

March 30/21

SUNCOR BASE MINE EXTENSION PROJECT  
[IAAC.BaseMine-MineBase.AEIC@canada.ca](mailto:IAAC.BaseMine-MineBase.AEIC@canada.ca)

PLEASE NOTE: The Clearwater River Band #175 is a separate and distinct legal entity from the Original Fort McMurray First Nation. They should not be dealt with as one indigenous party.

**Comments on the Draft Indigenous Engagement and Partnership Plan and Tailored Impact Statement Guidelines Impact Assessment for the Suncor Base Mine Extension Project**

Suncor's Base Mine Extension Project will cover over 29 Sections of land commencing less than 3 km. from Fort McMurray along the Athabasca River.

The *Impact Assessment Act*, SC 2019, c. 28 requires that the the impact of "direct and incidental effects" on the rights of indigenous peoples be considered. "Federal lands" is defined as including "reserves, surrendered lands and any other lands that are set apart for the use and benefit of a band and that are subject to the *Indian Act*, and all waters on and airspace above those reserves or lands". When conducting a review a number of factors set out in section 22 must be considered, including:

(c) the impact that the designated project may have on any indigenous group and any adverse impact that the designated project may have on the rights of the indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act 1982*;

...

(g) Indigenous knowledge provided with respect to a designated project;

...

(l) considerations related to indigenous cultures raised with respect to the designated project;

as well as an assessment, study or plan of effects provided by an indigenous governing body (q and r).

It is the obligation of Canada under the *Constitution Act, 1982* to ensure that the treaty and aboriginal rights of aboriginals are upheld specifically when the traditional lands of aboriginals are being destroyed by Suncor in this Base Mine Extension Project by the use of open pit mining. These are the traditional lands of the Paul Cree/Clearwater River Band and also the OFMFN both of whom are centred on the Moccasin Flats area and Cree Crescent area of Fort McMurray and on the Clearwater Reserve which is approximately 6 miles east of the southern edge of Fort McMurray, along the Clearwater and Christina Rivers where they meet in Township 88, Range 7 West of the 4<sup>th</sup> Meridian. Historically traplines were held surrounding this area with events in Fort McMurray since the 1970's resulting in loss of traplines.

It is the obligation of Canada to uphold the constitutional rights of aboriginals pursuant to sections 35 and 25 of the *Constitution Act, 1982*. This includes the treaty and aboriginal rights of Bands as defined in section 2 (2) of the *Indian Act*, RSC 1985, c. I-5 which states:

"band" means a body of Indians

(a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart, before, on or after September 4, 1951.

The Clearwater River Reserve No. 175 was set apart by Privy Council Order #1570 on May 12, 1921 for the Paul Cree Band aka Clearwater River Band composed of Paul Cree, Alexis Cree and Raphael Cree. This Reserve is located in Township 88, Range 7, West of the 4<sup>th</sup> Meridian where the Clearwater River and the Christina River meet. No Privy Council Order has changed this designation. The Lands in Severalty of Harry Malcolm were taken in order to make this Reserve and although there is a continuing obligation on Canada, no lands have been set apart to fulfill this *Treaty No. 8* constitutional obligation.

The traplines of the Paul Cree Band extended into this area now covered by the Base Mine Extension Project and were trapped into the 1980's. This is their traditional hunting, fishing, and gathering of spiritual and medicinal plants area, less than 30 miles from their Reserve Lands. It is made up of significant wetland areas. The Paul Cree/Clearwater Band claims for recognition and return of their Reserve and other damages in Federal Court Action T-436-15 against Canada and the Fort McMurray First Nation, and the Dumais plaintiffs in Action T809-17 with claims respecting the Clearwater Reserve, all of which will proceed to Dispute Resolution in September, 2021 in the Federal Court.

Members of the Original Fort McMurray First Nation were noted in early pay lists for the Cree-Chipewyan Indians and Canada continued to deal with these Indians living within Fort McMurray until efforts by Suncor and Syncrude pushed them out of River Lots, Moccasin Flats and even towards Cree Crescent in Fort McMurray in the 1980's. Members of the OFMFN also trapped in this area, hunted and fished and gathered spiritual and medicinal plants into the proposed Base Mine Extension area, less than 5 kilometres from where they were at the time. Federal Court Actions T-1601-12 and T-165-01 will also be part of the Dispute Resolution in Federal Court in September, 2021.

