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Technical Memorandum: Suncor Energy Inc. Base Mine Extension Initial Project Description (February 2020)

Introduction

Suncor Energy Inc. ('Suncor'), based on requirements of the federal *Impact Assessment Act, 2019* ('IAA'), submitted an Initial Project Description ('IPD'), for the proposed Base Mine Extension Project ('BMX', 'the Project') in February 2020.

In addition to the IPD, the Impact Assessment Agency ('the Agency') has also provided guiding questions with respect to potential effects and approach to consultation. Input from Fort McKay Métis Nation and Fort Chipewyan Métis Local #125 (collectively referred to as 'the Communities') with respect to these documents will inform, and become part of, the Summary of Issues document that the Agency will provide Suncor for inclusion and/or response in the next step of the planning phase, the Detailed Project Description ('DPD'). Following receipt of the DPD, the Agency will make a determination as to whether an impact assessment ('IA') is required. This determination, based on subsection 16(2) of the Act, must consider the following:

- a. The IPD, DPD and response to the Summary of Issues provided by the proponent;
- b. The possibility that carrying out the project may cause adverse effects in federal jurisdiction, or any direct or incidental effects;
- c. Any adverse impact the project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- d. Any comments, received within the time period specified by the Agency, from the public, any jurisdiction or Indigenous group consulted;
- e. Any relevant regional or strategic assessment conducted under the Act;
- f. Any study that is conducted or plan that is prepared by a jurisdiction – in respect of a region that is related to the project - and that has been provided to the Agency; and

- g. Any other factor that the Agency considers relevant.

Contents of this Technical Memorandum

This memo consists of both detailed 'track changes' in the Initial Project Description (IPD) document provided by the Agency as well as a summary of the key issues that speak to the following:

- the content provided in this Initial Project Description (IPD);
- the content and/or level of detail needed for the Detailed Project Description (DPD);
- the guiding questions for this comment period; and
- the need for a federal impact assessment or a cooperative impact assessment with Alberta.

The attached 'track changes' document of the IPD is, and forms part of, this technical memo.

Key Issue: Engagement

This key issue includes early engagement by Suncor with jurisdictions and agencies as well as Indigenous groups. It also includes engagement and consultation expectations between the Communities and the Agency as well as between the Communities and Suncor.

Early Engagement

The IPD describes early engagements with various municipal, provincial and federal jurisdictions and agencies as consisting of general project updates and regulatory and policy requirements. From these engagements Suncor identifies key topics that include: potential impacts to land use, wildlife and wetlands; potential losses to fish habitat; employment opportunities; and project location with reference to the city of Fort McMurray. Despite the requirements under the *Impact Assessment Act* ('the Act') to consider the impacts to the rights of Indigenous people, including as a key factor in the consideration of designating a project, this was not identified by Suncor as a key topic of early engagement. At a minimum, the DPD should include:

- potential impacts to Indigenous Peoples including Constitutionally protected rights, culture and use of lands and resources;
- contribution of the Project to cumulative effects and compounded negative effects both locally and regionally; and
- proximity of the Project to Indigenous Communities and within Indigenous owned lands, reserve lands and traditionally used and occupied territories.

With respect to early engagement with Indigenous groups, the IPD provides two lists of Indigenous groups: those for which in-person meetings have occurred where Suncor provided information with respect to project location, timing and future engagement opportunities; and those which have expressed interest in the project but have not been engaged. The Communities, both of which are listed under those Indigenous groups that have been engaged disagree with the characterization by Suncor and would describe these early efforts as better characterized as notification of the Project. This is evident in the following lists of 'topics' and 'concerns' listed by Suncor. Suncor has, and has had, both

direct and ongoing engagements with Indigenous groups in the Athabasca Oil Sands Area (AOSA) on a number of other Suncor projects, including the Voyageur and Voyageur Upgrader Projects that were predecessors to this Project but not carried out; but also on numerous oil sands Environmental Impact Assessments (EIAs) and Traditional Land Use Studies (TLUS)/Cultural Impact Assessments (CIAs) that have been carried out on and around the Project area (including preliminary TLUS/CIAs that have been conducted for the Project). In the IPD, Suncor should have provided at a minimum:

- a description of the engagements with each listed Indigenous Group;
- a table of engagements identifying the Community, the topics or issues raised and the outcome of those engagements (e.g. will it be further discussed in future engagements, will it inform the Project planning, assessment or mitigation, etc.); and
- other topics and issues that may not have been raised directly for the Project but may inform the Project through past project engagements, such as relevant community information from: other Suncor EIAs and their Technical Review by communities; studies such as TLUS, CIAs, Socio-Economic studies, Cultural Heritage Assessment, Human Impact Assessment, etc.; and related submissions, which would be validated in consultation with communities in a Project-specific context.

