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FILE No.

FAX COVER

To: **Brent Maracle** **Fax:** **1.613.957.0862**
Panel Manager
Participant Funding Program
Canadian Environmental Assessment Agency

cc: **The Honourable Leona Aglukkaq** **Fax:** **1.819.953.0279**
Minister of the Environment

cc: **Jim Ellis** **Fax:** **1.403.297.8326**
President
Alberta Energy Regulator

From: Norine Saddleback **Fax:** 1.780.585.2104
Samson Creek Nation

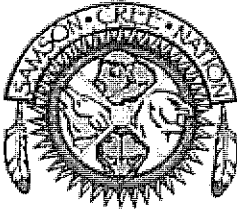
Date: January 20, 2015 **Pages (including this cover):** 7

MESSAGE

Please see attached correspondence.

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To: John Schaden
Coal Valley Resources Inc. **Fax:** 1. 780-794-8146

From: Norine Saddleback
Samson Creek Nation **Fax:** 1.780.585.2104

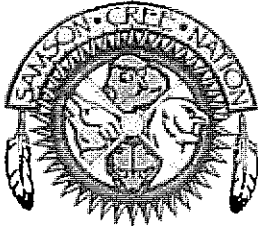
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FILE No

January 20, 2015

SENT VIA FAX & E-MAIL

Participant Funding Program
Canadian Environmental Assessment Agency
160 Elgin Street, 22nd Floor
Place Bell Canada
Ottawa, ON K1A 0H3

Attention: Brent Maracle, Panel Manager
(RobbTrend@ceaa-acee.gc.ca)

Dear Sirs/Mesdames:

Re: Samson Cree Nation's ("Samson") Comments on the Draft Agreement to Establish a Joint Review Panel for the Robb Trend Coal Mine Expansion Project between the Minister of Environment (Canada) and the Alberta Energy Regulator (Alberta) (the "JRP Agreement")

This letter provides Samson's comments on the JRP Agreement in respect of Coal Valley Resources Inc.'s ("**CVRI**") proposed Robb Trend Coal Mine Expansion project (the "**Project**"). Samson provides its comments to ensure that the environmental assessment of the Project is carried out in a meaningful manner whereby the full constitutional dimensions of our Aboriginal rights including title, and Treaty No. 6 rights ("**s. 35 Rights**") are expressly considered. In addition, Samson expects that the Joint Review Panel ("**JRP**") will provide adequate and full responses to each of the concerns raised by providing an issues-tracking table demonstrating how the JRP Agreement has been revised to incorporate Samson's comments. Thereafter, Samson should be provided an opportunity to respond to the issues-tracking table.

Introduction

Samson, of the Nipisikopahk Maskwacis Cree Peoples, is a northern member of the Nêhiyawak Confederacy and a signatory of Treaty No. 6, underlying the central portions of Alberta. Treaty No. 6 was concluded between the Plains Cree and the Crown in 1876 at Fort Pitt & Fort Carlton. Kiskaquin, or Chief Bobtail, signed his "x" mark in an adhesion to Treaty No. 6 at the signing of Treaty No. 7 at Blackfoot Crossing in 1877. Samson's traditional land use area covers the

following land use regions: South Saskatchewan, Red Deer, North Saskatchewan, Upper Athabasca, Lower Athabasca, Lower Peace and Upper Peace.

(Collectively, "**Samson Territory**")

Samson's s. 35 Rights are inextricably connected to the land, waters and resources within Samson Territory from which our people/military, spirituality/beliefs, identity, economic base, culture, heritage, language and traditions arose. Samson's s. 35 Rights pre-exist Treaty No. 6 and exist in Canadian law not as a result of governmental recognition, but because they were not extinguished upon the Crown's *assertion* of sovereignty.

The Project is proposed to be developed in Samson Territory. Since time immemorial, Samson's members have and continue to extensively use and occupy Samson Territory and have continued being the stewards of the land. As original habitants of Samson Territory, Samson holds a sacred trust to protect and preserve Mother Earth in order to ensure Samson's way of life and livelihood is not disturbed. Therefore, any development proposed to take place within Samson Territory must be carried out in a manner that protects and respects both the environment and Samson's s. 35 Rights.

