MNAA R1) in Northeastern Alberta stretches from the Lac La Biche area to the border with the Northwest Territories. The 4,354 registered members of the MNAA R1 elect a president and vice-president to three year-terms, extending to four years in 2014. The president and vice president are supported by administrative staff at the MNA R1 Office in Lac La Biche. The role of the MNAA R1 is to coordinate region-wide activities in line with directions it receives from

¹ Statistics Canada, 2011, National Household Survey: Aboriginal Peoples in Canada: First Nations, Métis and Inuit. 99-011-X accessed October 24, 2013.

<http://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-011-x/99-011-x2011001-eng.cfm#a4>

the Regional Council composed of presidents of Métis Locals – there are 11 Locals in total within the MNAA R1.

Métis Locals are community-based organizations with a minimum membership requirement of 25 people. Locals elect members to voluntary executive positions. Presidents of these locals attend Regional meetings and Annual General Meetings of the MNA and advocate on behalf of grass-roots members. Métis Nation of Alberta Association Local Councils are located in Fort Chipewyan (#125), Fort McKay (#63), Fort McMurray (#1935), Fort McMurray (#2020), Willow Lake/Anzac (#780), Conklin (#193), Owl River (#1949), Lac La Biche (#2097), Lakeland area (#1909), Athabasca Landing #2010, Buffalo Lake (#2002). The MNAA R1 also represents directly the interests of Métis people living in areas where no Local Council exists at present, such as Chard. They also represent the interests of individuals who are members of the Métis Nation of Alberta, but have chosen not to join a Métis Local. For more details about our organization, we encourage the panel to review the MNA bylaws that can be found at <http://metis.albertametis.com/MNAHome/MNA2/MNA-Bylaws.aspx>

This letter contains the MNA R1's comments on Shell Canada Pierre River Mine (PRM) project. The first part of the letter outlines the MNA R1's general concerns with the consultation process to date. Shell has disregarded our request for consultation on the PRM project, even going so far as to not send us a copy of this latest round of SIRs. Further, they have ignored or misrepresented requests to determine its potential impacts on our constituent member Locals. The second part of the letter contains specific comments about the SIRs. Our review places particular emphasis on sections related to Stakeholder and Aboriginal Consultation and on Aboriginal Traditional Land Use.

General Concerns with the Consultation Process

Issue 1: Capacity to Undertake Effective Consultation

In order for consultation with Aboriginal Stakeholders to be considered meaningful, both proponents and community representatives need to fully understand the issues and be empowered to have an informed conversation about a project's potential impacts. Communities require information and technical capacity to review the project application. Likewise, the proponent must be provided with information on Aboriginal land use within its project areas. To date Shell has failed to provide the capacity necessary to the Métis community in Northeastern Alberta so that it may undergo a thorough technical review of the project either at a Local or Regional level. Furthermore, Shell has not provided funding to complete a Traditional Land Use assessment of its project area. With the exception of the Fort McKay Métis Local 63 which has chosen to partner with the Fort McKay First Nation, none of the Métis communities which CEAA has recognized as potentially affected have been provided the resources necessary to review the proposed project, to engage their membership, or meet with the company on a regular basis about project specific issues. Furthermore, Shell has failed to meet with our organization once since the Jack Pine Mine Expansion Hearing over a year ago. Further, they have failed to even consider our requests to include project specific Traditional Knowledge information from Métis communities. For this reason we believe the application should be considered incomplete and returned to the proponent.

Issue 2: Lack of Engagement by Shell, the Government of Alberta and the Federal Government

Closely related to the first concern, the MNA R1 regrets that Shell, the Government of Alberta and representatives of the Federal government have had only minimal engagement with the potentially affected Métis community in Northeastern Alberta. At earlier stages in the process the MNA R1 requested that the proponent meaningfully engage with the Métis community in northeastern Alberta so that we may evaluate the potential impacts of the project on our members. To date this has not happened. Furthermore the Joint Review Panel has requested that MNA R1 respond to this latest round of Supplementary Information Requests but has provided only limited funds and no access to third-party technical experts. As such, it is very difficult for us to comment on issues involving air quality, water resource use and project impacts on biodiversity. Without adequate resources we have not had the chance to study the project's potential cultural and socioeconomic impacts and possible impacts to Aboriginal traditional land use. We were especially disappointed to see that Shell agreed to fund other Aboriginal groups review of the latest round of SIRs but did not even have the courtesy to send us a DVD.² Without such information it is impossible to consider this consultation process meaningful or complete, particularly given the tight timelines imposed on this project.