This information, along with the following, should be included in the DPD:

- feedback from Indigenous groups on expectations for consultation plans;
- feedback from Indigenous groups on expectations for engagement activities; and
- feedback from Indigenous groups on expectations for assessment participation opportunities.

Note the Communities have provided additional topics and concerns in the 'track changes' document.

Future Engagement

Going forward, consultation and engagement with Suncor should be early, meaningful (as defined by the Communities), and on-going and responsive to the Communities' perspectives and input. Engagement plans should be developed collaboratively with each Indigenous community and reviewed on a regular basis to ensure that engagement activities occur in a timely manner so that input from the Communities can be integrated into the impact assessment and inform Project planning, management, mitigation and monitoring.

Following submission of the IPD, consultation and engagement by Suncor with the Communities should include, but not be limited to:

- areas of potential impact and concern;
- appropriate temporal and spatial boundaries and assessment cases;

- appropriate, culturally-based Indigenous methodology for integrating Indigenous Knowledge (IK) and Community input into the impact assessment to appropriately and ethically assess potential effects and significance of those effects from an Indigenous perspective¹; and
- appropriate management and mitigations that may be applied to reduce the significance of effects, particularly with respect to effects to Aboriginal Peoples.

When a federal Impact Assessment is required, the Communities would like to collaboratively develop the Indigenous Engagement and Partnership Plan ('IEPP') with the Agency by first providing comments on the IEPP. The Communities request that sufficient time and capacity is provided to allow the Communities to work collaboratively, including identifying potential methods and tools for engagement and consultation as well as approaches throughout the IAA phases. Given that that IEPP is required to be within 180 days of the IPD being posted and the current environment with COVID-19, the Communities don't foresee direct engagement at this time with members of the Communities, include Indigenous Knowledge holders; but would like to reserve that opportunity should it become available. Leadership from the Communities are still available via virtual methods allowing the Communities to seek input and validation as necessary. With respect to the Agency working with the Communities in relation to the assessment of impacts, the Communities are very interested in employing Community-led assessment methodologies that are rigorous, peer reviewable and defensible. This will include community derived culturally appropriate methodology and criteria for the assessment regarding Métis epistemologies (worldviews and perspectives) that inform cultural practices, protocols, customs, and pursuits predicated on spiritual beliefs and stewardship responsibilities in relationship with the land. As was done during Teck, the order of what the Agency does should be reconsidered (all consultation activities should be completed BEFORE a potential for a Joint Review Panel).

Key Issue: Potential Effects and Impacts

As discussed above under the Engagement Section, and identified in the 'track changes' of the IPD (attached), the Communities have not been provided Project information that would assist in the Communities providing comprehensive input on the potential effects and impacts. Nonetheless we have provided within this document and attached 'track changed' IPD a number of issues and concerns that directly and indirectly relate to the Project. Throughout the Communities' comments, effects to section 35 rights including in the forms of impacts to abundance, quality, and usability of territory resources, harvesting area opportunities within the harvesting territory, and interruption or loss of traditional and cultural knowledge, practices and pursuits. This creates a change in land use patterns in response to anthropogenic pressures which is an infringement on the exercise and viability of the Communities' section 35 rights, and cultural continuity.

Impacts to Indigenous Peoples

Effects and impacts to traditional resources, lands, and supporting environmental components on and adjacent to the Project include loss of vegetation, wildlife, and habitats; aquatic resources; continued

¹ Engagement includes the validation of any secondary information about the Communities' land use that is not Project-specific, or produced externally from the Communities.

degradation of vital resource and transportation pathway (Athabasca River) through potential treated water release; emissions (including odours and dust). There is also uncertain traditional end land use after uncertain reclamation. Given the geographic location of the Project, cumulative effects on a regional scale, particularly air, water, terrestrial and biodiversity are being acutely felt.

