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VIA EMAIL

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Marguerite Lake Compressed Air Energy Storage Project
Impact Assessment Agency of Canada
9700 Jasper Avenue, Suite 1145
Edmonton, Alberta T5J 4C3

Re: Marguerite Lake Compressed Air Energy Storage Project Initial Project Description

On January 8, 2024, BLCN received a letter inviting the Nation to participate in consultation on the summary of the Initial Project Description (“**IPD**”) for the Marguerite Lake Compressed Air Energy Storage Project (the “**Proposed Project**”), located outside of La Corey, Alberta. We write as legal counsel for Beaver Lake Cree Nation (“**BLCN**” or the “**Nation**”) to comment on the IPD.

The Proposed Project falls within Beaver Lake Cree Nation’s Traditional Territory

The Proposed Project is in BLCN’s Traditional Territory and has the potential to result in direct, indirect, and cumulative impacts on the Nation’s rights, culture, and way of life. BLCN people have historically and continue to occupy and attempt to use and rely on their territory for a range of sustenance, cultural, spiritual, and other purposes. As such, meaningful consultation is required with BLCN.

BLCN is already facing the cumulative impacts of development within its territory and further highlights the fact that the Proposed Project falls within an area subject to unresolved and active litigation related to the cumulative impacts of development on the Nation’s way of life.

BLCN is concerned about the potential impacts of this Proposed Project on its rights given the nature of the activities, the overlap of the Proposed Project location with areas of importance to BLCN, and the reality that BLCN people rely on the integrity of the area to support wildlife habitat, vegetation, and traditional resources required for the continued exercise of rights.

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About Beaver Lake Cree Nation

Treaty 6 was signed on August 23, 1876 at Fort Carlton. Beaver Lake Cree Nation was a signatory to the adhesion made to Treaty 6 at Ft. Pitt on September 9, 1876. Chief Pee-Yas-See-Wah-We-Cha-Koot signed on behalf of the Beaver Lake Band No.131. In exchange for the Indigenous signatories' agreement to "cede, release and surrender and yield up to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors forever, all their rights, titles and privileges, whatsoever, to the lands included" (121,000 square miles of Alberta's fertile plains), the Indigenous signatories were promised that they would be able to continue hunting and fishing throughout the surrendered lands.

BLCN's Traditional Territory is the Nation's spiritual, physical, and economic homeland. BLCN stewards this land to honour their ancestors, and on behalf of future generations, so that as long as the sun shines, the rivers flow, and the grass grows, BLCN people can continue their way of life.

Beaver Lake Cree Nation's rights, culture, and way of life are threatened by ongoing development and cumulative impacts

BLCN has witnessed the relentless loss of and impact to its Traditional Territory from industrial, agricultural, and other forms of development. The result is that BLCN community members now face significant challenges to the exercise of their rights which can grow worse with each additional project or activity.

Even where a project or activity may seem to have a relatively minor impact when viewed in isolation, the cumulative impacts of development, taking up of land and prevailing land use policies and regulations combine in such a manner as to bar and constrain community members from meaningfully hunting, fishing, harvesting, and carrying out other important activities on the land.

In these circumstances, it is not enough for proponents and Crown agencies to focus their consultation efforts on the immediate effects of a proposed project or activity. What is required are mechanisms to actively repair and promote the rights, culture, and interests of our members now, as well as the rights, culture, and interests of our future generations.

Beaver Lake Cree Nation is concerned about impacts to rights, culture, and way of life from this Proposed Project

BLCN is primarily concerned about the use of this novel technology in conjunction with other proposed projects within its Traditional Territory, and the potential impacts to ecosystem health and wildlife, water quality, and human health and safety.

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A. Impacts to Ecosystem Health and Wildlife

BLCN members hunt, fish, and harvest all throughout their Traditional Territory and as such, BLCN is concerned about the potential impacts to wildlife and the integrity of wildlife habitat from the Proposed Project.

