



Fort Chipewyan Métis Local 125
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Sent Via Email Only

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RE: Fort Chipewyan Métis Local 125 Submission to the Impact Assessment Agency of Canada on the Joint Review Panel Report & Draft Approval Conditions for Teck Resources Ltd., Frontier Mine.

The Fort Chipewyan Métis Local 125 (FCML 125) wish to provide our review comments on the Joint Review Panel Report (the Report) and Draft Approval Conditions for the Teck Resources Ltd. Frontier Mine. As rights holders under S.35 of *the Constitution Act, 1982* of Canada, we submit this review to be included along with other Aboriginal rights holders.

In order to assess full and accurate consultation with Aboriginal peoples and characterization of their concerns on impact to S. 35 rights, IAA (the Agency) asks if three questions have been addressed:

- I. In their report, did the Panel appropriately characterize the concerns raised by Fort Chipewyan Métis Local 125 during the environmental assessment?
- II. Do the recommendations made by the Panel mitigate or avoid the potential impacts to identified Aboriginal and Treaty rights?
- III. Are there any outstanding concerns that are not addressed in the Panel's report (i.e. are there any impacts on potential Aboriginal and Treaty rights and/or interests that are not addressed in the recommendations contained in the report)? If so, do you have any recommendations on how these potential impacts may be addressed?

In assessing the first question, as well as appropriate characterization of concerns raised, the FCML 125 are also concerned with accuracy of characterization of our community, particularly in judicial and quasi-judicial proceedings and records. We require a public correction of the inaccurate characterization of our membership. This correction is vital to the credibility of the FCML 125 as rights holders. We provide a summary here clarifying the appropriate characterization of our community provided in previous submissions, from FCML 125 sources listed in the Report.

We represent those Métis who trace the origin of their Métis Aboriginal rights to Fort Chipewyan. Our members living in or commuting to Fort Chipewyan, at the time of the Statement of Concern in 2012, was estimated to be 173. There are between 350-400 Métis who live in Fort Chipewyan and surrounding environs who come and go for work and school, as stated in our August 27th letter. The FCML 125 directly fund and offer services to those Métis who may not have registered with our community office, and those who are MNA cardholders. FCML 125 estimates that our modern Métis community-specific origin group descendants number over a thousand. This number is derived from and supported by genealogical research on our ancestral origin families, (the historic Métis community), and their estimated population growth.

These dynamics of the Fort Chipewyan Métis community diaspora are important to understand and present, as regional cumulative pressures that the Project will contribute to, on Indigenous livelihoods, housing and land availability, employment, and other socio-economic realities, greatly influence choices of Fort Chipewyan Métis to stay in the community with limited opportunities. However, their movement and residence out of the community does not diminish their ancestral and modern ties to the community.

While we agree with the Panel's determination of significance of impact to the FCML 125 by the Project in general, some specifics of the Panel's characterization of FCML 125 concerns did not capture the necessary context of the underlying cultural concepts, which are the Aboriginal perspectives that inform the exercise of cultural activities, hence rights. These are discussed below. Additionally, there were some grammatical errors made such as spelling mistakes, and missing prepositions.¹

The FCML 125 supports the Panel's use of the Mikisew-Agency methodology: *Methodology for Assessing Potential Impacts on the Exercise of Aboriginal and Treaty Rights of the Proposed*

¹ For example: [3667] 'over-dimensional trips'; [3676] 'create anomie'; [3689] 'trials'.

Frontier Oil Sands Mine Project for use during the environmental assessment of the Frontier project. However, we find the Panel did not follow through on all outlined principles of the methodology in assessment of the FCML 125. The Panel focused largely on the tangible biophysical impacts to land use and some elements of culture, but it did not make the connection to the core cultural epistemologies that underlie the values and expectations that inform behavior, practice, and perspectives, hence the exercise of rights. For example, some of those listed in the methodology steps were not applied: community thresholds, cultural landscape, and present and future generations. These are related and demonstrated in the in-depth examination provided by the FCML 125 on the cultural importance of migratory bird flyways and their seasonal availability as a reliable dietary staple and abundant food source, for past, present, and future generations. Knowledge was provided around the sensitivity of the migratory flyway, cumulative effects on this resource, and the vast changes that have reduced numbers as to negatively exceed community thresholds within one generation. It is now impossible to use as a dietary staple. However the Panel found this cumulative impact and the Project's potential contribution to it to be negligible.