With respect to potential effects and impacts on physical and cultural heritage, current use of lands and resources for traditional purposes and structures, sites or things of historical, archaeological, paleontological or architectural significance should be more defined and required by Suncor, as with other Community-led studies for the Project such as TLUSs and CIAs. The Project area is, and has been, used by the Communities for traditional and cultural uses, including harvesting and use of specific sites for ceremonial and spiritual purposes and other pursuits. The Project will also result in alienation of familiar territory lands; loss of sites; loss of cultural landscape; loss of place-based use, connection, and knowledge transmission of sites, including through loss of access.

As described in the Communities' 'track changes' on the IPD, using aggregate data to provide context for health and socio-economic effects to effected Indigenous communities does not reflect the community-specific realities. With regard to health, effects include on community and individual well-being. It is recommended that the Project impact assessment include a Health Impact Assessment (HIA) in addition to a Human Health Risk Assessment (HHRA). By requiring HIA and HHRA under federal legislation this would also require active participation of health authorities (Health Canada, Alberta Health) in the decision-making process. As evidenced in the 2015 Lower Athabasca Regional Plan (LARP) Panel Review, Indigenous health includes a number of factors related to the health beyond Project-specific standard human health risk assessment used in EIAs (i.e. those directly linked to environmental media or biota). The Panel suggested that by 2017 at the latest, Alberta Health and Wellness and Health Canada conduct a regional baseline health study for First Nation, Métis and other Aboriginal groups that considered all relevant health factors². Such a study has yet to be initiated or completed.

Similarly, socio-economic effects need to be assessed at a local and community level to be relevant to the impact assessment as the level of capacity, services and access will differ among impacted communities and not be reflected in aggregate data. As identified in the Communities' 'track changes' of the IPD, the DPD should include a description and discussion of the rapid change in socio-economic conditions for the population that existed prior to population changes that resulted from oil sands development, including Indigenous communities. Socio-economic information and trends at a community level should be included (e.g. the changes from a subsistence lifestyle to a wage-based economy; the differences in population growth; the differential services to accommodate these changes; the taking up of lands and need for additional TLE and other accommodations for displacement of lands and culture, etc.)

With regards to sustainability, holistic Indigenous thresholds for the health, safety, quality and sufficient quantity of lands and resources in territories, needed to sustain the cultural life-ways of growing communities, have already been surpassed. In addition to a national and international Indigenous right

² 2015 LARP Review Panel Report, page 202

to traditional food and water security, these surpassed thresholds for ability and useful opportunity for cultural practices and pursuits undermines the viability of current and future rights for rights holders. Cultural continuity within current conditions and impact to land use, access, knowledge transmission, abundant and quality resources, etc. continues to be in jeopardy while the Indigenous demographic continues to grow. Elders who have the knowledge have an increasingly difficult time as they age being physically able to reach and teach youth at these places. This decreasing window of time for knowledge transmission opportunity is compounded with increasing loss in access.

Impacts to the Environment

As identified in the Communities' 'track changes' of the IPD, the Project has the potential to have effects and impact environmental components under federal authority including fish and fish habitat, migratory birds and species at risk all of which historically and currently support the Communities' traditional livelihoods and cultural continuity.

Key Issue: Studies or Plans Relevant to the Project

Of key concern to the Communities in the IPD is the list of resource developments in the AOSA by Suncor that have been subject to a provincial or joint provincial-federal regulatory review. As stated in the appended 'track changes' IPD comments, the list provided does not reflect the extent of development in the region and therefore would result in an underestimation of currently operating projects, approved projects and planned projects including several SAGD projects (note that SAGD projects make up 80% of recovery of oil sands from the region). It also does not include transmission and pipelines, quarries, roads and large exploration projects that cover the landscape and add to both existing and cumulative effects. For the IA, the Communities recommend to the Agency that Suncor be required to undertake an assessment of previous project applications and validate predicted impacts using available monitoring data (e.g. Government of Canada - Oil sands monitoring documents and reports³ and Government of Canada - Canada-Alberta oilsands environmental monitoring services and information⁴). This would inform the certainty of results from any Impact Assessment which may be conducted.

