



BROKENHEAD
Ojibway Nation
BAASKAANDIBEWIZIIBING

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September 28, 2020

Via Email

Prairie and Northern Region
Canada Place
Suite 1145 – 9700 Jasper Avenue
Edmonton, Alberta
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Attention: Ms. Barbara Pullishy

RE: Opportunity to Comment: Designation Request for the Proposed Vivian Sand Processing Facility Plant and the Vivian Sand Extraction Project under the Impact Assessment Act

We are in receipt of your letter dated September 14, 2020 which attaches CanWhite Sands Corporation's ("CWS") letter dated September 11, 2020 respecting the above noted proposed project. The elected Government of the Brokenhead Ojibway Nation ("BON") is providing this letter to provide additional information about the project's adverse impacts to BON's Aboriginal and Treaty rights as protected under s. 35 of the *Constitution Act, 1982*.

We have requested the Manitoba Government to immediately suspend its approval process of the project until: (a) such time that the appropriate federal authorities have the required information from CWS to determine the extent of the adverse impacts the proposed project will have with respect to federal jurisdiction; and (b) such time as the Crown engages BON in full, proper and meaningful consultation under section 35 of the *Constitution Act, 1982* to determine what if any adverse impacts this proposed project will have with respect to BON's section 35 rights prior to any environmental approval of this project.

To be clear, BON is requesting a joint federal – provincial panel review process with respect to the proposed project.

To date, we find it very surprising and disappointing that BON has not been contacted or meaningfully consulted by anyone from Government or from CWS with respect to the proposed project given that the project is directly located in BON's traditional Treaty 1 territory and given that there is a strong likelihood that toxins from the project and project run off will end up in the Brokenhead River. What makes this project even more concerning to BON is that the Brokenhead River runs directly through our Reserve lands and is used by members for harvesting, cultural and gathering purposes.

Concerns:

1. **Splitting of Project into 2 Separate EAP's:** An immediate concern is that the current EAP submitted by CWS splits up on the Silica project into two separate EAP's for environmental approval. Once the proposed silica processing facility receives Manitoba environmental approval, CWS intends to submit a second and separate EAP for environmental approval, under the Manitoba Environment Act, for its proposed silica sand mine and the mining method to extract the silica sand.

CWS' rationale as to why it wants to split up the Silica sand project into 2 separate EAP's does not make sense and are not strong reasons for separating the project into 2 separate EAP's. In our view, the splitting up of a single proposed development project into two separate projects makes approval, under the Manitoba Environment Act, of the silica sand mine and the mining methods to extract the silica sand, a foregone conclusion and also fails to provide BON members and other citizens, with the full scope of information of the entire project. This is unacceptable, it is our position that this project must proceed under one single EAP for environmental approval.

Further, it is BON's understanding that the proposed Canadian Premium Sand development project, which included a silica sand processing facility, a mine and other related undertakings, were all assessed as one project by the Province of Manitoba as a Class 2 Development project under the *Manitoba Environment Act*. Notwithstanding this, CWS proposed silica and development project, a similar silica sand development project as the proposed Canadian Premium Sands project, was in our respectful opinion, intentionally and deliberately spilt in to two separate projects for the purpose of the environmental review process under the *Manitoba Environment Act* to avoid, and purposefully to do an end run around the legal duty and the fiduciary need to undertake a section 35 meaningful consultation and accommodation process with impacted and affected Indigenous groups including BON.

2. **'Metal' as a Physical Activity under the Impact Assessment Act Regulations:** It is BON's understanding that 'metal' is a 'physical activity' under the Regulations of the *Impact Assessment Act* ("IAA") and therefore, the project should trigger an automatic designation under the IAA. The project overview of the CWS EAP provides that the Vivian Sand Facility Project is being developed for the purpose

of supplying high-quality silica sand for use in a variety of markets such as the renewable energy industry (e.g. solar panel production), electronics (e.g. cell phones, computer chips). Solar panels, cell phones and computer chips require silicon metal. The Vivian Sand Facility will produce tailings and a silica sand concentrate from which silicon is to be extracted. Under the Federal Physical Activities Regulations and Metal and Diamond Mining Effluent Regulations the Vivian Sand Facility is a new metal mill with an ore (extracted raw sand) input capacity of more than 5000 t/day that must be designated under the IAA.