Issue 3: Definition for Potentially Affected Aboriginal Communities

Throughout this round of SIRs, Shell makes reference to engagement with only Métis Locals 125, 1935, and 63. While we are pleased that Shell has initiated a consultation process with these communities, we would like to ask the proponent as well as the two Government's how they determine: who is the constitutionally impacted community in northeastern Alberta and how that community is impacted by projects such as the proposed PRM project. Furthermore, the MNA R1 asks that Shell explain its process for providing capacity funding to potentially affected Aboriginal communities. As the association representing the Métis people in Northeastern Alberta, one of Canada's constitutionally recognized Aboriginal people, the MNA R1 has reason to consider itself and its members a potentially affected Aboriginal community. As such, the MNA R1 requests that Shell and the Provincial and Federal Governments recognize this fact or provide us with an explanation as to why they do not. We ask the Panel to not consider this application complete until it is provided a satisfactory answer to these questions and can therefore make a determination about the potential impacts of the project on the Métis community.

Specific Concerns with the Supplementary Information Requests

Cover-Letter

On page 2 Shell states that “the JPME hearing also allowed for a considerable amount of new Traditional Land Use (TLU) information to become available.” And that they have “taken the opportunity to incorporate this information into its PRM cultural review and TLU assessments, where practicable.” Unfortunately, as was repeatedly pointed out during the JPME hearing and in the Panel recommendations, Shell did not complete project specific Métis cultural and TLU information outside of work complete by the Fort McKay Métis community in partnership with the Fort McKay First Nation. As a result, Shell has yet to provide the panel a full understanding

² Shell Canada, “Shell Canada Submission to Alberta Environment and Sustainable Resource Development - Bi-Monthly Consultation Report for the period July 2013 to November 2013.” Dec. 4, 2014. <http://www.ceaa.gc.ca/050/documents/p59539/96751E.pdf>.

of how the project may impact our members, even though the proponent agrees that the affect of the PRM project on members of the Métis community in northeastern Alberta may potentially be “high” for at least some Métis people.³ Such a finding should warrant additional work, particularly considering such work was undertaken for other communities which the proponent deemed to potentially be significantly impacted by the project. We strongly encourage the Panel to offer this direction to the proponent and deem the application incomplete until project specific studies with potentially affected Métis Locals and the MNA R1 are completed.

Determination of PRM Project Effect

SIR 5

Shell’s response to SIR 5 provides an effects assessment and environmental consequence of the PRM on all KIRs not previously assessed for the PRM only. MNA R1 requests Shell provide capacity funding to support a thorough review of the additional information.

Significance of Effects

SIR 7

The information presented in SIR 7 is of great interest to the Métis community in northeastern Alberta because it predicts the environmental consequences of effects prior to reclamation. As reclamation completed to date in the oil sands region has not demonstrated the re-establishment of biodiversity and ecosystem functions required to support traditional land use activities, the environmental consequences of PRM prior to reclamation represents the additional potential losses to traditional Métis territory given the current state of reclamation in the oil sands region. For example, in Table 7-1, the magnitude of the effect on riparian communities, old growth forests and wetlands is high and the direction is reported as reversible/irreversible with a high environmental consequence. Reclamation practices to address the potential effects on these three KIRs are in the rudimentary stages of development and have not demonstrated any potential to reverse the long-term effects. MNA R1 requests capacity funding for themselves and potentially affected Métis Locals to review the methods and assessment results presented by Shell in the Appendices of the Additional Information submitted as part of the SIRs. MNA R1 also requests clarification on how the effects on KIRs can be described as both reversible and irreversible.

