



Horse Lake First Nation
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January 20, 2015

Brett Maracle, Panel Manager
Canadian Environmental Assessment Agency
160 Elgin Street, 22nd Floor
Ottawa ON K1A 0H3
Email: RobbTrend@ceaa-acee.gc.ca

RE: Horse Lake First Nation's Written Comments on the Robb Trend Joint Review Panel Agreement and Terms of Reference

Dear Mr. Maracle,

Thank you for providing Horse Lake First Nation ("HLFN") with the opportunity to comment on the establishment of the Joint Review Panel Agreement and Terms of Reference in relation to the Robb Trend Coal Mine Expansion Project ("Project").

Coal Valley Resources Inc. is proposing to expand its Coal Valley Mine in the Coal Branch area of Alberta. The Project, located near the community of Robb, would be approximately 37 km in length and would include portions of the Pembina River, Embarras River and the Erith River.

HLFN currently exercises constitutionally protected Treaty and Aboriginal rights and other interests within the vicinity of the proposed Project, which is located within HLFN Traditional Territory. HLFN is very concerned about the potential combined effects of the many different resource sectors operating within our territory. We believe that the combined or cumulative effects of industrial development may be long lasting, significant and adverse and that the overall effects may be more severe than the sum of the individual projects' effects.

HLFN has reviewed the Joint Review Panel Agreement, as well as the Terms of Reference for the proposed Project. While we acknowledge that the Federal Minister of the Environment has determined that a Joint Review Panel is required for the Project, we have proposed several revisions with respect to the draft Joint Review Panel Agreement and Terms of Reference that will better address the interests of our First Nation. We would ask that the Canadian Environmental Assessment Agency seriously consider the revisions that we have proposed (see table attached to this letter) and get back to us with

respect to any clarification required. To date, Coal Valley Resources Inc. has not engaged with HLFN, nor has the company provided any financial resources to our Nation to assist HLFN in assessing potential Project impacts on the exercise of our Treaty and Aboriginal rights and other interests.

Please feel free to email me <email address removed> with respect to any questions that you may have.

Thank you,

<original signed by>

Chief Eugene Horseman
Horse Lake First Nation

**Comments of Horse Lake First Nation
on
The Draft Agreement
To Establish a Joint Review Panel for the
Robb Trend Coal Mine Expansion Project
Between The Minister of the Environment, Canada**

- and -

The Alberta Energy Regulator, Alberta

January 21, 2015

A. Comments on the Draft Agreement

DRAFT AGREEMENT WORDING	HORSE LAKE FIRST NATION SUGGESTED CHANGES
PREAMBLE	
'WHEREAS' Clauses	None of the 'WHEREAS' Clauses provides reference to First Nations. Horse Lake First Nation suggests adding: WHEREAS Treaty 8 First Nations hold Constitutionally protected Section 35 (1) rights and other interests, a draft version of this Agreement is subject to consultation with Treaty 8 First Nations.
1. Definitions	
"follow-up program" means a program for a. verifying the accuracy of the environmental assessment of the Project, and b. determining the effectiveness of any mitigation measures;	Horse Lake First Nation recommends adding: c. determining the effectiveness of any accommodation measures.
3. Constitution of the Joint Review Panel	
3.1 The Joint Review Panel will consist of three members. The chief hearing	Horse Lake First Nation recommends adding:

