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May 31, 2023

Alberta Energy Regulator
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4

Attention: Aimée Hockenbull

**Re: Request for Reconsideration of Suncor’s McClelland Lake Wetland Complex (MLWC)
Operational Plan for the Fort Hills Oil Sands Project by Alberta Wilderness Association
Suncor Energy Inc. (Suncor) / Fort Hills Energy Corporation (Fort Hills)
Request for Reconsideration No.: 1942728
Suncor’s Response Submission**

Dear Ms. Hockenbull,

Overview

On December 15, 2021, pursuant to its *Water Act* Approval,¹ Suncor Energy Operating Inc. (SEOI) on behalf of Fort Hills Energy Corporation (FHEC), filed its Operational Plan to sustain the non-mined portion of the McClelland Lake Wetland Complex (MLWC). On September 9, 2022, the Alberta Energy Regulator (AER) authorized the Operational Plan (Decision).²

On March 31, 2023, the Alberta Wilderness Association (AWA) made an unusual request that the AER reconsider the previously-approved Operational Plan under section 42 of the *Responsible Energy*

¹ *Water Act* Approval No. 151636-01-00 (as amended), sections 3.11, 3.12, 3.13 and 3.14. (Attachment 1)

² AER letter to SEOI authorizing Operational Plan, September 9, 2022. (Attachment 2)

*Development Act*³ (REDA). On April 18, 2023, the AER confirmed that it has sole discretion to reconsider a decision made by it and that:

The AER will only exercise its discretion to reconsider a decision outside these time limits under the most extraordinary circumstances, where it is satisfied that there are exceptional and compelling grounds to do so.⁴

The AER confirmed that AWA's March 31, 2023 email did not provide sufficient details to support the AWA's request for reconsideration and established a submission process (Phase 1) to determine whether the AER should exercise its discretion to proceed to reconsider the Decision (Phase 2).⁵ Only if the AER determines it should reconsider the Decision will it proceed to Phase 2, where each party will be afforded an opportunity to provide further submissions as to whether the Decision should be confirmed, varied, suspended or revoked.

On May 8, 2023, AWA filed its submission in support of its request for reconsideration (AWA Report). With the exception of minor formatting changes and a covering letter, this submission is identical to AWA's March 31, 2023 filing.

The following is SEOI's response to the AWA Report. SEOI submits that AWA's request should be dismissed, and the AER should decline to proceed to Phase 2 of the reconsideration process based on the following:

1. AWA's historic and continued refusal to participate in the Sustainability Committee and engage with SEOI;
2. parties must utilize available appeal mechanisms;
3. reconsideration is an extraordinary remedy saved for the rarest circumstances – the circumstances for which do not exist here;
4. AWA is not directly and adversely affected by the Operational Plan;
5. AWA has failed to demonstrate any error in the Decision; and
6. AWA has not adduced any new, compelling, significant, or extraordinary information.

³ SA 2021, c R-17.3, s 42.

⁴ AER letter to AWA and Fort Hills, Request for Reconsideration No.: 1942728, April 18, 2022. (Attachment 3)

⁵ *Ibid.* (Attachment 3)

Background

Approval to mine a portion of the MLWC was granted over 20 years ago in Alberta Energy and Utilities Board Decision 2002-089 (2002 EUB Decision).⁶ In that decision, the approximately one billion barrels of oil underlying the MLWC were approved for recovery, provided it could be done in a manner that minimizes damage to the rest of the MLWC.⁷ To protect the MLWC, the EUB ordered the convening of a committee of stakeholders and regulators to work towards the goal of minimizing damage to the non-mined portion of the MLWC.⁸

Against this background, in 2005, the Sustainability Committee was created, which SEOI views as the backbone of the Operational Plan. The Sustainability Committee is a unique and diverse group created to guide development of the Operational Plan, the foundational document which outlines how the non-mined portion of the MLWC will be sustained in accordance with Alberta's Integrated Resource Plan.⁹

Over the years, participants in the Sustainability Committee have included SEOI, Indigenous communities¹⁰ and various regulatory and government agencies. In addition, offers to participate have been extended to environmental non-governmental organizations (ENGOs). In recent years, the Sustainability Committee has been supported by an Aboriginal Advisory Group (AAG), comprised of Elders, traditional knowledge holders and land users, and a Technical Advisory Group (TAG), comprised of scientific technical experts, and two independent co-chairs.