As part of the response to SIR 7, on p.3-47, Shell states that environmental consequences for Aboriginal Rights and Interests cannot be determined in the same manner as the other biological or environmental KIRs contained in the preamble, and thus are not outlined in the tables presented as part of the response to SIR 7. Shell’s position is that “the environmental consequences to a particular Aboriginal Right or Interest will be closely tied or directly related to the environmental consequences of the supporting environmental or biological KIR.”

The environmental consequences of oil sands development on Aboriginal Rights and Interests are of utmost concern to MNA R1. Shell does not provide any predictions of environmental consequences on Aboriginal Rights and Interests but suggests a process that could be used to estimate the environmental consequence. MNA R1 requests that Shell apply the suggested method (see Section 3, 3-47) to determine the environmental consequences of the PRM on Aboriginal Rights and Interests. MNA R1 requests capacity funding for themselves as well as potentially affected Locals to work with Shell to identify the KIRs that are associated with

³ SIR Response 3-61 & 3-65.

Aboriginal Rights and Interests and to review the methods and results of the effects assessment and predictions of environmental consequence on Aboriginal Rights and Interests.

SIR 8

Shell provided an effects assessment of the 2013 Application Case and 2013 Planned Development Case to a Pre-Industrial baseline. For some components, the 2013 Base Case was also compared to a Pre-Industrial baseline. The Pre-Industrial baseline should represent traditional Métis territory prior to the initiation of industrial development in the region and should be the starting point for evaluating cumulative effects of PRM. A comparison of the Significance of each KIR is presented before and after reclamation for each of the cases assessed against the Pre-Industrial baseline. MNA R1 requests that Shell present the direction, magnitude, geographic extent, duration, reversibility, frequency and environmental consequence for the LSA and RSA of each KIR for the 2013 Base Case, 2013 Application Case and 2013 Planned Development Case assessed against the Pre-Industrial baseline. MNA R1 requests that Shell define the criteria used to determine the magnitude of each KIR. The summary provided in the response to SIR 8 indicates that many Terrestrial Resources KIRs have undergone a change of greater than 10% of the resource and in some cases greater than 20%. It is unclear in the Additional Information provided how high, low and medium magnitude is determined for KIRs. MNA R1 requests that Shell present the magnitude of change from the Pre-Industrial baseline for all cases.

MNA R1 requests capacity funding to review the methods used to define the Pre-Industrial baseline. Additionally they request funding for affected Métis Locals to do the same. Furthermore, MNA R1 requests that the environment effects and environmental consequences on Aboriginal Rights and Interests be determined using the Pre-Industrial baseline and that MNA R1 and its member Locals be provided with capacity funding to review this information.

On page 3-65 Shell states that in the Planned-Development Case (PDC) “[t]here is not enough information to assess the effects of the 2013 PDC on trapping by the Fort McMurray Métis.” They go on to state that “as a result of the [project’s] high magnitude and long duration effects to traditional hunting, fishing and plant and berry harvesting the effects [...] are considered significant.” While we are pleased that Shell has recognized that the impact of their project will be “significant,” we still believe that a baseline project specific traditional land-use study and technical review are necessary to determine whether measures can be taken to reduce the impact and mitigate potential community concerns. We understand that Shell has provided such opportunities to other communities who will be impacted to a lesser degree and we would expect that the same opportunities be offered to our Aboriginal group. Additionally we would ask that Shell review their project and consider how it will affect other Métis communities in the region. Specifically Shell indicates that the impact will not be significant for Métis Local 125. We would like more information regarding how this decision was reached and what information Shell is using to make this determination given that they did not complete a project specific study with the Métis community in Fort Chipewyan. Furthermore there are other Métis communities in the region that we represent who may be significantly impacted by the project. Specifically, as noted in the JPME hearing, there are a number of trappers and harvesters who live south of the RSA but hold RFMAs and other traditional use interests in the RSA and even the LSA. Without a study, regional in scope, Shell cannot determine the degree of impact of their project on the Métis community in the region nor can they assess which Métis communities will be significantly or insignificantly impacted. We ask the Panel to deem the application incomplete

until this information is provided to the Panel and we ask the proponent to work with MNA R1 to design such a project that meets the needs of the Métis community in the region.

