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VIA EMAIL

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Attn: Marguerite Lake Compressed Air Energy Storage Project

Impact Assessment Agency of Canada
9700 Jasper Avenue, Suite 1145
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780-495-2037

**Re: WLFN #128 Comments on Initial Project Description
Marguerite Lake Compressed Air Energy Storage Project**

We write as legal counsel for Whitefish (Goodfish) Lake First Nation #128 (“**WLFN 128**”) to comment on the Initial Project Description (the “**IPD**”) for the Marguerite Lake Compressed Air Energy Storage project (the “**Project**”) proposed by the Federation Group Inc. (the “**Proponent**”).

In the response below, we provide comments on the IPD and advocate for a federal review of this Project due to its potential impacts on areas of federal concern, including Indigenous peoples, migratory birds, fish and aquatic species, and species at risk. Further, as this Project is using sub surface storage under Treaty 6 lands in a novel manner, the utmost care and environmental protection is required to ensure that these areas of federal concern are not adversely impacted.

1.0 SUMMARY OF CONCERNS

1.1 The Project may adversely impact WLFN 128’s Aboriginal and Treaty Rights.

WLFN 128 is concerned that the Project will impact the waters, lands, and resources required for the practice of their Aboriginal and Treaty rights. WLFN 128’s primary concerns include:

- (a) The environmental impact of loss of wetlands (including: habitat loss for birds, aquatic species, and other wildlife; and overall integrity of the ecosystem in the area).

- (b) Impacts to groundwater quality resulting from the hollowing out of underground areas, spills and leaks, brine pollution of groundwater during use and after disposal how this may affect the drinking water for Indigenous peoples.
- (c) Safety and reliability of caverns holding compressed area and the overall impact of using the sub-surface area for storage of compressed area.
- (d) Lack of detail on powerline routing, pipeline routing, and potential expansion of the existing substation.
- (e) Cumulative impacts on WLFN 128 ability to use the land for the practice of their Aboriginal and Treaty rights.

1.2 A federal impact assessment is required.

We note that many of these impacts are on areas of federal concern, including: fish and aquatic species, migratory birds, and species at risk. All of which have an impact on Canada's responsibility to protect and preserve the environment and meet their Treaty obligations as required by the honour of the Crown.

In addition, the Project will have impacts on the rights of Indigenous peoples, including WLFN 128 members. These impacts should be addressed considering the major impacts to Treaty 6 lands wrought by oil and gas development and other industry, and the dramatic increase in the scope and scale of carbon capture and other subsurface storage projects proposed in the surrounding area.

1.3 Canada has not discharged its duty to consult.

In addition, the IPD does not accurately describe consultation on this Project. Although a consultation adequacy decision has been reached by the ACO, WLFN 128 has not provided any comments or concerns regarding the Project to date. The IPD identifies that the "Federation has been engaged in consultation with the 11 Indigenous communities listed above since May of 2021 regarding the Project".¹ This is technically accurate but does not reflect that the Proponent and WLFN 128 have not engaged in any meaningful conversations about the impacts of the Project on WLFN rights. There was simply a project notification sent, a follow-up email, and a record of consultation sent for review.² Although it may meet the technical specifications of Alberta's consultation policy and guidelines, this is not meaningful consultation, nor does it discharge the federal Crown's duty to consult.

2.0 WHITEFISH (GOODFISH) LAKE FIRST NATION #128

WLFN 128 is a Treaty 6 (the "**Treaty**") First Nation and are an Aboriginal people within the meaning of section 35 of the *Constitution Act, 1982*. WLFN 128's reserve land and much of their traditional territory lies within the tract of land subject to the Treaty. WLFN 128 traditional

¹ Federation Group Inc., Initial Project Description: Marguerite Lake Compressed Air Energy Storage (November 23, 2023) at 5 [IPD].

² IPD at p 10.

territory extends throughout northern and central Alberta. Like many First Nations in Alberta, WLFN 128 faces encroachment from industrial, resource, agricultural, urban, recreational, and other development. The practice of Treaty rights by WLFN 128 members is at risk due to the cumulative impacts of unsustainable industrial and other development on Treaty 6 lands.