The Fort Hills *Water Act* Approval¹¹ includes the building blocks for development of the Operational Plan. Specifically, condition 3.13 of the *Water Act* Approval reflects the requirements used to establish six distinct objectives to guide development of the Operational Plan, with the ultimate purpose of sustaining

⁶ TrueNorth Energy Corporation Application to Construct and Operate an Oil Sands Mine and Cogeneration Plant in the Fort McMurray Area, October 22, 2002.

⁷ 2002 EUB Decision, p 39. (Attachment 4)

⁸ 2002 EUB Decision, p 39. (Attachment 4)

⁹ Fort McMurray-Athabasca Oil Sands Subregional Integrated Resource Plan (IRP, ASRD 2002). <https://open.alberta.ca/dataset/02ea9d65-00f6-4a10-bb80-88f12bcbfc87/resource/480b474a-e371-4d31-b32c-eda81c0379ce/download/2002-fortmcmurrayathabascaoilsandsplan-2002.pdf>.

¹⁰ Indigenous communities currently on the Sustainability Committee include Fort McKay First Nation, Fort McKay Métis Nation, Fort McMurray 468 First Nation, McMurray Métis Local 1935, Athabasca Chipewyan First Nation, Fort Chipewyan Métis Local #125 and Mikisew Cree First Nation.

¹¹ *Water Act* Approval No. 151636-01-00 (as amended), s 3.13. (Attachment 1)

the non-mined portion of the MLWC. SEOI has worked with the Sustainability Committee for several years to establish and refine these six objectives, which were submitted with the Operational Plan proposal as per Condition 3.11 of the *Water Act* Approval. The proposal was subsequently authorized by the AER in 2019. Updates on progress on the Operational Plan have been reported to the AER through annual progress reports.

Following submission of the Operational Plan, the AER conducted a rigorous review process including detailed supplemental information requests (SIRs), technical meetings, and participation in Sustainability Committee meetings. Feedback from the Sustainability Committee was incorporated during development of the Operational Plan and SEOI has committed to continuing to work with the Sustainability Committee through operation and closure.

1. AWA's Historic and Continued Refusal to Participate in the Sustainability Committee and Engage with SEOI

Due to its continued refusal to participate in the Sustainability Committee, AWA missed the opportunity to contribute to years of discussion, data review and to provide input into the Operational Plan's development.

In 2005, FHEC's predecessor sent correspondence to the AWA requesting its input on development of the Sustainability Committee.¹² This put AWA on notice that its input would be considered and participation in the Sustainability Committee was available to it. Since 2005, AWA has been offered additional opportunities to participate in the Sustainability Committee,¹³ but AWA declined these invitations as well. AWA clearly acknowledges its lack of participation in the Sustainability Committee in the AWA Report:

AWA has declined – on numerous occasions – to participate as part of the Sustainability Committee, as we felt it was more valuable to maintain our independence so that our participation in the SC couldn't be considered by AER and the wider public as tacit approval for the submitted Operational Plan.¹⁴

Put another way, the AWA determined strategically that it would not support the Operational Plan before it even existed. For example, AWA's website indicates that it regards the Sustainability Committee as a

¹² Letter from Christyann Olson, Executive Director of AWA to Kenn Hall, Petro-Canada, June 10, 2005. (Attachment 5)

¹³ See, for example, 2010 email from Jon Hornung to AWA and AWA response. (Attachment 6)

¹⁴ AWA Report, p 15.

“means to legitimize the wetland complex’s destruction”.¹⁵ Given the years of collaboration that have gone into developing and progressing the Sustainability Committee and the Operational Plan, SEOI has demonstrated that is clearly not the case and that it values the Sustainability Committee and the input of its members.

In addition to extending multiple offers to participate at the Sustainability Committee, SEOI corresponded directly with AWA and offered to engage directly with AWA to discuss the contents of the Operational Plan in more detail. For example, on December 22, 2021, AWA filed a letter with the AER requesting a copy of the Operational Plan.¹⁶ On January 28, 2022, SEOI provided AWA a copy of the Operational Plan and offered to discuss its contents and any concerns AWA had.¹⁷ AWA sent further correspondence to SEOI in March and April of 2022, requesting details on the Operational Plan regulatory process, to which SEOI responded.¹⁸ Despite this, AWA chose not to meet or discuss with SEOI nor file any additional information with the AER, even though nearly eight months passed from AWA’s receipt of the Operational Plan until its authorization.

