



February 9, 2020

ATCO Salt Cavern Storage Expansion Project  
Impact Assessment Agency of Canada  
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To whom this letter may concern,

**RE: Michel First Nation Comments on the Initial Project Description for the ATCO Salt Cavern Storage 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 ATCO Salt Cavern Expansion Project and, based on our below detailed response, request that this Project be designated as per Provision 38(f) SOR/2019-285 *Physical Activities Regulations* as the Project will exceed the 50% storage capacity outlined in this provision.

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”), the lack of regional assessment in this area, and lack of strategic assessment completed to date.

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

#### **Capacity**

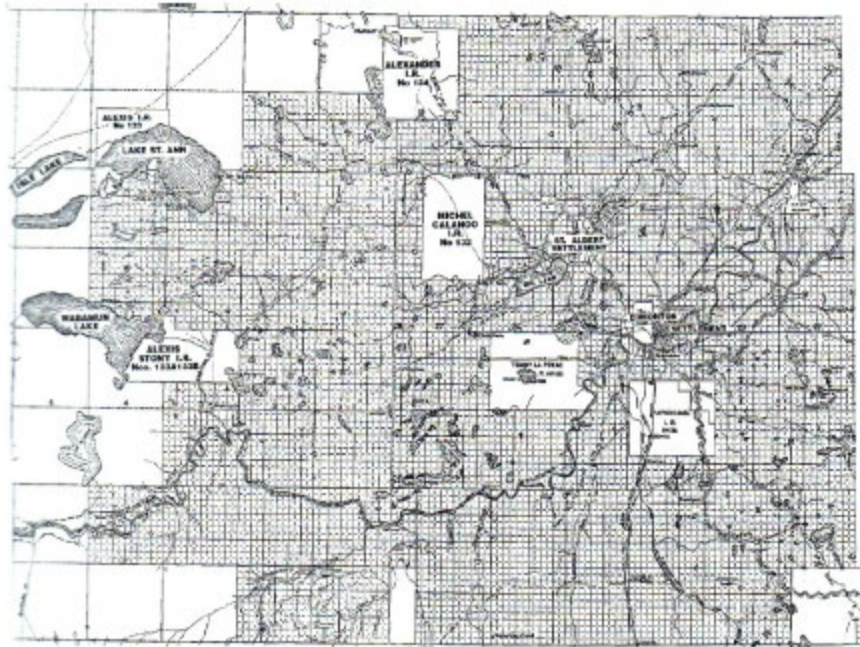
Michel First Nation is listed as an Indigenous nation for consultation within the Project Description; however, as Michel First Nation does not receive core capacity from either the provincial or federal governments', we cannot deploy the necessary resources to engaged in Project consultations. Indeed, our Chief and Council, who operate on a volunteer basis, cannot support direct project consultation and have no staff with which to delegate these tasks; therefore, this review was Michel First Nations first opportunity to consider the Project. A federal designation would allow Michel First Nation to more actively participate in the regulatory review of this Project.

#### **Historical Connection**

Michel First Nation has a significant historical connection to the Project area. While the distance to Michel First Nation was noted in the Project Description as being the office/postal box, Michel First Nation have a historic reserve within 50km of the Project and have a long standing historical and familial connection to the area.

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



The above displayed map is a historic map of the Michel First Nation Indian Reserve, Surveyor General Sheets #79 and #314, 1903 and 1904 (as reproduced in MacPherson 1998). We note that historical resources, ancestral connection to the area is acknowledged within the Project Description on Page 27 (PDF page 31). We require this acknowledgement be extended to Michel First Nation and that this connection be considered in relation to our Section 35 rights.

#### **Lack of Involvement in Government of Alberta Initiatives**

Due to the lack of recognition for Michel First Nation by the Government of Alberta, despite having over 976 members on the Alberta general list, Michel First Nation has not been involved in many important initiatives. This can be highlighted by Michel First Nation's lack of involvement, to date, in the North Saskatchewan Regional Plan (referenced in the Project Description). This will mean Michel First Nation will have no involvement in the regional Groundwater Quality Monitoring Framework which is to be developed as a component of the North Saskatchewan Regional Planning process; and is relied upon by this Project for ongoing groundwater quality monitoring.

This example highlights why, for Michel First Nation, reliance on Alberta processes is flawed. Until Michel First Nation can regain recognition as a rights-bearing nation, any process under the Alberta government will be deficient; including the Project Descriptions assertion that ATCO will "follow the recommendation of the Government of Alberta" with regard to First Nation Consultation Adequacy.

#### **Potential Effects of the Project**

In addition to the above noted responses, Michel First Nation also has concerns with aspects described in *Part E: Potential Effects of the Project*. Recently, our Nation has experienced changing weather in the Province of Alberta which has brought about a variety of once in a 100-year events. We are concerned with the hydrological connectivity of wetland (W3) which may have connectivity with Astotin Creek during a major precipitation event. In order to ensure our concerns are alleviated, we require consultation on the water diversion process identified in the Project Description as well as review of the Environmental Protection Plan, once developed.

Additionally, as noted above, Michel First Nation has a historical connection to the Project area. Therefore, we require notification should any historical resources be identified within the footprints where HRA clearance is applied for.

**Project Benefits**

The Project Description indicates that 90,000 direct and indirect jobs will be created by the petrochemical sector by 2030. The Project Description further states that “AES will evaluate opportunities to meet short and long-term labour force needs through the employment of Indigenous peoples with relevant qualifications or required equipment and/or services.” More information is required on whether AES will provide training and education to Indigenous communities to allow for entry into the petrochemical field. This requires additional discussion between AES and Michel First Nation to ensure our citizens needs are met; a process which can be facilitated through the federal regulatory review process.

Based on the Provisions within SOR/2019-285 *Physical Activities Regulations*, as well as our above listed concerns with the 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, 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

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