



FORT MCKAY

FIRST NATION

May 1, 2020

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Impact Assessment Agency of Canada
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Dear Ms. Fedrau,

RE: Suncor Base Mine Extension Project - Fort McKay First Nation comments on Suncor's Initial Project Descriptions & IAAC's Guiding Questions for this Comment Period

On behalf of the Fort McKay First Nation (Fort McKay), I am writing to you in response to the public comment period with respect to the Initial Project Description on Suncor Energy Inc. (Suncor) Base Mine Extension (BMX) Project, which we understand commences the Planning Phase for a federal assessment of the Project.

As detailed below, Fort McKay has a long-standing positive relationship with Suncor and we have been successful in developing consultation processes together that have proven effective to address our project-specific concerns on its prior projects. We look forward to advancing and concluding our project specific concerns with Suncor. However, as we have advised the Government of Canada, including at the recent Teck Frontier Mine hearing, Canada has an obligation to ensure our Treaty rights are protected from the cumulative effects of development. These are concerns and impacts that Suncor is unable to address beyond its project-specific mitigation measures. As described below, we would like to provide notice to Canada that it is our request and expectation that the new *Impact Assessment Act* fulfill its intention of achieving sustainability by early collaboration on effective and meaningful accommodation measures for Canada and Alberta to implement alongside the assessment and review of the BMX Project.



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Comments on the Initial Project Description & Guiding Questions

Please see attached Fort McKay's detailed responses to the Agency's Guiding Questions for this pre-planning period of the environmental assessment, which include our comments on the Initial Project Description, preliminary issues of concern and potential impacts on our rights including on our Treaty rights to hunt, fish and trap; maintain, protect and develop our cultural heritage; and use and enjoy our reserve lands. We also include our early requests to co-develop cumulative effects management measures to be implemented by Canada.

Planning Phase and Requirement for a Federal Assessment

Your initial e-mail (March 2, 2020) indicates that after comments from the public, federal agencies and Indigenous groups are received regarding the Initial Project Description that the Agency will review and provide a summary of issues to the proponent who will prepare responses and a detailed project description. After this, the Agency would make a decision as to whether a federal assessment is required.

It is our understanding that due to the size of the Project, a full impact assessment is mandatory for the Project. In any event, it is Fort McKay's position that a federal assessment is necessary for this project because of the nature of the project (large oil sands mine with tailings facilities and approximately 20,000 ha of new land disturbance), existing cumulative effects, potential project-specific impacts and contribution to cumulative effects, including direct or incidental effects and to areas of federal jurisdiction, and potential impacts on our interests and rights, including on our Reserves.

It is our expectation that we are an active participant, with Suncor and the Agency, in the federal (or joint) assessment of this project. It is Fort McKay's position that Fort McKay should be identified as an Indigenous Governing Body with "jurisdiction" pursuant to section 2, jurisdiction definition (g) of the *Impact Assessment Act*. We look forward to working with the Minister of Environment and Climate Change Canada to conclude an agreement pursuant to



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114(e) to be considered a "jurisdiction" within the meaning of the *Impact Assessment Act* and we ask for the Agency's guidance on this matter.

Federal Jurisdiction and Potential Impacts on Reserve (Federal Lands)

A key concern with development in proximity to Fort McKay is its potential to further deteriorate the air quality on our Reserves, which is a leading concern raised by members as affecting their health and quality of life. This is clearly within federal jurisdiction and it is incumbent upon Canada to acknowledge its federal powers and Treaty and fiduciary duties to protect Fort McKay's Reserves for its *safe* use and enjoyment. We ask that air quality on the Reserves be a key consideration of Suncor's cumulative effects assessment for the project, and a focus of action to be taken by Canada to address the significant impact. We propose that Fort McKay designs and leads this assessment with funding from Canada or Suncor.