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<p>commissioner of the AER shall appoint the chairperson and shall appoint one other member of the Joint Review Panel, with the approval of the Federal Minister of the Environment. The third Joint Review Panel member will be appointed by the Federal Minister of the Environment in accordance with article 3.2 of this Agreement.</p>	<p>The Joint Review Panel members will have read Treaty 8 and will be very familiar with Treaty and Aboriginal rights and other interests. At minimum, one Panel member will have legal expertise in Aboriginal Law.</p> <p>Furthermore, the chief hearing commissioner of the AER and the Federal Minister of the Environment shall consider names of potential candidates put forward by First Nations and the public.</p>
<p>3.3 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.</p>	<p>Horse Lake First Nation recommends adding:</p> <p>3.4 The Joint Review Panel members will not be employed by the Public Service of Alberta or the Public Service of Canada.</p> <p>Note: This will help remove any potential conflict of interest.</p>
<p>3.3 In the event that a Joint Review Panel member resigns or is unable to continue to work, the remaining members shall constitute the Joint Review Panel unless the Federal Minister of the Environment and the AER determine otherwise.</p>	<p>Horse Lake First Nation recommends that a fourth Joint Review Panel member shall be selected as an alternate, in case a Joint Review Panel member resigns or is unable to continue to work.</p> <p>Horse Lake First Nation does not believe that it is reasonable to proceed on a Project of this size and scale with only two Joint Review Panel members present.</p>
<p>4. Secretariat</p>	
<p>4.3 The AER will provide its offices in Edmonton and/or Calgary, when required, for the conduct of the activities of the Joint Review Panel and the Secretariat.</p>	<p>Horse Lake First Nation recommends that the Secretariat conduct its activities in a neutral location, so that any potential conflicts of interest relative to the proponent, Alberta Government and Canada are removed.</p>

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5. Record of the Joint Review and Report	
<p>5.4 On completion of the assessment of the Project, the Joint Review Panel shall prepare a report. The report shall include an executive summary in both official languages of Canada. The report will set out the rationale, conclusions and recommendations of the Joint Review Panel relating to the environmental effects of the Project, including any mitigation measures and follow-up program, and a summary of comments received from the public, including Aboriginal persons and groups. The report will be conveyed to the Federal Minister of the Environment within the overall time limit for the Project review established by the Federal Minister of the Environment.</p>	<p>Horse Lake First Nation wishes to be consulted on the Joint Review Panel report. Moreover, Horse Lake First Nation will be need to be provided with adequate financial resources and time to review and provide comment on the draft of the Joint Review Panel report. This will ensure that the information that Horse Lake First Nation provides will be verified (true and accurate) from our Nation.</p>
<p>5.6 The Agency will be responsible for the translation of public notices and releases and the report prepared by the Joint Review Panel, into both of the official languages of Canada. The Agency will use all reasonable efforts to expedite the translation of the report.</p>	<p>Horse Lake First Nation recommends that the Agency provide funding to Horse Lake First Nation, so that the report can be translated into Beaver and Cree for our Nation.</p>
6. Other Government Departments	
<p>6.1 The Joint Review Panel may request federal and provincial authorities having specialized information or knowledge with respect to the Project to make that information or knowledge available to the Joint Review Panel. The Joint Review Panel may also retain the services of independent non-government experts to provide advice on certain subjects within the Joint River Panel's Terms of Reference.</p>	<p>Horse Lake First Nation recommends that the Joint Review Panel also consider Elders and Land Users as experts and call upon our experts to discuss potential adverse affects of the Project on the continued exercise of Treaty and Aboriginal rights.</p>

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7. Participant Funding	
<p>7.1 Decisions regarding participant funding by the Agency under the federal Participant Funding Program, and decisions on participant funding by the AER as provided for in REDA, the AER <i>Rules of Practice</i> and the AER's <i>Directive 031: REDA Energy Cost Claims</i> will, to the extent practicable, take into account decisions of the other party.</p>	<p>Horse Lake First Nation recommends that the AER provide funding to First Nations so that they can have meaningful participation and input during the process.</p>
8. Amending this Agreement	
<p>8.1 The terms and provisions of this Agreement may be amended by written memorandum executed by both the Federal Minister of the Environment and the Chief Executive Officer of the AER.</p>	<p>Horse Lake First Nation would like to be consulted on any amendments to this Agreement. Should an amendment to this Agreement arise, Horse Lake First Nation will need to be provided with adequate financial resources and time to review and provide comment on the amendment.</p>

