



December 9, 2020

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Suite 1145, 9700 Jasper Avenue  
Edmonton, Alberta T5J 4C3

Dear Ms. Boss,

**RE: Michel First Nation Comments on the Initial Project Description for the Value Chain Solutions (VCS) – Heartland Complex Expansion Project and Information related to Participation in the Impact Assessment Planning Phase**

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I am writing as the elected Chief, on behalf of the Council and Membership of the Michel First Nation. Michel First Nation (“MFN”) has been governed since 1985 through democratic election every three years. At minimum, Michel First Nation Chief and Council represent approximately 976<sup>1</sup> people currently registered as Indians, under the *Indian Act* Registry on the Alberta General List as well as many non-status descendants.

Michel First Nation has the following rights protected by section 35 of the Canadian Constitution, 1982:

- a. Michel First Nation are “Indians” within the meaning of Section 91(24) of the Constitution Act, 1867.
- b. Michel First Nation is therefore an “Aboriginal Peoples” within the meaning of s. 35,
- c. Michel First Nation are signatories to Treaty 6, and
- d. Michel First Nation has rights identified and set out in the *Natural Resources Transfer Agreement, 1930*

Michel First Nation members receive their Treaty 6 annuity payments, under Treaty 6; a payment of \$5.00 each year from the Government of Canada. According to Aboriginal Affairs and Northern Development Canada:

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<sup>1</sup> As of December 21, 2019

*“Treaty annuity payments are paid annually on a national basis to registered Indians who are entitled to treaty annuities through membership to bands that have signed historic treaties with the Crown”.*

MFN's s. 35 rights include hunting and fishing, as laid out in Treaty No. 6; as well as trapping and gathering, which is implied through the right to pursue avocations.<sup>2</sup> Further, MFN's s. 35 rights include aspects not explicitly addressed in Treaty 6, including land and resource rights, as well as rights to self-govern, practice our culture, and speak our language.

We have reviewed the Initial Project Description for the Heartland Complex Expansion Project and, based on our below detailed response, request that this Project be designated as per Provision 38(a) and Provision 38(e) of SOR/2019-285 *Physical Activities Regulations*. This designation will allow for the more robust requirements of the assessment of potential project impacts on Indigenous rights to be applied and considered. This is of particular importance to MFN in relation to the combined impacts of this Project with existing and planned developments within Alberta's Industrial Heartland (“AIH”).

### **Comments on the Initial Project Description**

#### Legislative Requirements

One of our main concerns with the initial Project Description, and the project proceeding with a provincial Environmental Impact Assessment (“EIA”), is the disconnect between the provincial and federal approaches to Indigenous consultation. The new *Impact Assessment Act* (“IAA”) includes requirements for the assessment of impacts that a physical activity may have on the rights held by Indigenous peoples of Canada. This varies from provincial legislation which still heavily relies on current use of land as a metric of effect. We have reviewed a variety of new federal planning phase documents available on the registry including the Practitioner's Guide to the Impact Assessment Act as well as Tailored Impact Statement Guidelines produced for other Projects. This review has allowed us to conclude that the best way for Indigenous rights to be considered is through a federal process.

We are concerned with the language of impacts to Indigenous peoples within the Initial Project Description as it reflects previous legislation rather than *IAA*. For example, “VCS will gather information, including potential impacts, related to Indigenous physical and cultural heritage, traditional land use, and historical, archaeological, paleontological or architectural significance for the proposed Expansion during the consultation process with Indigenous communities.” This does not speak to the directed language with the *IAA* and the Practitioners Guide which require assessment of potential impacts to rights. This must be updated by the proponent through future Planning Phase documents (i.e., the Tailored Environmental Impact Statement Guidelines) and a greater understanding of what is required must be gleaned.