We note that in Section 18 of the Initial Project Description that Suncor describes the jurisdictions that have powers and duties related to the BMX Project's potential effects. Suncor focuses on environmental aspects of the assessment. In addition, the federal government has duties in an assessment related to Indigenous peoples and Reserves:

- Crown consultation/duty to consult
- Direct and indirect effects on Reserves – Fort McKay's Reserves could potentially be affected, for example, by effects on air and water quality
- Impacts on Rights – see our detailed comments on rights in Section 5 of the attached responses to Guiding Questions
- Management of cumulative effects

In Section 21 of the Initial Project Description, Suncor indicates no effects are expected on Reserves. This will need to be assessed in the environmental assessment, as there very likely will be continued effects on Fort McKay Reserves. Fort McKay's community, the Hamlet of Fort McKay, which has about 600 residents, is on reserve land, adjacent to and on the west side of the Athabasca River. Fort McKay also has Reserves on the east side of the Athabasca River and to the northwest of the community at Moose Lake, which is a key cultural area. See Figure 1 in the attached response document, which shows the locations of Fort McKay's Reserves.



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Fort McKay is experiencing cumulative effects on Reserves including:

- Impacts on air quality on a regular basis, including exceedances of Fort McKay's health based air quality objectives
- Recurring odour issues, which have been the subject of an AER Recurrent Complaints investigation and process, and that are still not adequately managed, and which significant evidence is pointing to tailings ponds
- Air-related incidents such as coker fires that cause extreme health and safety concerns in the community
- Air emission deposition (e.g. hydrocarbons, dust, SO₂, and NO₂) and cumulative acidification and eutrophication effects
- Dust deposition and air emissions leading to measured declines in quality of preferred plants for gathering, especially different varieties of wild berries in and around reserve lands
- Dust impacts on human health, including sensitive individuals that have pre-existing respiratory conditions
- Noise from industrial activities especially intermittent high frequency noises that disrupt the peace and enjoyment on Reserve, 24 hours a day
- Water quality concerns in the Athabasca River, which is adjacent our Community and Reserves, including unsafe levels of mercury in fish, seepage from upstream tailings facilities, release of treated sewage and proposed large-scale releases of treated Oil Sands Process Water from all the mines in the region, previous release incidents (e.g. untreated sewage), and other matters affecting water quality on the Athabasca
- Take up of land in areas adjacent to our Reserves that has resulted in direct losses of prime areas to practice Treaty rights in close proximity to Reserves

Consultation with Suncor

Fort McKay and Suncor have a long-established positive working relationship. Suncor has started consultation with us early regarding this project and has indicated that it intends to continue doing so throughout the pre-application and federal and provincial assessments, and should the project be approved, throughout construction, operation, reclamation and closure.



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In this regard, Fort McKay and Suncor have agreed to develop a robust consultation plan to guide the project-specific consultation process for the project.

Suncor and Fort McKay worked together to already determine the scope for a community-led Traditional Land Use Study (TLUS) for the BMX project, which Suncor funded. The TLUS has been completed. We request and expect that Suncor will use the TLUS, in collaboration with the Fort McKay Sustainability Department, to inform the Tailored Impact Assessment Guidelines and Impact Assessment and to clearly demonstrate this in the Impact Statement report.

We have also provided a preliminary identification of areas of the assessment where we wish to have particular input and these are included in our responses to the Guiding Questions.

Consultation and Accommodation with Canada & Rights Assessment and Protection

Fort McKay would want to take the lead in any assessment of impacts on our Rights but would be willing to work in a collaborative way with the Agency and Suncor.

Of utmost concern to Fort McKay are the outstanding cumulative effects on air, water, land and wildlife within our Traditional Territory and on-Reserve that are currently significant and adverse to our Treaty rights and have not been adequately and appropriately managed, mitigated and accommodated by Alberta and Canada. As a result, our Treaty 8 rights are at risk of infringement and no protection is in place.

Canada continues to rely on its participation in the Oil Sands Monitoring Program as a means to address the cumulative effects on Fort McKay. This is wholly insufficient; monitoring is inherently a “lagging” process, does not equal mitigation or accommodation measures, nor does it prevent the impacts caused by the taking up of lands and processing of bitumen that takes place surrounding Fort McKay.