This lack of address of ancient migratory bird flyways along the Athabasca River to the Peace-Athabasca Delta also demonstrates how step 3 of the methodology was not adequately carried out by the Panel, regarding the guiding principles of the steps and their broader cultural scope, such as: nature and scope of rights; understanding the context of historical and contemporary cumulative effects in which rights are exercised; recognizing that existing environmental conditions do not tell the full story about historical and current cumulative impacts on aboriginal and treaty rights; and using an indigenous perspective and indigenous knowledge; community driven selection of methods and indicators for assessing impacts to aboriginal and treaty rights; thresholds and measures defined by the community to understand the potential effects of a project on the exercise of aboriginal and treaty rights and culture. It is imperative to understand epistemologies and concepts underlying an Aboriginal perspective of the land and its use. That is the inherent-ness of S.35 rights. The previous example of the migratory bird flyway in the context of these guiding principles demonstrate the broader scope of the right: Métis cultural food and water security, not just loss of use and harvesting; place-based knowledge, cultural landscape, and knowing where and when of harvesting a resource are tied together.

Question two, posed by the Agency, is whether recommendations made by the Panel mitigate or avoid the potential impacts to identified Aboriginal and Treaty rights. The Panel found the Project will likely result in significant adverse environmental effects, and will also likely result in significant adverse effects to the asserted rights, use of lands and resources, and culture of indigenous groups who use the Project area. Further, the Panel found the proposed mitigation

measures have not been proven to be effective or to fully mitigate project effects on the environment or on indigenous rights, use of lands and resources, and culture.

The FCML 125 found some edits and additions to the condition language was required either for clarification, for respect for under-capacity community timelines, to effectively capture the intent of the condition, or preservation of consideration of rights. Where necessary, rational is provided. They are as follows:

2.5 Consultation

- 2.5.1 The FCML 125 recommends additional language to address and ensure the process of meaningful consultation viewed by the parties is enabled: “provide a written notice *at the earliest time possible* of the opportunity for the party or parties being consulted to present their views and information on the subject of the consultation”
- 2.5.2 The FCML 125 recommends additional language to account for hours of office operations: “provide all information available and relevant to the scope and the subject matter of the consultation and a period of time agreed upon with the party or parties being consulted, not to be less than 15 *business* days, to prepare their views and information”
- 2.5.4 The FCML 125 recommends additional language to ensure demonstrable accountability: “advise *on and demonstrate to* the party or parties being consulted ~~on~~ how the views and information received have been considered by the Proponent including a rationale for why the views have, or have not, been integrated. *This shall be documented and provided to the parties shortly thereafter for their immediate use, and as a record for their files on the response to the required consultation with the parties.* The Proponent shall advise the party or parties in a time period that does not exceed the period of time taken in 2.5.2.”
- 2.6 The FCML 125 recommends additional and continuity in language in keeping with 2.5.2: “The Proponent shall, where consultation with Indigenous groups is a requirement of a condition set out in this document, *provide a record regarding* communication with each Indigenous group with respect to the manner to satisfy the consultation requirements referred to in condition 2.5, including methods and timeliness of notification, the type of information and the period of time to be ~~provided~~ *agreed upon* when seeking input, the process to be used by the Proponent to undertake impartial consideration of all views and information presented on the subject of the consultation,

and the period of time and the means to advise Indigenous groups of how their views and information were considered by the Proponent.”