The AWA has had ample opportunity to participate in and contribute to the work of the Sustainability Committee and it unilaterally and deliberately chose not to participate in that process. It refused to be a part of the Sustainability Committee where it would have benefitted from hearing the views of all the participating parties. The AWA has refused to accept the decision that “it is in the public interest to approve mining within the MLWC, subject to establishing the appropriate mitigation plan.”¹⁹ The AER should not incentivize these actions by establishing a subsequent reconsideration process so the AWA may now provide input it could have provided earlier. Doing so would establish a troubling precedent that would encourage parties to only raise concerns after decisions have been made.

¹⁵ <https://albertawilderness.ca/issues/wildlands/areas-of-concern/mcclelland-lake/>

¹⁶ Letter from Phillip Meintzer to the AER, December 22, 2021. (Attachment 7)

¹⁷ Letter from SEOI to AWA, January 28, 2022. (Attachment 8)

¹⁸ Email from Michael Robinson of SEOI to AWA, April 14, 2022. (Attachment 9)

¹⁹ EUB Decision 2002-089, p 39. (Attachment 4)

2. Parties must utilize available appeal mechanisms

Contrary to AWA's submissions,²⁰ there is no mechanism or ability for members of the public to "request" reconsideration. Section 42 of REDA is abundantly clear that reconsideration is at the sole discretion of the AER:

42 The Regulator may, in its sole discretion, reconsider a decision made by it and may confirm, vary, suspend or revoke the decision.

This distinction is important because no time limit is specified in section 42 of REDA. If parties were permitted to request reconsideration of AER decisions when they please, there would be no finality to AER decisions – any AER decision would be open to a reconsideration request at any time, which would create significant uncertainty in the regulatory process.

The Operational Plan was authorized on September 9, 2022. In the usual course, parties have two avenues to appeal a decision under the AER's process:

- 1) Under section 38 of REDA, an "eligible person" may request a regulatory appeal of an "appealable decision".
- 2) Under section 45 of REDA, a person may apply to the Court of Appeal of Alberta for permission to appeal a decision of the AER on a question of law or jurisdiction.

These appeal mechanisms are subject to statutory time limits. Given the AER's authorization of the Operational Plan on September 9, 2022, a request for regulatory appeal or permission from the Court of Appeal was required to be filed by October 9, 2022.²¹ SEOI's understanding is that AWA did not pursue either of these avenues and is now time barred since both deadlines have long since passed.

The need to utilize the available statutory appeal mechanisms under REDA is reinforced in a 2014 AER decision denying a reconsideration request:

Under section 38 of the *REDA*, persons who are directly and adversely affected by an appealable decision of the AER may seek a regulatory appeal of the decision. Also, under section 41, a person may apply to the Court of Appeal of Alberta for leave to appeal an AER decision on a question of

²⁰ AWA Report, p 17.

²¹ *Alberta Energy Regulator Rules of Practice*, Alta Reg 99/2013, s 30(3) and *Responsible Energy Development Act General Regulation*, Alta Reg 90/2013, s 5(1).

law or jurisdiction. Those two appeal mechanisms provide an opportunity for persons who are affected by and have a genuine interest in an AER decision to request that it be reviewed if they consider the decision to be in need of review. The AER’s reconsideration power is not, and is not intended to be a substitute for the existing regulatory appeal and judicial appeal mechanisms under the REDA, nor is it intended to by-pass the requirements of those processes or provide for an appeal mechanism when the time for engaging those processes has passed. Given the need for finality and certainty in its decisions, the AER reserves its discretion to reconsider a decision for the most extraordinary circumstances where it is satisfied that there are exceptional and compelling grounds to do so and no other review process exists. Mere disagreement with a decision is not sufficient, particularly if another suitable appeal process is available or was available but was not used.²² (emphasis added)

AWA waited over six months after authorization of the Operational Plan and after the time limits to appeal lapsed and then attempted, via the reconsideration request, to create a third avenue of appeal not provided by the Alberta legislature. The AWA neglected to utilize the available appeal mechanisms and should therefore be denied the opportunity to avail itself of the AER’s limited reconsideration process which, as the next section demonstrates, is only to be used “under the most extraordinary circumstances”.