An important aspect of a rights assessment is to identify mitigation and accommodation measures and actions for Canada and Alberta to implement to meaningfully address existing cumulative effects (e.g. amending or creating new approval conditions for oil sands operators to



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address existing impacts and prevent future impacts) and the effects of the Project on Treaty Rights and to take actions to protect the promises made by Treaty 8 in a manner consistent with the Honour of the Crown.

Fort McKay requests that a consultation and accommodation plan be agreed to by Canada and that it clearly identifies an honourable process to address and accommodate impacts to Fort McKay's Treaty 8 rights and protect their continuity.

Impact Assessment Approach & Regional Assessment

The BMX Project presents an opportunity for the Government of Canada to take concrete actions to ensure the sustainability of Fort McKay as an Aboriginal community, which in the present day requires a respected balance between economic self-sufficiency and opportunities to live our traditional livelihood within a culturally and environmentally intact environment. Fort McKay, through its assertion of the right to co-management, has sought to achieve this by ensuring positive, collaborative and long-term relationships with companies like Suncor to mitigate project specific environmental impacts, to seek protection from development of key cultural areas, and to enhance and protect the sustainability of Fort McKay's community and individual health on its Reserves and within our traditional territory.

Some examples of where Fort McKay has worked collaboratively with governments, industry and others in the region include active participation in or development of the:

- Cumulative Environmental Management Association (CEMA)
- Wood Buffalo Environmental Association (WBEA)
- Moose Lake Plan – currently in negotiations with Alberta and actively engaging with industry (oil sands, forestry) and other Indigenous groups
- Recurrent Human Health Complaints process with AER, Alberta, and oil sands companies to develop a plan address air quality and odour management issues
- Various initiatives with Suncor independently and with other Indigenous groups on areas of mutual interest such as on reclamation and closure plans and research, studies on traditional plants and wetlands, and the McClelland Lake Wetland Complex Sustainability Committee



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We look forward to working with the Agency and Suncor under the new *Impact Assessment Act*, which we understand is aimed at ensuring early collaboration efforts can lead to meaningful and concrete actions on behalf of both Government's and the proponent's behalf to address both project-specific concerns and impacts and manage cumulative effects in manner that fulfills the Crown's obligation to protect Fort McKay's Treaty 8 rights.

Based on our recent involvement in the assessment of the Teck Resources Frontier Project, we have the benefit of recently developed concrete, practical and meaningful measures that can be taken, in collaboration with Alberta and Canada to help address outstanding cumulative effects. This could be a starting point, to be updated with information and data provided through Suncor's impact assessment.

A key point however is that we agree and would like to take full advantage of the *IAA's* emphasis on early planning to seek to resolve both our project-specific and cumulative effects concerns with the proposed project. In this regard, it is our view that the Agency must begin this discussion now with Fort McKay in both the design of the impact assessment and potential accommodation and treaty implementation measures.

In this regard, we request that a regional assessment be conducted in conjunction with Suncor's impact assessment. This assessment should include participation of Indigenous groups including Fort McKay, as well as Canada, Alberta, Suncor and other companies and stakeholders in the region. The regional assessment should focus on cumulative effects and sustainability with deliverables being concrete actions and management plans to address cumulative effects and sustainability and to accommodate impacts on Treaty and Aboriginal rights and to ensure the Crown's obligations to protect Treaty 8 rights through treaty implementation is met. This could then be the basis upon which Suncor conducts its assessment and applies its proposed plans and mitigation measures to address project-specific effects and their contribution to cumulative effects and sustainability.



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Contact Information

Please direct all communications to:

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We appreciate the opportunity to participate in this early Planning Phase for the BMX assessment and we look forward to the next steps.

Sincerely,
<original signed by>

Bori Arrobo
Senior Manager, Environment and Regulatory Affairs
Fort McKay Sustainability Department

Encl: Fort McKay First Nation Responses to Guiding Questions

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