#### Existing/Completed Work to Date

Another concern with the Initial Project Description is the statement that “VCS is working with independent environmental consultancy agencies to summarize environmental baseline information and to prepare the applications”. As MFN has not been involved, to date, due to a returned mailed package of project information, this undertaking has been and continues to be

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<sup>2</sup> Treaty No. 6 (1876)

completed without MFN input. This is contrary to the spirit of the *IAA* and guidance provided within the Practitioner's Guide to the Impact Assessment Act (specifically, Guidance: Collaboration with Indigenous Peoples in Impact Assessments). Within this guidance document, the Impact Assessment Agency of Canada ("IAAC") indicates that approaches for collaboration include Indigenous-led studies and/or proponent/Indigenous joint studies. These are identified to occur within the Impact Statement Phase of the project. However, as VCS has undertaken studies already, prior to the Planning Phase even being initiated, Indigenous nations such as MFN will be left to play catch-up; effectively an after-thought.

This approach may be due to the proponents impoverished view of rights, whereby they indicate that they will include "potential effects on traditional lands" as part of their application. Rights are more than land-based activities. Further, rights are not all locational based. This descriptor indicates that the Project will focus on the current use of lands and resources for traditional purposes, a factor of previous legislation which does not foster reconciliation. This limited and narrow approach is highlighted by the lack of consultation determined by the Alberta Consultation Office and does not align with *IAA* clauses or intention.

#### Support of, and Benefit from, the Project

While MFN understands that this Project has support of many nations within Treaty No. 6, this cannot be construed as a free pass to dismiss potential impacts to rights. As noted above, rights are more than hunting, fishing, trapping and gathering as laid out in Treaty No. 6. MFN's s. 35 rights also include aspects not explicitly addressed in Treaty 6, including land and resource rights, the right to self-govern, practice our culture, and speak our language. As MFN navigates the difficult path to recognition, a path frustrated by the lack of conciliatory relationship with either the federal or provincial Crown, we are awakening to the true nature of our rights and reevaluating the colonial relationship. Therefore, impacts to our rights from all projects within our treaty area must be considered and assessed through this expansive lens.

The Initial Project Description also outlines the benefits to Indigenous Groups. This is premature as benefits are identified without a consideration of the impacts to rights. Typically, in an environmental assessment process, mitigation of impacts is applied, should additional impact remain following mitigation, accommodation or 'benefit' is identified to address any outstanding effect. While we understand VCS is proactive, this lack of consideration of the Project 'trade offs' minimizes the constitutional imperative to consider Indigenous rights.

#### Physical and Biological Environment

In addition to concerns related to our rights, MFN also has concerns with impacts to the physical and biological environment – largely related to the combined effects of this Project with others within the AIH. For example, any potential exceedances of the Alberta Ambient Air Quality Objectives that may occur from this Project, and water withdrawal from the North Saskatchewan. Combined effects from these examples must be described by the proponent and MFN requires consultation to identify how any potential combined effects of the project may interact with MFN's rights.

Based on the Provisions within *SOR/2019-285 Physical Activities Regulations*, as well as our above listed concerns with the process should it continue as a provincial process, we ask that this Project be designated to ensure a full consideration of MFN's rights and interests and a robust consultation process.

## **Information Related to Participation in Impact Assessment Planning Phase**

In addition to our comments on the Initial Project Description your letter indicated that you would like to initiate a dialogue on the consultation process should the Project require a federal impact assessment. To this end, MFN would like to indicate our interest in participating in all phases, starting with the Planning Phase. MFN would like the opportunity to review and provide comment into the Summary of Issues, the Indigenous Engagement Partnership Plan as well as the Tailored Environmental Impact Statement Guidelines. MFN is also receptive to ensuring this process is collaborative with the Crown, as represented by the IAAC, as well as the proponent. However, due to COVID-19, we prefer this be completed virtually until such a time that in-person meetings are deemed safe.

We look forward to your decision in relation to the designation of this Project. We further look forward to consultation and engagement from the IAAC and proponent on this project to ensure impacts to MFN's rights are considered, assessed, and mitigated.

Yours Truly,

<Original signed by>

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Michel First Nation

CC: Dayle Callihoo-Campbell  
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