3.0 COMMENTS ON THE PROJECT AND THE INITIAL PROJECT DESCRIPTION

3.1 The Project may adversely impact WLFN 128's Aboriginal and Treaty Rights.

This Project will have environmental impacts that will adversely impact WLFN 128's Aboriginal and Treaty rights.

Permanent loss of wetlands. Wetlands are a critical habitat for migratory birds, aquatic species, and other wildlife. They also underpin the stability of the ecosystem and provide an environment where WLFN 128 members can practice their Aboriginal and Treaty rights. The Project has a disturbance area of 13.5 ha.³ 13% of this disturbance area is made up of four wetlands – all of which will be “permanently affected by construction of the Project” and “Project activities will result in permanent loss of wetland function and wildlife habitat within the impacted wetlands”.⁴ We can expect that loss of wetlands will have a permanent and adverse effect on birds, aquatic species, species at risk, and other wildlife – species that all fall under federal jurisdiction.

Despite this, the Proponent concludes that “the Project is not expected to have high impacts to wetlands”.⁵ This is due to the key accommodation measure -- compensation in the form of wetland replacement fees.⁶ Financial accommodations should not be permitted to downplay the environmental disturbance of a Project. The IAAC should consider these impacts to wetlands as part of the overall impact of the Project and ensure that, regardless of the financial accommodation put in place, the loss of wetlands is properly reflected in the IPD.

Further, it is crucial to note that the wetland replacement fee does not accommodate the impact to WLFN 128 Treaty rights. It is true that these funds “will be allocated toward specified restorative or non-restorative measures”⁷ but it cannot be said that they mitigate the impact to the wetlands in the disturbance area. At most this is an indirect measure that *may* have the effect of rebuilding or revitalizing wetlands elsewhere and does nothing to accommodate or compensate WLFN 128 for the impact to Treaty 6 lands.

Potential damage to subsurface area. The IPD does not sufficiently describe how the Proponent will ensure the safety and reliability of the caverns holding compressed air and the overall impact of using the sub-surface area for storage of compressed area. WLFN 128 is deeply concerned about the impact of sub surface storage under Treaty 6 lands. Other proposed carbon capture and storage facilities (e.g. Pathways) are bringing to light the lack of

³ IPD at 34.

⁴ IPD at 33.

⁵ IPD at 33.

⁶ IPD at 33.

⁷ Alberta Wetland Policy at 18.

full understanding of what storing waste, compressed air, or liquids underground will do to the local environment and the geological stability of the area. Increased earthquakes and other seismic activity will place the safety and wellbeing of the Indigenous peoples in the area at risk and could harm the security of water and food supplies. This is particularly true for WLFN 128 members who use the remaining available areas around the Project for traditional land use.

We request that the IAAC seek further details about the potential for increased seismic activity resulting from storing compressed air in underground pore space.

Risk of impact to groundwater quality. WLFN 128 is concerned about the nature and extent to which the Project Activities risk groundwater quality. The most concerning project activity is “solution mining” (i.e. blasting out underground areas in the earth with a brine-based solution). The IPD does not make clear how reliable and safe these underground areas will be, what the impact of leaks or seepage will be on groundwater, and how the “solution” will impact groundwater during construction. There are “28 water wells within a 5 km radius of the site”.⁸ WLFN requests that the IAAC inquire about the impacts to these wells from potential leaks and seepage – both during the mining process and after storage of the compressed air.

It is also critical that the IPD frame these sub surface storage activities in the context of expanding carbon capture and storage facilities and the patchwork of oil and gas wells throughout this area. The IPD does not sufficiently describe the cumulative impacts of subsurface storage on groundwater quality. The expanded use of subsurface storage, particularly with pressurized liquids and gases, is an area worth studying in greater detail. This could adversely impact groundwater quality that feeds fish-bearing lakes and rivers, including Marguerite Lake.