B. Comments on Terms of Reference in Appendix 1 of the Draft Agreement

Appendix 1 Terms of Reference

TERMS OF REFERENCE WORDING	HORSE LAKE FIRST NATION SUGGESTED CHANGES
Part II Scope of the Environmental Assessment of the Project	
<p>As per section 19(1) of CEAA 2012, the assessment shall include a consideration of the following factors:</p> <ul style="list-style-type: none"> a) the environmental effects of the Project, including the environmental effects of malfunctions or accidents that may occur in connection with the Project and any cumulative environmental effects that are likely to result from the Project in combination with other projects or activities that have been or will be carried out; b) the significance of the effects referred to in paragraph a); c) comments from the public, including Aboriginal persons and groups, that are received during the joint review; d) mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the Project; e) the requirements of the follow-up program in respect of the Project; f) the purpose of the Project; g) alternative means of carrying out the Project that are technically and economically feasible and the environmental effects of any such alternative means; and h) any change to the Project that may be caused by the environment. 	<p>Under the authority in s. 19(1)(j) CEAA 2012, Horse Lake First Nation recommends adding the following to the list of factors to be considered in the assessment:</p> <ul style="list-style-type: none"> i) the cumulative effects of the Project on the exercise of Treaty and Aboriginal rights and other interests; and j) mitigation and accommodation measures that would address any adverse effects of the Project on the exercise of Treaty and Aboriginal rights and other interests.

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In examining all of the 19(1) factors set out in CEAA 2012, community knowledge and Aboriginal traditional knowledge (such as, but not limited to, traditional use studies), shall be taken into account.	Note: Coal Valley Resources Inc. has not approached Horse Lake First Nation in relation to undertaking a traditional land use study over the proposed tenure area.
Part III – Scope of the factors	
A. Aboriginal Rights and Interests	
The Joint Review Panel shall accept as part of its record and review information from Aboriginal groups related to the nature and scope of asserted or established Aboriginal or Treaty rights in the area of the Project, as well as information on the potential adverse environmental effects that the Project may have on asserted or established Aboriginal or Treaty rights, and information regarding any measures proposed to avoid or mitigate the potential adverse effects of the Project on asserted or established Aboriginal or Treaty rights.	<p>Horse Lake First Nation recommends revising this paragraph to include the following:</p> <p>The Joint Review Panel shall accept as part of its record and review information from Aboriginal groups related to the nature, scope, <u>location and extent</u> of asserted or established Aboriginal or Treaty rights in the area of the Project, as well as information on the potential adverse environmental effects, <u>including cumulative effects</u>, that the Project may have on asserted or established Aboriginal or Treaty rights, and information regarding any measures proposed to avoid, mitigate the potential adverse effects of the Project on asserted or established Aboriginal or Treaty rights. <u>In accepting and review such information and such proposed measures, the Joint Review Panel shall also accommodate asserted or established Aboriginal or Treaty rights.</u></p> <p>[Underlining added to show changes.]</p>
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	<p>Horse Lake First Nation recommends revising this paragraph to include the following:</p> <p>The Joint Review Panel, based on its assessment of the environmental effects</p>

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<p>established Aboriginal or Treaty rights that were identified.</p>	<p>of the Project, may recommend measures to <u>avoid or</u> mitigate any adverse environmental effects caused by the Project that could adversely impact or infringe those established Aboriginal or Treaty rights that were identified. <u>In determining such measures, the Joint Review Panel shall also accommodate asserted or established Aboriginal or Treaty rights.</u></p> <p><u>Based on the Joint Review Panel’s assessment, the Government of Alberta must determine whether the proposed Project should be approved, modified or rejected.</u></p> <p>[Underlining added to show changes and additions.]</p>
<p>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.</p>	<p>Horse Lake First Nation recommends revising this paragraph to include the following:</p> <p>After discussions with Horse Lake First Nation, the Joint Review Panel may, where appropriate, provide recommendations on any additional measures to <u>avoid or</u> mitigate potential adverse impacts to asserted or established Aboriginal or Treaty rights. <u>In determining such measures, the Joint Review Panel shall also accommodate asserted or established Aboriginal or Treaty rights.</u></p> <p>[Underlining added to show changes and additions.]</p>
<p>Nothing in these Terms of Reference limits the application of section 21 of REDA or Part 2 of the <i>Administrative Procedures and Jurisdiction Act</i> to the AER, and the Joint</p>	<p>Given that the AER cannot determine the adequacy of consultation with First Nations, Horse Lake First Nation recommends adding a paragraph</p>