Further, we note that under the definition of a 'mine' under *The Manitoba Mines and Minerals Act* C.C.S.M. c. M162 mining activities, milling and processing are inseparable and therefore, must be considered under one assessment. For convenience, "mine" is defined as follows:

"mine" means an opening or excavation in the ground that is established or maintained for the purpose of mining and includes

(a) a quarry,

(b) machinery, plant, buildings, premises, stockpiles, storage facilities, waste dumps or tailings, whether below or above ground, that are used for, or in connection with, mining,

(c) a crusher, mill, concentrator, furnace, refinery, processing plant or place that is used for, or in connection with, washing, crushing, sifting, drying, oxidizing, reducing, leaching, roasting, smelting, refining, treating or conducting research on mineral bearing substances, and

(d) an abandoned mine and abandoned mine tailings;"

The Metal and Diamond Mining Effluent Regulations set out the definition of "milling" as: "milling" means any of the following activities for the purpose of producing a diamond, metal or metal concentrate:

.....(c) the processing of tailings.

Section 35 Aboriginal and Treaty Rights:

3. We have determined that EAP is fundamentally deficient with respect to addressing BON's Aboriginal and Treaty rights protected under section 35 of the *Constitution Act, 1982*. As we have previously stated, the EAP is missing critical information about BON's concerns and information on BON's rights, claims, interests and impacts on the same. The EAP contains generic statements and assumptions that are not grounded on information or evidence. Moreover, we have identified a failure to appropriately consult with BON by meaningfully engaging with

BON and discussing both potential impacts to BON' rights and its members' rights from the project, and reasonable mitigation or accommodation measures for such impacts.

The Brokenhead River is a fish bearing river and this river flows right through our Reserve lands. Despite the potential for the project to have adverse impacts on the Brokenhead River which runs through our Reserve lands and which community members use for harvesting, fish and other traditional and customary purposes, BON has not been consulted by the Crown, prior to CWS's EAP submission.

The release of toxins /deleterious substances into the Brokenhead River would be a clear violation of the Federal *Fisheries Act* and threaten aquatic life there - life such as the rare Chestnut Lamprey eel. The Chestnut Lamprey eel is a species at risk, still surviving in the Brokenhead River. As fish production is the foundation of the federal government fishery legislation and policy Fish and Fish Habitat Protection Program (FFHPP) for protecting fishes, fish habitat, and fisheries, we find it hard to believe that this proposed project and issue has not been fully addressed to fully identify potential impacts.

4. **Treaty One Government Support and SCO Support:** We also advise that your September 14, 2020 letter along with CWS's letter dated September 11, 2020, have been shared with and discussed among the Treaty One First Nation Government which represents 7 Treaty One First Nations in Manitoba, including BON. A copy of the correspondence has also been shared with the Manitoba Southern Chiefs Organization which represents 34 southern First Nations in Manitoba, BON included. The Treaty One First Nation Government has made a commitment to provide its letter of support for BON's request to designate the projects as a "physical activity" under s. 9(1) of the IAA and for the Crown to engage in meaningful consultation and where appropriate, accommodation measures, with BON consistent with s. 35 of the *Constitution of Canada, 1982*.

CWS mentions in its letter that they consulted with the SCO about their proposed project. This is contrary to the confirmation that BON received directly by text message from the SCO Grand Chief Jerry Daniels on September 23, 2020. In an email received from SCO on September 27, 2020, SCO further confirms that after a review of their files no one from the organization met with or talked to any representative from CWS. SCO has indicated that they will be providing a letter to CSW for clarification on who and when CSW met with from SCO, BON will be copied on this letter.

We are also fully aware that the Manitoba Metis Federation Inc. ("MMF") has also expressed concerns about the proposed project respecting the adverse impacts the project will have on the MMF's and Metis citizens' resource development and harvesting rights within the project area and we have therefore also copied the President of the MMF on our correspondence.

We look forward to your reply on the above as to whether the proposed project is automatically designated as a 'physical activity' under the IAA and the Regulations as outlined in point number 2 above, or to the Minister exercising his/her discretion on or before **November 16, 2020** to designate not only CWS's proposed silica sand processing facility, but also its silica sand mine and method used to extract the silica sand, as a "physical activity" for assessment under the IAA.

Sincerely,

BROKENHEAD OJIBWAY NATION



Chief Deborah Smith

CC.: Councillor Wendell Sinclair Jr.
Councillor Allan Hocaluk
Councillor Kevin Thomas
Councillor Chris Kent
President David Chartrand, Manitoba Metis Federation
Dennis Sullivan, What the Frack, Manitoba
Grand Chief Jerry Daniels, Southern Chief's Organization