The IPD indicates that the Proposed Project may result in habitat loss and loss of connectivity between habitats, including with respect to species at risk. Apart from using existing disturbed areas, does not offer any particular mitigation measures to reduce this risk. The IPD describes a “temporary reduction” in the area available for plant harvesting due to the operations requiring graveling. This “temporary reduction” is in fact expected to last for the entire life-cycle of the Proposed Project (expected to be at least 30 years) as it will not be remedied until the decommissioning phase (expected to occur in 2050 *or later*). BLCN notes that decommissioning is stated to follow the “requirements of the day” and there is no certainty as to what these requirements may be, or what long-term impacts would result from the “temporary” graveling.

The IPD also states that all four wetlands within the Proposed Project area will be “permanently affected” by construction of the Proposed Project, particularly by permanent loss of wetland function and wildlife habitat. Wetlands support a healthy ecosystem and healthy waterways throughout BLCN’s traditional territory, including by indirectly supporting fish and fish habitat. Further, species of importance to BLCN such as caribou, moose, and different types of fish and plants, either live in and around wetlands or rely on wetlands to support their habitat and a healthy ecosystem overall. BLCN also notes that the proponent has paid “wetland replacement fees” but not to BLCN or its members, who will continue to be impacted by the environmental degradation in their traditional territory. It is unclear to BLCN how the mitigation measures (including compensation for wetland replacement), still allowing for the permanent loss of wetland function and wildlife habitat, can be found *not* to have high impacts to wetlands, as stated in the IPD.

B. Impacts to Water

BLCN is concerned about impacts to water and groundwater from the Proposed Project. BLCN notes that wetlands are highly important to surface and groundwater health. Beyond impacts to wetlands, the IPD indicates that the Proposed Project may have impacts on groundwater quality and quantity/levels and that proposed mitigations include developing a monitoring program. The IPD also indicates that contaminants may pollute surface water but to mitigate this risk, it says only that efforts will be made to avoid spills. BLCN is concerned about the lack of information about what kind of pollutants may be present and what risks these may pose to BLCN members, and has further concerns about the ability of proponent-led monitoring programs to adequately monitor cumulative impacts to rights.

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C. Impacts to Human Health and Safety

BLCN is concerned about how the Proposed Project activities may put human health and safety at risk. For instance, BLCN is aware of the Pathways Alliance proposed carbon storage project, which proposes to store an unprecedented amount of carbon under BLCN's reserve lands forever. BLCN is still in early stages of understanding sub-surface storage and the potential risks and impacts to both members' use of the lands to exercise their rights, and the integrity of the environment, including geological stability, that support the exercise of rights. As BLCN members continue to use areas surrounding the Proposed Project, a full understanding of what impacts high-pressure storage facilities may have is of the utmost importance.

A Federal Impact Assessment of the Proposed Project is required

While the ACO found that consultation was adequate with respect to the Proposed Project, the further development of sub-storage facilities in BLCN's Traditional Territory and the continued and ongoing cumulative impacts to BLCN's rights and way of life demands further meaningful consultation with the Nation. An Impact Assessment under the IAA will help BLCN better understand the potential impacts of this sub-storage facility, including impacts on the rights of Indigenous peoples and areas of federal concern including fish and aquatic species, species at risk, and migratory birds. All of these impacts should be taken seriously in light of BLCN's infringement claim and ongoing litigation, the ongoing major and cumulative impacts from development, and the increase in proposed sub-storage facilities that are following on the oil and gas industry, all continuing to take up land within Treaty 6 and BLCN's traditional territory.

Conclusion

BLCN looks forward to further engagement and Crown consultation on this Proposed Project, and to gaining a full understanding of the potential impacts posed to the Nation's way of life and ongoing exercise of its Aboriginal and Treaty rights, and ways to minimize or avoid these impacts altogether.

Yours truly,
JFK Law LLP

Per:
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Associate

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