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<p>Review Panel (in its capacity as a panel of AER hearing commissioners) remains at all times subject to the requirements of those provisions, and is entitled to exercise the powers under Part 2 of the <i>Administrative Procedures and Jurisdiction Act</i>, including but not limited to section 13 thereof.</p>	<p>identifying who will be the responsible authority to determine the adequacy of consultation with Horse Lake First Nation.</p>
<p>B. Cumulative Effects Assessment</p>	
<p>The Joint Review Panel should focus its consideration of cumulative effects on key valued components.</p> <p>The cumulative effects assessment should provide a justification and description of the spatial and temporal boundaries and include, but not be limited to, the following: a pre-Coal Valley Mine case to allow the Joint Review Panel to take into account the effects that may have already been experienced prior to the Project</p>	<p>Horse Lake First Nation recommends that the cumulative effects assessment use a pre-industrial baseline to assess the past, current condition to assess the present and all proposed future development to assess the future.</p> <p>Note: A cumulative effects assessment must provide for assessment and management of all types of industrial activities and occurrences on the landbase and the assessment must include the past, present and future.</p> <p>In addition, Horse Lake First Nation must be consulted on the key valued components to be used in the cumulative effects assessment.</p>
<p>C. Accidents & Malfunctions</p>	
<p>In considering the environmental effects of malfunctions or accidents that may occur in connection with the Project, the Joint Review Panel should consider potential malfunctions or accidents associated with the following components:</p> <ul style="list-style-type: none"> • tailings management; • surface water diversion and management; • waste management and disposal; • use, handling or spills of chemicals 	<p>In terms of tailings management, Horse Lake First Nation recommends that the proponent provide a detailed post-closure tailings management plan.</p> <p>Due to the increase in road traffic, Horse Lake First Nation recommends that the proponent undertake a wildlife mortality study.</p>

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<p>and hazardous materials on-site;</p> <ul style="list-style-type: none"> • the increase in road traffic, and risk of road accidents; and • any other project components or systems that have the potential, through accident or malfunction, to adversely affect the natural environment. 	
Part IV – Review Process Mandate	
<p>A majority of the Joint Review Panel members constitutes a quorum for the purposes of the proceeding to be conducted by the Joint Review Panel. When a hearing, public meeting, or other activity is conducted by the Joint Review Panel and a member of the Joint Review Panel for any reason does not attend on any day or part of a day, the other members who are sitting at the hearing, public meeting or other activity may continue as fully and effectively as though the absent member were present.</p>	<p>Please refer to Horse Lake First Nation’s comment under section 3.3.</p>
Part V – Process	
A. Review of the documentation	
<p>1. As soon as possible following its appointment, the Joint Review Panel will initiate a public comment period on whether the information available on the public registry is sufficient to allow a review that complies with the Joint Review Panel’s Terms of Reference and to proceed to the public hearing phase of the process. The public, Aboriginal groups and government departments and agencies will be provided with a minimum of 30 days to provide comments.</p>	<p>It is important to note that Horse Lake First Nation’s timelines do not necessarily align with the federal or provincial government’s timelines. It will be very important that Horse Lake First Nation be provided with adequate time and resources to review the public registry.</p>