Suncor has ignored Clearwater Band and the Original Fort McMurray First Nation although they have known of their presence since the 1990's. As the Supreme Court of Canada noted in *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, [2010] 2 SCR 650, any new activity that that has the effect to adversely affect their treaty and aboriginal rights must be consulted and accommodated. The fact that Suncor failed to consider their treaty and aboriginal rights when their Base Plant and other sites were constructed does not exclude their obligation now. They have only recently contacted them seeking to conduct outreach or consultation with these bands as one "community group". In this outreach effort they require the Clearwater/OFMFN to sign off on a Non-Disclosure Agreement in order to consult on "environmental considerations". Suncor has been notified that Clearwater and OFMFN cannot do this particularly in light of the upcoming Federal Court Dispute Resolution. Suncor completely ignores the reality of Paul Cree/Clearwater Band and the OFMFN constitutional rights. They also ignore the United Nations Declaration of the Rights of Indigenous Peoples which has now received 2<sup>nd</sup> Reading and is proceeding through Parliament which requires recognition and observance of their treaty and aboriginal rights.

Although there is generally a need to work with respect for each viewpoint, there is a Constitutional obligation to comply with *Treaty No. 8* and aboriginal rights. The law is continually evolving as shown by the 2020 decision of the Supreme Court of Canada in *Newfoundland and Labrador v. Uashaunuat* 2020 SCC 4 where the majority in the Supreme Court of Canada upheld the constitutional principle that aboriginal title is unique distinguishing it from civil law and common law conceptions of property. It is firmly grounded in the relationships formed by the "confluence of prior occupation and the assertion of sovereignty by the Crown, which gives rise to obligations flowing from

the honour of the Crown...". Both the majority and the minority found that "rights protected by s. 35 of the *Constitution Act, 1982*, ...are a burden first and foremost on the Crown's underlying title". All of these lands are lands where the Crown continues to hold the title.

In *Mikisew Cree First Nation v. Canada* [2005] 3 SCR 388, para. 47 Mr. Justice Binnie, for the Court, held that aboriginals cannot be "dispatched" from their "traditional hunting grounds and traplines". When such action has taken place, there is a potential action for treaty infringement, para. 48.

Madam Justice Greckol in *Fort McKay First Nation v. Prosper Petroleum Ltd. And Alberta Energy Regulator*, 2020 ABCA 163, held that "the cumulative effect of numerous developments over time" could extinguish treaty rights which is contrary to section 35 of the *Constitution Act, 1982*. This is very relevant in the oil sands area and must be considered in this Impact Assessment. This destruction of treaty hunting, trapping, and gathering areas of the Paul Cree/Clearwater River Band and OFMFN must stop.

Suncor is now requiring the Paul Cree/Clearwater River Band and the OFMFN to sign a Non-Disclosure Agreement by March 31, 2021 prior to funding and involvement in community sessions. This is a legal document which will not be signed because it completely excludes the ability of Clearwater River Band and OFMFN to pursue their constitutional rights, may adversely affect their Federal Court proceedings, and bars their freedom to object to this Base Mine Extension Project: see attached Capacity Funding letter and draft Non-disclosure Agreement from Suncor to be signed by March 31, 2021. This limits at a very early stage the ability of Paul Cree/Clearwater River Band and OFMFN to comment on the draft Tailored Impact Statement for the Base Mine Extension Project and the Indigenous Engagement and Partnership Plan. If this Non-Disclosure Agreement were signed, it would limit the ability to engage in the requirements set out for Phase 2 – Impact Statement by preventing the submission of comments related to indigenous knowledge because it will all be within the control of Suncor as to what is disclosed and what is not disclosed; it prevents the ability to have a partnership and to disclose adverse effects of this Base Mine Extension Project; prevents the submission of opinions on the proponent's Impact Statement; and fully restricts all disclosure of section 35 rights being impacted by this Project.

In the Suncor Draft Tailored Impact Statement Guidelines pursuant to the *Impact Assessment Act* for the Suncor Base Mine Extension Project, Annex I – Draft Terms of Reference for the provincial environmental Assessment, Suncor states:

Suncor is committed to communicating directly and openly with Indigenous communities to identify and address questions and concerns.

Suncor will continue to engage and consult with Indigenous communities throughout the life of the project. Future engagement activities will vary depending on the nature and extent of impacts on communities, and how individual communities want to be engaged. Engagement may include open houses, on-the-land workshops, community meetings and technical meetings.