SIR 60

In this SIR Shell is requested to determine the impact of the project on “Aboriginal people” and develop mitigation strategies to assess the cumulative effects of the Project on the health of affected communities. Additionally Shell is asked to “describe how traditional practises of Aboriginal groups in the area may be impacted by changes or perceived changes in the levels of toxic substances in traditional food items,” Assess the effects on the health of Aboriginal people due to cumulative impacts on their traditional lifestyle caused by the proposed project in combination with past, existing and future development using a pre-industrial baseline; and “identify possible monitoring and mitigation strategies for the direct and cumulative impacts of the Project on the health of Aboriginal people.”

In partial response, Shell states that to “mitigate the impacts associated with a potential shift away from traditional foods, Shell will continue to consult with the Fort McKay First Nation and Métis, Athabasca Chipewyan First Nation, Mikisew Cree First Nation, Fort McMurray #468 First Nation, Fort Chipewyan Métis Local #125 and Fort McMurray Métis to address issues and concerns about traditional use of the areas adjacent to and outside the PRM area and the perceived changes in the levels of toxic substances in traditional food items.” It is concerning for MNA R1 that Shell only notes those three Métis communities when potentially others will also be impacted by the project. Again we ask Shell to explain their process for determining which Métis communities they will and will not consult with. For example while the company chooses to include Fort McMurray #468 First Nation in their study which is centred in Anzac, it is difficult for us to comprehend why they then choose not to include Métis Local 780 which is also centred in Anzac or Métis Local 2020 which is based in Fort McMurray or the numerous Métis people who are members of MNA R1 but have yet to join a Métis Local in the region. Consultation is not an activity to which the company can pick and choose its partners. We again ask Shell to meaningfully engage with our organization so that we can develop a consultation strategy so that all Métis community members potentially affected by the proposed project can be properly consulted and project specific concerns can be identified and then mitigated or accommodated.

An additional concern is that currently Shell does not provide the resources necessary to any Métis community (with the exception of Fort McKay which is partnered with the neighbouring First Nation) to make these consultations regular or meaningful. While Shell is proud to note that the Oil Sands Developers Group, an organization to which they are a major funding partner, provided \$22 million dollars for Industrial Relations and Government and Industry Relations corporations owned by First Nations between 2007 and 2009 (and presumably more in the five years after)⁴ to ensure meaningful consultation the company has yet to provide any funding for consultation to our organization, and have yet to sign a project specific consultation agreement with Métis groups that they identify as potentially affected. We therefore ask the Panel to require the proponent to develop an action plan and signed consultation agreement with MNA R1 and potentially affected Métis Locals prior to accepting Shell’s plan to mitigate the impacts associated with developing PRM.

⁴ PRM SIR Response, Appendix 7 Page 6&7; Appendix 8 Page 18&19.

Cumulative Effects

SIR 8

On page 3-66 to 3-67 Shell states that “There is not enough information to assess the effects of the 2013 PDC on trapping by Fort McMurray Métis.” Further, Shell makes a determination that the majority of project impacts will be minor to “members of Fort Chipewyan Métis Local #125” because the majority of their traditional land use “occurs North of the RSA.” Outside of recognizing that the Fort McKay Métis community will likely be adversely impacted by the project, the proponent makes no further reference to how Métis communities will be affected by the proposed development plan. Furthermore, they make these conclusions without completing one Métis specific Traditional Land Use study, or providing capacity for Métis communities to complete their own independent reviews of the project. We feel that these statements are inaccurate and that the company should complete additional studies to determine how Métis community members may potentially be affected by the project. Further research, including a technical review and project specific TLU study, will be required to understand the nature of these impacts and how the proponent might work with the Métis community in northeastern Alberta to mitigate and/or accommodate these concerns.