3. Reconsideration is an extraordinary remedy saved for the rarest circumstances – the circumstances for which do not exist here

The above-referenced time limits for appealing AER decisions are important because parties require certainty in the decision-making process. Because section 42 of REDA does not have a time limit and other appeal processes are available under REDA, the AER has indicated it will only exercise its discretion to reconsider a decision in the most extraordinary, exceptional, and compelling circumstances:

Given the appeal processes available under REDA, and the need for finality and certainty in its decision, the AER will only exercise its discretion to reconsider a decision under the most extraordinary circumstances where it is satisfied that there are exceptional and compelling grounds to do so. The AER considers that the reconsideration power in section 42 of REDA should be used

²² AER letter denying Beaver Lake Cree Nation Reconsideration Request against Canadian Natural Resources Kirby In-Situ Expansion Project, June 27, 2014. (Attachment 10)

sparingly, and only in the most compelling cases where no other review power exists to address a situation that is in obvious need of remediation.²³

AWA provides no extraordinary, compelling, or exceptional circumstances which would warrant reconsideration. Instead, AWA unreasonably delayed its engagement of consultants and has failed to file or provide any relevant information with the AER which would explain its reasons for this delay.

AWA states that its evidence was not available at the time of the Decision, and that AWA did not have an opportunity to bring forward the evidence prior to the Decision.²⁴ SEOI strongly disagrees. AWA had ample opportunity to make information available prior to the time of the Decision. AWA participated in the original proceeding and hearing that led to the 2002 EUB Decision. Therefore, AWA has known since 2002 that a mitigation plan would need to be developed in connection with the MLWC. It was invited on several occasions to participate in the process leading to the development of the Operational Plan and it refused. On this basis alone, there is no excuse whatsoever for the AWA's failure to retain experts earlier. It had almost 20 years to do so.

Even if the time since the issuance of the 2002 EUB Decision is not factored in, AWA could have raised its concerns following submission of the Operational Plan. Consider the following timelines:

- December 15, 2021: Operational Plan submitted to the AER.
- January 28, 2022: SEOI provides a copy of the Operational Plan to AWA.
- August 2022: AWA engages two consultants to review the Operational Plan.²⁵
- September 9, 2022: AER authorizes Operational Plan.
- November 3, 2022: AWA's consultant Dr. Biagi completes her review.²⁶
- December 28, 2022: AWA's consultant Dr. Harris completes her review.²⁷
- March 31, 2023: AWA files a request for reconsideration.

To summarize: i) it took approximately seven months from AWA's receipt of the Operational Plan for it to engage consultants; ii) it took AWA's consultants a total of four months to review the Operational Plan and

²³ AER Letter denying O'Chiese First Nation Reconsideration Request against Teck Coal approval, February 19, 2019. (Attachment 11)

²⁴ AWA Report Cover Letter, p 2.

²⁵ AWA Report Cover Letter, p 2.

²⁶ AWA Report, Appendix 1.

²⁷ AWA Report, Appendix 2.

provide their findings; and iii) it took AWA an additional three months to summarize the consultants' findings. In total, fourteen months passed from the time AWA received the Operational Plan until it decided to file any information with the AER. This is longer than the entire AER regulatory proceeding following submission of the Operational Plan, which was approximately nine months.

AWA cites apparent conflicts for its delay in engaging consultants and fails to explain why it took a further three and four months for these consultants to conduct a basic, high-level review of the Operational Plan. These are not compelling enough reasons to warrant a reconsideration. SEOI acknowledges AWA's December 22, 2021 letter to the AER requesting a copy of the Operational Plan and providing information on SEOI's commitments made during development of the Operational Plan – but this document does not request participation in the proceeding, nor does it request additional time to review the Operational Plan and/or engage experts.

AWA also states there was “no opportunity for public comment” on the Operational Plan.²⁸ However, this argument is disingenuous. AWA had numerous opportunities to file documentation and/or bring forward concerns to the Sustainability Committee in the two decades between the 2002 EUB Decision and the filing of the Operational Plan and had several additional opportunities after the filing of the Operational Plan. Parties cannot expect the AER to accommodate their timelines to file information that should have been filed earlier in a proceeding. This is especially so in these circumstances, where AWA made no effort to communicate its concerns or that additional time was required to SEOI or the AER (that SEOI is aware of). In SEOI's view, lending any credence to the AWA Report would set a precedent for parties to file information at their convenience, including after an authorization has been issued. This would completely disrupt any certainty and undermine confidence in the AER's regulatory processes. AWA could have and should have taken advantage of the opportunities to provide input and potentially influence the contents of the Operational Plan and instead they chose to wait until March 31, 2023, which was far too late.