Suncor will continue to engage with Indigenous peoples, seek to identify specific impacts to economic, social and health conditions and ensure that they are incorporated into ongoing assessment work and planning for the project.

...

Suncor's first long-term social goal recognizes the value of relationships, and focuses on changing the way we think and act so we can strength relationships and increase the participation of Indigenous Peoples in energy development.

However, the requirement that Paul Cree/Clearwater River Band and OFMFN sign a Non-Disclosure Agreement prior to any discussion and by March 31, 2021, disputes all of Suncor's statements of engaging and consulting with Indigenous peoples.

Further this limits the ability to raise issues under the *Public Lands Act*, RSA 2000, c. P-40 respecting section 20(9) - "Nothing in this section is to be construed as in any way derogating from or adding to the rights of aboriginal persons recognized and affirmed under Part 2 of the *Constitution Act, 1982* or the rights of Indians under the Transfer Agreement". These are Crown Lands and fall under the jurisdiction of the *Public Lands Act*.

A review of this Suncor letter and the Non-Disclosure Agreement, shows that it is an improper method around the review process aimed, it is submitted, at ensuring that there is no public hearing because all indigenous communities will be barred by Non-Disclosure Agreements. It would also interfere with the Federal Court proceedings set for September, 2021.

Suncor does not address the loss of *Treaty No. 8* traditional lands, the loss of wildlife through the oil sands developments and the few remaining areas which retain some undisturbed areas, does not address the extremely serious issue of the destruction of wetlands and their part in the overall issue of the Peace/Athabasca River System and its relationship to the Wood Buffalo National Park. No consideration of Canada's commitments to the World Heritage Site status of Wood Buffalo National Park and the three year Action Plan Canada committed to in December, 2020 which requires consideration of developments beyond the Park boundaries which cause effects within it boundaries. The World Heritage Committee will examine this issue of the Peace/Athabasca Delta in its 45<sup>th</sup> Session this year. This Base Mine Extension Project will further impact the Athabasca River, causing more degradation of the Peace/Athabasca delta region and reduction in flow. Loss of wetlands further aggravates the issues of the Athabasca River and its effect on the Peace/Athabasca River Delta. These issues must be considered in this Application.

Conserving forest and wetlands is imperative and of utmost concern in the world. Canada has agreed to the United Nations Climate Change objectives as stated by the UN Secretary-General to be required by 2020 and announced funding to restore Wood Buffalo National Park. Any effects including the extensive changes that will occur to wetlands and the changes that will occur to the Athabasca River by this Base Mine Extension Project must be reviewed with respect to these matters. In the past extensive loss of wetlands has occurred with a reduction of over 50%. Developments in the white zone in Alberta have to adhere to a policy of no net loss of wetlands but the oil sands have not complied with this in the green zone: see *Harris Guideline for Wetland Establishment on Reclaimed Oil Sands Leases*.

There has not been any successful remediation of tailings pond and as stated by Suncor in their Project Footprint "Wetlands, watercourses and waterbodies within the Project footprint will be modified as the development proceeds" but Suncor has proposed in its February 26, 2021 "Proposed Terms of Reference Environmental Impact Assessment Report ..." "that it will discuss opportunities to coordinate reclamation plans with adjacent operators". After more than 50 years of research, remediation of wetlands has not succeeded and tailings ponds are everywhere with destroyed wetlands.

The Guiding Principles of the Wetlands Mitigation System in Alberta Wetlands Policy 2013 requires that there be an 'equitable sharing of environmental, societal and economic costs between all groups in society. This fails to observe that *Treaty* and aboriginal rights are a constitutional guarantee which is ignored in reviewing the issue of wetlands. Wetlands are key to survival of woodland caribou, moose, muskrat, beaver, wild bird migration and numerous fish which are at the core of hunting, fishing and trapping retained by aboriginals. Medicinal and spiritual plants rely on wetlands. Their destruction in the Base Mine Extension must be thoroughly dealt with.

\*Original signed by\*  
[Redacted signature]

John Malcolm  
Band Manager  
Clearwater Band No. 175 (Paul Cree Band)  
and

*Interim Chief* Original Fort McMurray First Nation

cc: email address removed  
cc: [Redacted]  
cc: [Redacted]