Much like the carbon capture and storage facilities being proposed throughout this area, the Project is a novel approach to electricity generation that relies heavily on the stability of the sub-surface area below WLFN 128 lands. Additional study into the impacts of using sub-surface storage “caverns” in this way is required and more substantial understanding of groundwater patterns, flows, and reservoirs is needed.

To better understand these impacts and how they will be mitigated, WLFN 128 requests the Proponent provide details of the groundwater and stormwater management plans.

Impacts from storage and disposal of ‘waste’ brine. In the IPD, the Project describes that the waste brine used in the “solution mining” process will be deposited in deep wells.⁹ WLFN 128 is concerned about the impact on subsurface geology and stability from these deposits, and the impacts to migratory birds and other species that may land on the storage ponds. The Proponent notes that “Federation has evaluated the geology of the area to ensure that the disposal wells are located in viable reservoirs that are deep enough to safely dispose of waste brine without interfering with groundwater and oil and gas production in the area”.¹⁰

⁸ IPD at 29.

⁹ IPD at 72.

¹⁰ IPD at 72.

WLFN requests that the IAAC inquire about these conclusions and the studies that support them as this could have a substantial impact on water and the fish, aquatic species, and migratory birds that rely on wetlands and lakes in the area.

Project contributes to cumulative impact and diminishment of Treaty rights. The Project adds 13.5 ha¹¹ of new disturbance to a deeply disturbed Treaty 6 landscape. It further *permanently* affects four wetlands. This results in a degradation of suitable habitat for migratory birds, species at risk, other wildlife, and the wildlife resources harvest by WLFN 128 members as part of exercising their Treaty rights. Taken together with impacts of oil and gas development, forestry, carbon capture and storage projects, other electricity generation projects, and other industrial uses, these land uses cannot co-exist with Treaty 6 rights in a sustainable way.

The IPD includes no consideration of impacts to WLFN 128 members. The IPD does not reference WLFN 128 beyond stating that they were on the list of impacted First Nations and a Project Notification and follow-up correspondence was sent. It is not sufficient to exclude impacts on a First Nation simply because they did not provide information to you directly. There is ample publicly available land use information published by WLFN 128 including a geodata map that highlights use throughout this area and cumulative effects reports that have been submitted to Alberta on multiple occasions. As stated in the summary, consultation-to-date has not been meaningful nor has it been sufficient to discharge the federal Crown's duty to consult.

We request that the federal Crown consult with WLFN 128 to further identify their issues and incorporate them into the Summary of Issues table to be prepared by the IAAC.

The IPD does not mention Treaty rights. There is considerable information in the IPD about environmental impacts but limited information on impacts to Treaty rights. *Clyde River* clarifies that the "consultative inquiry is not properly into environmental effects *per se* ... Rather it inquires into the impact on the *right*".¹² The Detailed Project Description must include a detailed assessment of impacts to Aboriginal and Treaty rights, including impacts to Treaty 6 First Nations and WLFN 128. There are cursory mentions of Treaty rights throughout the IPD that indicate there will be impacts but no substantive inquiry. The Proponent hints at the potential impacts to Aboriginal and Treaty rights but does not explore them further, as shown in the below excerpt:

There are some ongoing concerns related to the cumulative effects in the region resulting from cumulative effects that could displace Indigenous peoples from preferred traditional used areas due to noise, increased activity of personnel, increased traffic or safety risks.¹³

The Proponent does not provide further details about how these may be mitigated or accommodated. These potential impacts trigger the honour of the Crown. We request that the Detailed Project Description provide a full section on impacts to Indigenous peoples, Treaty 6, and the rights of WLFN 128 members.

¹¹ IPD at 1.

¹² *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40 at para 45.

¹³ IPD at 59.

4.0 CLOSING REMARKS

Thank you for your consideration of these comments. Our client looks forward to working with you directly to better understand the impacts of this Project and their Aboriginal and Treaty rights.

JFK Law LLP

Per:

Blair Feltmate
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