4 Groundwater

- 4.02 The FCML 125 recommends additional language maintains the intention of the condition to establish and preserve baseline groundwater level and baseline groundwater chemistry in springs, but recognizes the need to differentiate potential project-specific effects for mitigation from the pre-existing or potential effects from other projects:
- “The Proponent shall, prior to construction and in consultation with Indigenous groups, conduct a survey of springs on the west bank of the Athabasca River down gradient of the Designated Project to establish baseline groundwater level and baseline groundwater chemistry in springs that might be in use by Indigenous peoples. *If the baseline groundwater level and baseline groundwater chemistry is shown to be influenced or effected by other projects*, the Proponent shall monitor baseline groundwater levels and chemistry at the springs through all phases of the Designated Project and mitigate project specific effects through *engagement with Indigenous groups during drafting* and implementation of the Hydrology and Water Quality Mitigation, Monitoring and Adaptive Management Plan.”

5 Surface Water Quality

Similar to paragraph [1083] regarding Teck and Mikisew agreement that the project should have no greater than a negligible effect on water quality in Ronald Lake, Lake Claire, and the Peace-Athabasca Delta, the FCML 125 must determine what is ‘safe’ to return according to their land and resource use expectations and values. The FCM have identified in their submission that they would also define it as being able to drink water from the river, and negligible effect would need to consider this fundamental Indigenous right of consumable water security.

- 5.08 The FCML 125 recommends additional language to the condition: “The Proponent shall ensure discharges from the Designated Project into receiving waters meet or surpass regulatory requirements. Water that does not meet the limits shall be diverted to the closed-circuit drainage system for water reuse during operations, or treated prior to release. *The Proponent will develop, in consultation with Indigenous communities and the Agency, contingency plans, as part of the water management plan, tailings management plan and closure drainage plan if: (1) treated oil sands process-affected*

water is not regulated for release to the natural environment; or (2) the quality, after treatment, does not meet both federal and provincial regulatory requirements.”

5.09 Relatedly, the FCML recommends additional language to the condition: “The Proponent shall consult with Indigenous groups on the water discharge criteria prior to discharging into waters that may reach *or effect, including cumulatively without potential oil sands discharges*, the Ronald Lake watershed or Lake Claire.”

5.16.4.1 To clarify timelines, The FCML 125 recommend additional language: “Because the information must be collected in the area before conditions and use change in the watershed due to Project construction, the FCML 125 recommends additional language clarifying the timing of the condition: “physical, biological and cultural baseline conditions, *collected prior to Project construction*, for the Ronald Lake watershed and the southern end of Lake Claire.”

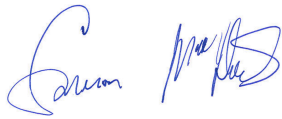
10 Current use of lands and resources for traditional purposes

10.05 The FCML 125 disagrees with the text proposed by Teck. It is important to the FCML 125 to maintain the federal condition text, as 'capacity' is the ability that exists at present, pre project disturbance. 'Capability' refers to a more ambiguous level of ability that could be demonstrated under 'the right conditions'. For the *equivalent* use of lands and resources by Indigenous people for traditional purposes, the land must have the same capacity experienced currently, under pre-disturbance conditions, to do so. This is supported in paragraphs [493, 495, and others referencing pre-disturbance conditions and capacity. The FCML 125 recommends maintaining condition language: “The Proponent shall conduct progressive reclamation of areas disturbed by the Designated Project. In doing so the Proponent shall identify, in consultation with Indigenous groups and relevant authorities, plant species native to the Designated Project area to use for re-vegetation as part of progressive reclamation, including species suitable to create habitat for wood bison, woodland caribou, whooping crane and other species of interest to Indigenous groups. Land shall be reclaimed to a self-sustaining ecosystem that supports **equivalent land use capacity**, including the use of lands and resources by Indigenous people for traditional purposes.”

Finally, regarding question three: are there any outstanding concerns that are not addressed in the Panel's report (i.e. are there any impacts on potential Aboriginal and Treaty rights and/or interests that are not addressed in the recommendations contained in the report)? If so, do you have any recommendations on how these potential impacts may be addressed?

We have identified our key concerns not addressed appropriately or adequately in the previous sections.

Sincerely,



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