Aboriginal Rights and Interests

SIR 64

In the SIR Shell was asked to justify choosing two non-Aboriginal RFMA holders to interview as part of the PRM project study. As noted in earlier testimony at the JPME hearing many Métis community members, some not belonging to either Métis Locals 1935, 125 or 63, have concerns with development on the west side of the Athabasca River. Again MNA R1 strongly encourages the Panel to deem this application incomplete until the proponent engages with Métis community members and community organizations to ensure the Panel is provided enough information to properly review the project.

SIR 65

In this SIR the Panel requested that Shell consider the impacts to the Local Study Area providing a list of the type and number of sources of information used, assess the impacts to each of the potentially affected Aboriginal groups, validate the information source by specifying the Aboriginal affiliation of each person who provided information, and provide details about how this information was incorporated into the Project assessment. We will deal with each of these points separately:

- i) *Provide the type and number of sources of information used.*

It is disappointing the Proponent seemed to only use the minimum when determining potential projects impacts. At the JPME Hearing both ACFN and MNA R1 provided lists of additional sources that could be consulted to gain a proper background to assess the potential project

impacts.⁵ It is unfortunate that the proponent chose not to include any primary source material in their review and it should be difficult for the Panel to deem the project complete without the inclusion of important primary source material from the Athabasca Oil Sands Research Project, the Northern River Basin Study Program, the Hudson's Bay Company Archives, National Archive of Canada and the Alberta Provincial Archives. It is also disappointing that the proponent chose not to consult with our group when determining what sources to review in preparation for this response. Had such a conversation taken place we would have gladly added to their source list which ultimately would have allowed them to improve upon their final product and better prepare the Panel to make a final decision.

ii) *Assess the impacts for each of the potentially affected Aboriginal Groups.*

While we are pleased that the proponent recognizes that the project will negatively impact RFMA 1275 which is identified as a key traditional use area by Métis Local 125, Métis Local 63 and Métis Local 1935 we are concerned that that the proponent does not identify any other potential Métis land users, even though a number of users, and concerns, were identified by our community at the JPME hearing in the Fall of 2012. We would ask that the proponent project specific TLU studies with those affected Métis communities, as well as MNA R1 to determine in fact a number of Métis members use land within the LSA and will be directly and adversely impacted by the project.

SIR 66

As above, we would ask the proponent to complete a project specific study with potentially affected Métis communities to determine whether impact to the region will be significant.

SIR 68

While Appendix 2, section 4.4 discusses the significance on the cumulative effects for the 2013 PRM Application case and PRM, it does so without project specific information from our community. We feel this is a significant gap and that the project application cannot be deemed complete without it.

Appendices

Unfortunately we were unable to complete a full review of the numerous appendices attached to the SIRs. The few we did briefly review did raise a number of concerns which call into question whether Shell has provided the detail necessary to consider this application complete. MNA R1 asks the Panel to consider this application incomplete until MNA R1 is provided the resources necessary to complete a full review of these SIRs.

Appendix 2 – Cumulative Effects

On page 35 Shell states that: “No spatial data regarding the traditional territories of potentially affected Métis groups was available at the time of report preparation, though the discussion of disturbance within First Nations traditional territories should be illustrative of the degree and

⁵ Métis Nation of Alberta, Region 1. “Written Submission to Participate in the Hearings.” Oct. 1, 2013: <http://www.ceaa.gc.ca/050/document-eng.cfm?document=81947>; Athabasca Chipewyan First Nation, “Written Submission to Participate in the Hearings and Notice of Question of Constitutional Law.” Oct. 1, 2013: <http://www.ceaa.gc.ca/050/document-eng.cfm?document=81951>.

type of change experienced by Métis groups as well.” This is an unfortunate statement and speaks to Shell’s decision not to meaningfully include Métis communities in their review. Spatial data is available from a number of Métis organizations in the region, and if Shell had entered into consultation agreements with those groups this information could have been shared along with project specific information that could assist the Panel in making their decision. We would therefore ask the Panel to deem this project incomplete until this information is brought before the Panel.