In recent years, Samson has dedicated extensive resources to actively engage in the environmental assessment processes for proposed development, activity and land use management regimes in Samson Territory. This does not necessarily mean that Samson is opposed to all development. However, the increased level of impacts (direct, indirect and cumulative) and the lack of recognition and respect of Samson's s. 35 Rights has left Samson no other choice but to defend our way of life. Despite the Crown having constitutional and fiduciary obligations to protect and balance our interests with broader societal interests, it has been absent in honouring and fulfilling its Treaty No. 6 rights and obligations.

As such, when we state our concerns, we ask that you be patient, understanding and respectful, for the future of Samson's way of life rests with each decision currently before the Crown and its regulatory authorities. We also request that you make further inquiry into our concerns if they have not been articulated in a manner consistent with Western worldviews.

Generally, Samson is concerned that the JRP will not consider impacts to Samson's s. 35 Rights and interests. The JRP should expressly include this as a valued component to the environmental assessment process for the Project. Additionally, the JRP should ensure that its report should make recommendations on impacts to Samson's s. 35 Rights and interests.

PREAMBLE

Context: The Preamble section of the JRP Agreement fails to identify that Canada and the Province have constitutional obligation pursuant to section 35(1) of the *Constitution Act, 1982*, and fiduciary obligations flowing from the honour of the Crown. Additionally, the Preamble does not recognize that these constitutional duties flow upstream the JRP's statutory obligations pursuant to the Canadian Environmental Assessment Act, 2012 ("**CEAA 2012**") and the Responsible Energy Development Act ("**REDA**").

Recommendation: A provision should be added to the Preamble indicating that the framework for conducting the environmental assessment of the Project will be consistent with the Crown's constitutional obligations and fiduciary duties.

DEFINITIONS

Context: The definitions of “Environment”, “Follow-up Program” and “Mitigation” do not contain an Aboriginal component.

Recommendation: These definitions need to incorporate an Aboriginal component, including making express reference to traditional knowledge, traditional ecological knowledge, culture/beliefs, socio-economic perspectives, Indigenous worldviews and understandings, Samson’s s. 35 Rights and interests and impacts to Samson’s s. 35 Rights.

CONSTITUTION OF THE JOINT REVIEW PANEL

Context: Section 3.3 of the JRP Agreement reads, in part, as follows:

The Joint Review Panel members shall be unbiased and free from any conflict of interest relative to the Project and are to have knowledge or experience relevant to the anticipated environmental effects of the Project.

Recommendation: We recommend that the JRP add the following language to section 3.3 of the JRP Agreement:

The Joint Review Panel members shall be unbiased and free from any conflict of interest relative to the Project and are to have knowledge or experience relevant to the anticipated environmental effects of the Project and impacts to Aboriginal s. 35 Rights and interests.

APPENDIX 1 TERMS OF REFERENCE – PART I SCOPE OF PROJECT

Context: We note that the description of the scope of the Project does not set out the project area.

Recommendation: As project scoping will be important to properly determine impacts to Samson’s s. 35 Rights and interests and corresponding mitigation measures, we recommend that the this description should expressly define “Project scope”. In doing so, “Project scope” should not be viewed in a vacuum by limiting it to simply the direct disturbance area of the Project. Additionally, cumulative impacts should be a factor in determining the “Project scope”.

APPENDIX 1 TERMS OF REFERENCE – PART II SCOPE OF THE ENVIRONMENTAL ASSESSMENT OF THE PROJECT

Comment Number One

Context: As stated above, the Crown’s constitutional obligations lie upstream the JRP statutory framework. Section 19(1) is a narrow interpretation of these duties. We note that at page A2 of the JRP Agreement that it includes Aboriginal traditional knowledge.

Recommendation: The scope should be expanded to expressly include: (i) Samson's s. 35 Rights and interests; (ii) Samson's ecological traditional knowledge; and (iii) Indigenous worldviews and beliefs in respect of environment effects arising from the Project.

Comment Number Two

Context: The terms of reference has not clearly established a list of component that will be used throughout the environmental assessment process.

Recommendation: We recommend that the JRP clearly identify valued components in the terms of reference in collaboration with Aboriginal participants prior to finalization. Including, but not limited to:

- i. hunting, fishing, trapping and gathering;
- ii. access;
- iii. s. 35 Rights and interests;
- iv. lost of use and removal of available Crown lands;
- v. wildlife & wildlife habitat;
- vi. water;
- vii. fish and fish habitat;
- viii. culture; and
- ix. any other site-specific locations identified by Samson.