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B. The Joint Review Panel Process	
<p>4. The Joint Review Panel shall fulfill its mandate and submit its report to the Federal Minister of the Environment within 425 days (14 months) of the date of establishment of the Joint Review Panel. The 425 days does not include the time period(s) between a request for information from the Joint Review Panel to the Proponent and receipt of the requested information by the Joint Review Panel.</p>	<p>If the Joint Review Panel requests additional information from the Proponent, Horse Lake First Nation shall be provided with adequate time and resources to review and provide comment on the additional information.</p>
Stage 1 – Sufficiency Review of the EIA and Supplemental information by the Joint Review Panel	
<p>8. If the Joint Review Panel is of the view that it requires additional information from the Proponent but the information deficiency is minor in nature, and the Joint Review Panel receives a commitment from the Proponent to provide the outstanding information in a timely manner, the Joint Review Panel may announce the hearing</p>	<p>Horse Lake First Nation recommends that the hearing not be announced until the Joint Review Panel has all of the required information from the Proponent to start the process.</p>
Stage 2 – Public Hearing	
<p>13. If, after reviewing the additional information and any written comments from the public, Aboriginal persons and groups, government departments or agencies, or other technical experts, the Joint Review Panel concludes that it has sufficient information to proceed to hearing, it will announce the hearing, providing for a minimum of notice of 30 days prior to the commencement of the hearing.</p>	<p>Horse Lake First Nation is currently inundated with dispositions from various resource sectors. Advance notice of 60-90 days would be a more adequate timeframe for Horse Lake First Nation to better prepare for the hearings.</p>
<p>16. The Joint Review Panel shall take into account the timing of traditional activities in Aboriginal and local communities when</p>	<p>Horse Lake First Nation recommends that the Joint Review Panel consult with Horse Lake First Nation on the timing and</p>

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setting the time and location of the public hearing session.	location of the public hearing sessions.
Stage 3 – Joint Review Panel Report	
<p>18. Following the completion of the public hearing, the Joint Review Panel shall prepare and submit to the Federal Minister of the Environment a report as required in article 5.4 of the Agreement. The Joint Review Panel shall provide the executive summary of the report in both official languages of Canada. The report will include:</p> <ul style="list-style-type: none"> • A summary description of the Joint Review Panel’s process; • A summary of the report; • The rationale, conclusions, and recommendations of the Joint Review Panel relating to the environmental assessment of the Project including any mitigation measures and follow-up programs; • A summary of any comments received including those from Aboriginal groups, government bodies, the public and other interested parties; • An identification of those conclusions that relate to the environmental effects defined in section 5 of CEAA 2012; • An identification of recommended mitigation measures and follow-up programs that relate to the environmental effects defined in section 5 of CEAA 2012, including, as appropriate, any commitments identified by the Proponent in the EIA or during the review panel process; and • A summary of the information received from participants as set out in Part III (A) 	<p>Horse Lake First Nation recommend adding the following bullet:</p> <ul style="list-style-type: none"> • Any measures to avoid or mitigate any adverse effects on the exercise of Treaty and Aboriginal rights and other interests. In determining such measures, the Joint Review Panel shall also accommodate asserted or established Aboriginal or Treaty rights.

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on Aboriginal Rights and Interests above.	
25. Upon receiving the report submitted by the Joint Review Panel, the Federal Minister of the Environment and the AER will make the report available to the public and will advise the public that the report is available.	Horse Lake First Nation recommend revising this section to the following: Upon receiving the report submitted by the Joint Review Panel, the Federal Minister of the Environment and the AER will make the report available to the public and Aboriginal communities, and will advise the public that the report is available.
28. Any requests for amendments under this article, as well as any amendments to these Terms of Reference, shall be posted on the Public Registry.	Horse Lake First Nation recommends that First Nations be notified of any amendments to the Terms of Reference and provided an opportunity to review and provide comment before they are posted on the Public Registry.

C. Comments on Appendix 2 of the Draft Agreement

APPENDIX 2 WORDING	HORSE LAKE FIRST NATION SUGGESTED CHANGES
Appendix 2 - Cost Sharing Provisions	
1. Cost Sharing	1. Cost Sharing Note: Given that the hearings are in relation to the Proponent's project, why is the Proponent not responsible for incurring some of the costs in relation to the Joint Review Panel's activities?