SEOI also notes that AWA appears to be in vehement disagreement with not only the AER's decision to authorize the Operational Plan, but the 2002 EUB Decision which approved mining in a portion of the MLWC.²⁹ The above-cited 2014 AER decision is clear that “mere disagreement” with a decision is not sufficient to trigger a reconsideration process – particularly where another appeal process was available but

²⁸ AWA Report, Cover Letter, p 2.

²⁹ See, for example, AWA Report, p 2, 9, 16 and 17, and 2005 and 2010 AWA Letters to SEOI re: Sustainability Committee participation.

not used.³⁰ All of these circumstances exist here, further supporting SEOI's position that AWA's reconsideration request should not proceed.

4. AWA is not directly and adversely affected by authorization of the Operational Plan

If AWA had requested participation in the AER's regulatory process to consider the Operational Plan – either through a statement of concern, regulatory appeal or otherwise – SEOI submits that AWA would not have met the AER's standing test, which requires demonstration of “direct and adverse effect”.

To meet the “direct and adverse effect” test and obtain standing, generally, a party must demonstrate “some degree of location or connection between the work proposed and the right asserted” in accordance with the statement from *Dene Tha' First Nation v Alberta (Energy and Utilities Board)*.³¹ In a 2014 decision denying a request to participate from the Oil Sands Environmental Coalition,³² the AER cited an Environmental Appeals Board decision which summarized the test for direct and adverse effect:

28. What the Board looks at when assessing the directly affected status of an appellant is how the appellant will be individually and personally affected. The more ways in which the appellant is affected, the greater the likelihood of finding that person directly affected. The Board also looks at how the person uses the area, how the project will affect the environment, and how the effect on the environment will affect the person's use of the area. The closer these elements are connected (their proximity), the more likely the person is directly affected. The onus is on the appellant to present a prima facie case that he or she is directly affected.³³

SEOI is not aware of any previous AER decisions which granted reconsideration where the requesting party did not meet the AER's standing test. In the very few instances the AER has granted reconsideration, the requesting party has demonstrated a tangible interest in the subject matter – in other words, that party would have met the AER's “direct and adverse effect” standing test. This is not the case here. AWA is a Calgary-based association that has expressed general concerns about authorization of the Operational Plan and has

³⁰ AER letter denying Beaver Lake Cree Nation Reconsideration Request against Canadian Natural Resources Kirby In-Situ Expansion Project, June 27, 2014. (Attachment 10)

³¹ 2005 ABCA 68, para 14. (Attachment 12)

³² AER letter to Oil Sands Environmental Coalition denying standing in CNRL Kirby In Situ Oil Sands Expansion Project, March 27, 2014. (Attachment 14)

³³ *Tomlinson v Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Evergreen Regional Waste Management Services Commission (03 April 2013)*, Appeal No. 12-033-ID 1 (A.E.A.B.). (Attachment 13)

not demonstrated how any of its members use the MLWC area or how they might be affected by the Decision. It is therefore clear that AWA does not meet (and would not have met) the AER's standing test.

5. AWA has failed to demonstrate any error in the Decision

AWA has not demonstrated that there was any error made by the AER in its decision to authorize the Operational Plan. While AWA makes a speculative statement that “the concerns raised in the Report cast doubt on the efficacy of the mitigation conditions the Regulator imposed in the Letter of Authorization”,³⁴ AWA fails to provide any evidence or specifics which would case such doubt in its Report, and SEOI's review of the AWA consultants' notes yields no section which specifically addresses the mitigation conditions in the Decision.

In a very recent decision denying a reconsideration request filed by NOVA Chemicals, the AER explained that it will reconsider a decision “where there is new information, or where there is an error in the decision, that is so profound that to not reconsider the decision would make it without any value or merit, such that it would be absurd not to reconsider it.”³⁵ Neither is the case here. The Decision to authorize the Operational Plan is well reasoned, puts the onus on SEOI to follow its commitments,³⁶ and requires continued work with the Sustainability Committee for years to come.