A. *Aboriginal Rights and Interests*

Context: At pages A2 – A2 of the JRP Agreement Appendix, it states the following:

The Joint Review Panel may use this information to make conclusions and recommendations that relate to the manner in which the Project may adversely impact asserted or established Aboriginal or Treaty rights as described by Aboriginal persons or groups.

And:

The Joint Review Panel, based on its assessment of the environmental effects of the Project, may recommend measures to mitigate any adverse environmental effects caused by the Project that could adversely impact or infringe those asserted or established Aboriginal or Treaty rights that were identified.

And:

The Joint Review Panel may, where appropriate, provide recommendations on any additional measures to mitigate potential adverse impacts to asserted or established Aboriginal or Treaty rights.

Recommendation: As the Crown will heavily rely on the JRP process to discharge its constitutional obligations, the JRP must have the ability to conduct all of these actions. The permissive term “may” used in the above sentences should be replaced with “shall”.

C. Accidents & Malfunctions

Context: The list of potential ‘malfunctions or accidents components’ does not list Samson’s s. 35 Rights and interests.

Recommendation: Samson’s s. 35 Rights and interests should be added as a component. Additionally, the “plans, measures and systems” should indicate how Samson will be directly involved.

PART IV - REVIEW PROCESS

Context: At page A5 of the JRP Agreement Appendix it states, in full, the following:

The Joint Review Panel shall conduct its review in a manner that discharges the responsibilities of the AER under REDA, the requirements set out in CEEA 2012, and the requirements set out in the Terms of Reference that were fixed and approved by the Federal Minister of Environment and the AER.

Recommendation: Samson is concerned that the JRP’s mandate will be narrowly confined to REDA and CEEA 2012 in light of our constitutionally protected rights and interests. The mandate should also expressly state measures that should be implemented to avoid and mitigate impacts Samson’s s. 35 Rights.

PART V – PROCESS

Context: Upon review of the timelines, it appears that Samson will have thirty (30) days to respond or provide comments throughout the process.

Recommendation: As Samson faces capacity constraints, we recommend increasing the proposed timelines from thirty (30) days to sixty (60) days. Increased timelines from 30 to 60 days

Stage 3 – Joint Review Panel Report

Context: At page A7 of the JRP Agreement Appendix, it states that "the report will include ... a summary of any comments received including those from Aboriginal groups, governmental bodies, the public and other interested parties" and "a summary of the information received from participants as set out in Part III (A) on Aboriginal Rights and Interests above."

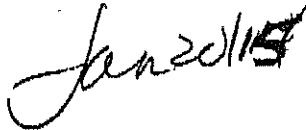
Recommendation: The JRP's report should not only include a summary of Samson's concerns, but all make recommendations on mitigating and avoiding impacts to its s. 35 Rights and Interests.

Samson looks forward to your response.

Sincerely,

<original signed by>

Norine Saddleback
Samson Cree Nation



Enclosure

cc: Chief Kurt Buffalo, Samson Cree Nation
Samson Cree Nation Leadership
Minister Leona Aglukkaq, Environment Canada
Jim Eills, CEO Alberta Energy Regulator
John Schaden, Coal Valley Resources Inc.
Amyn F. Lalji, Miller Thomson LLP

Message Confirmation Report

JAN-20-2015 14:59 TUE

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FILE No

FAX COVER

To: Brent Maracle
Panel Manager
Participant Funding Program
Canadian Environmental Assessment Agency
Fax: 1.613.957.0862

cc: The Honourable Loona Aglukkaq
Minister of the Environment
Fax: 1.819.953.0279

cc: Jim Ellis
President
Alberta Energy Regulator
Fax: 1.403.297.8326

From: Norne Saddleback
Samson Creek Nation
Fax: 1.780.585.2104

Date: January 20, 2015
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FILC No

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To: **Brent Maracle** Fax: **1.613.957.0862**
Panel Manager
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FILE #:

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To: Brent Maracle
Panel Manager
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Coal Valley Resources Inc. Fax: 1. 780-794-8146

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