The IPD also describes a number of studies and monitoring programs that have been initiated or are currently underway in the region. As provided in the attached 'track changes' for the IPD, a number of relevant initiatives have been identified for inclusion, including community-led initiatives. It is recommended that Suncor not just provide a list but detail and discuss how learnings from these initiatives apply to, or are incorporated into, the assessment of effects for the Project. Importantly, when community IK or land use information is being used by a company, whether as primary or secondary sources, it must be recognized that it is the intellectual and cultural property of the knowledge holders and their respective communities, held as collective rights. Therefore, to avoid potential misrepresentation or de-contextualization of Indigenous perspectives, that interpreted and

³ <https://www.canada.ca/en/environment-climate-change/services/oil-sands-monitoring/documents-reports.html>

⁴ <https://www.canada.ca/en/environment-climate-change/services/oil-sands-monitoring.html>

applied information should be validated with the respective communities regarding Project-specific scope and effects considerations.

Reference to LARP, whether as a strategic direction document, or within its management frameworks (e.g. draft Biodiversity Management Framework), in its current state, does not provide guidance in its frameworks for the Aboriginal rights holders it is mandated by the Alberta Land Stewardship Act to include. For instance, LARP was found by a Review Panel in 2015 to have inadequate information and to infringe on the S.35 rights of Aboriginal peoples.

Key Issue: Strategic and Regional Assessments Relevant to the Project

The IPD references the applicability of the draft Strategic Assessment of Climate Change. However, the Wood Buffalo National Park Strategic Environmental Assessment also recognized oil sands development as contributing to effects including to hydrology, migratory birds, metals and PAHs in traditional foods, water and sediments and climate change. For this reason, it should also be discussed in the DPD and included in the Project's impact assessment.

Future Strategic or Regional Assessments that may be conducted prior to the construction and operation of the Project that is not projected to start until 2026 should also be considered in the impact assessment if such information, should initiation or completion of such an assessment be provided or available prior to the IA being finalized, filed or responded to through supplementary information requests. Examples include but are not limited to regional efforts/studies/assessments related to the Oil Sands Mine Water Science Team, the Oil Sands Reclamation Interest Group and the regional baseline health study recommended by the 2015 LARP Review Panel.

Key Issue: Project Purpose/Need/Alternatives

It is unclear, from the IPD, how the Project, as proposed, fits into Suncor's overall development and growth strategy for its assets given that Voyageur and then the Voyageur Upgrader projects were proposed in the regulatory system and then subsequently shelved – it is unclear how this proposed Project differs from, and is an improvement of, past proposals. This should be provided in the DPD. In addition, Suncor should detail how, using base mine infrastructure, it will meet 'technology of the day'/BATEA with respect to environmental, cultural and socio-economic effects minimization (e.g. to meet climate change targets) compared to other alternatives for mining and upgrading the resource.

Key Issue: Need for a Federal Impact Assessment or a Cooperative Impact Assessment with Alberta

As identified within the key issues in this technical memo, including the appended 'track changes' IPD, in order to adequately assess Project effects, including on the rights of Indigenous people, an impact assessment under the IAA or jointly with Alberta through a cooperative impact assessment is necessary. Any time the Crown is contemplating conduct that may adversely impact Constitutionally protected section 35 rights, the Crown has an obligation to consult, and at times accommodate, with respect to those potential impacts. Section 25 of Schedule 2 of the Physical Activities Regulations provides for the

need for the Act to apply to the Project and federal involvement would be prudent given the number of federal jurisdictions that are, or should be, involved as responsible authorities.

Relevant Jurisdictions

Relevant jurisdictions that should be included and discussed in the DPD include the Alberta Consultation Office (ACO) and Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC). Also, as stated in the Communities' 'track changes' on the IPD, in addition to environmental effects there are jurisdictions that should be included to assess effects on health. Under CEAA 2012 the role of Health Canada has been, not as a Responsible Authority (RA), but to provide its expertise to the RA, Review Panel or other jurisdiction conducting the federal EA, which subsequently determines how this information will be used in its evaluation of the project. Under the new IAA, however, Health Canada should play a larger role, not just in providing advice on the direct environmental effects on health but to be an RA with respect to both direct and indirect health effects based on a Health Impact Assessment.