Appendix 7: Cultural Effects Review

On page 6 and 7 Shell outlines its approach to community engagement which, in short is to exclude Métis communities. This fact is brought into focus as you consider the discrepancy between consultation funding provided to First Nation Communities and Métis communities in the region. Between 2007 and 2009 Shell notes that the Oil Sands Developers Group provided approximately \$22 million in funding to IRCs/GIRs in the region. Additionally the proponent entered into “agreements with MCFN and FMFN that address each group’s project-specific concerns for all existing operations and the JME and PRM projects. Shell also has an agreement with ACFN that addresses ACFN’s project-specific concerns for existing operations.” No such project specific agreements exist for other Métis communities (with the exception of Fort McKay which is partnered with the Fort McKay First Nation) who only hold “Good Neighbour Agreements” that do not include funds for project specific consultation. Furthermore, a number of Métis communities in the region affected by the project do not even have a “Good Neighbour Agreement” with the proponent. As a result, as seen throughout the SIR response as well as the earlier EIA Shell has completed, very little project specific information from the Métis community is included in the application.

It is within this context that Shell makes the assertion on Page 31 that the project will, on its own, have an insignificant impact on the community of Fort McKay, on page 32 that: “Because the impacts within the RSA are limited to a few individuals and the large majority of traditional land use occurs north of the RSA, the impacts of the 2013 PDC are not expected to fundamentally alter the ability of Fort Chipewyan Métis Local #125 members to practice traditional activities. As a result, the effects of the 2013 PDC on harvesting by Fort Chipewyan Métis within the RSA are considered not significant. The effects of PRM on its own are also not considered significant;” and on page 33 that “Because of the small size of the PRM footprint in relation to the RSA and that most of the disturbance to traditional access within the RSA has been caused by existing and approved developments (i.e., the 2013 Base Case), the effects of the PRM on its own are not considered significant to Fort McMurray Métis TLU.” The company does not identify any other Métis community that the project may impact. As noted above, we disagree with this assessment and are not even sure how Shell could come to such a finding given they have yet to complete a Métis specific TLU study. As such, we would strongly encourage the Panel to ask Shell to provide a Métis specific TLU study prior to entertaining these assertions.

Summary

In sum, in response to the Canadian Environmental Assessment Agency’s invitation for public comments MNA R1 would like to express its disappointment with the Shell project’s SIR Responses, just as it maintains its disappointment with Shell’s earlier submissions and purposeful exclusion of our organization from the process. As noted earlier, Shell did not even send our organization a DVD let alone engage in a meaningful dialogue about the potential

project impacts on the Métis community in northeastern Alberta. We believe this application needs to be deemed incomplete until those conversations take place. If the Panel does not heed this advice, and chooses to deem the application complete, we will be forced to articulate these arguments at the Hearing and debate the issue of Métis consultation, ultimately wasting the Panel's time, reengaging in the same debates that the Shell JPME panel hoped to avoid when they made recommendations in the report for more effective consultation with the Métis community. Even though the recommendation is directed toward the Government of Alberta, one way the Proponent could potentially limit time spent discussing such issues at the Hearing would be to make a real effort to engage with Métis community representatives in a manner that would effectively identify Métis community-specific concerns about the PRM. To date this has not happened with the majority of potentially impacted Métis organizations in the region.

One positive step forward would be for Shell to sponsor the MNA R1 to conduct its own project-specific Métis environmental knowledge study. Additionally, the MNA R1 would welcome a Métis specific third party review of the project so it can better understand how the PRM might impact the Metis community. So far no original project-specific information on Métis land-use in the proposed project area has been collected and made public by Shell besides that provided to the Fort McKay Métis community which has partnered with the Fort McKay First Nation. Funding the MNA R1 to conduct its own Métis community-specific and community-based studies would provide reliable and verifiable information upon which meaningful engagement could take place between the MNA R1 and Shell and potentially the majority of issues and concerns could be mitigated or accommodated prior to the Hearing.

Sincerely,

ORIGINAL SIGNED

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