SEOI's position is that the Operational Plan is technically sound and there are no “extraordinary circumstances” or “exceptional and compelling grounds” justifying proceeding to Phase 2 of the AER's reconsideration process. SEOI is confident in the mitigation plans and response framework outlined in the Operational Plan and agrees with the AER's statements that it is a “rigorous framework around how the environmental conditions will be measured, assessed, and reported to the AER” and that surrounding areas have “been given significant attention throughout the approval process.”³⁷

6. AWA has not adduced any new, compelling, significant, or extraordinary information

SEOI submits that the AWA Report does not introduce or qualify as “new information” such that reconsideration is warranted, for several reasons. First, as described in detail above, AWA had ample

³⁴ AWA Report Cover Letter, p 4.

³⁵ Letter from AER to NOVA Chemicals denying reconsideration request, March 8, 2023. (Attachment 16)

³⁶ Decision, p 1-2. (Attachment 2)

³⁷ Jamie Malbeuf, “Conservation group opposes oilsands mining project on northern Alberta Wetland”, *CBC News* (January 12, 2023), online: [Conservation group opposes oilsands mining project on northern Alberta wetland | CBC News](#). (Attachment 16)

opportunity to submit the information previously, and chose not to – so it should not be considered “new information”. Second, even if the AWA Report is considered “new information”, as described in more detail below, the “new information” adduced by AWA is neither compelling, significant, or extraordinary. AWA’s seven concerns either: i) are addressed in the Operational Plan; ii) are based on incorrect or misleading assumptions; iii) are highly speculative and not supported by relevant evidence; and/or iv) demonstrate a lack of knowledge of the technical expertise that went into development of the Operational Plan. The reviews conducted by its consultants, Dr. Biagi and Dr. Harris, include summary “notes” with their views on certain sections of the Operational Plan.³⁸ Specifically, Dr. Biagi’s review includes four pages of bullet point notes while Dr. Harris’ review contains a seven-pages of similar broad-based overview of select portions of the Operational Plan.

The following section specifically addresses the seven concerns referenced in the AWA Report and provides support to SEOI’s position that these concerns are not compelling, significant, or extraordinary and no weight should be given to them.

1. Unaddressed Potential Saline Contamination of Freshwater (Wetlands and Groundwater)

AWA’s position is that there is evidence of elevated salinity from mining activity within the oil sands region.³⁹ However, AWA does not put forward evidence of elevated salinity occurring specifically at the MLWC site. This is a consistent theme and flaw across the AWA submission – generalized statements not supported by relevant evidence or relating to the MLWC site specifically. Further, in listing these concerns, AWA fails to consider that the hydrological and hydrogeochemical conditions at each individual site are unique. For this concern to have merit, it would have to be demonstrated that elevated salinity levels were observed at the MLWC site which has not been the case.

Regardless, the Fort Hills Oil Sands Project (Fort Hills) mine site has a robust Groundwater Monitoring Program (GMP) which is designed to identify, manage and mitigate potential effects to the groundwater system from oil sands mining across the lease. The Fort Hills mine site has an extensive groundwater monitoring network with 107 monitoring wells across the mine site. In addition, a Seepage Management System (SMS) is in place next to the Out of Pit Tailings Areas (OPTA and OPTA East). The intent of the SMS is to detect and mitigate potential migration of industrial wastewater (IWW) off-lease. Currently, the SMS consists of 106 monitoring wells used to assess groundwater quantity and quality. Additionally, there are 38 pumping wells designed to intercept any potential IWW-influenced groundwater containing IWW

³⁸ AWA Report, p 8.

³⁹ AWA Report, p 9.

(if detected in monitoring wells) prior to migrating off-lease. The SMS well network is already in place and is monitored and reported in conjunction with the GMP. The pumping wells would be activated if IWW-influence was suspected or detected at monitoring wells.

2. Lack of Modelling for Potential Impacts to Groundwater Quality

AWA states, “Based on observations in previously reclaimed systems in the Alberta Oil Sands Region, intrusion of saline groundwater is a considerable risk to the success of reclaimed ecosystems, yet the OP did not model this potential threat or discuss mitigation strategies.”⁴⁰ SEOI acknowledges that groundwater quality modelling is continuing to be progressed – section 4.3 of the Operational Plan is clear in this regard. However, AWA ignores that a roadmap for future work required on water quality modelling was provided in Figure 4.3-3 of the Operational Plan. Further, refinements to the MLWC water quality model are ongoing and this work will continue to be shared with the Sustainability Committee and its advisory groups, as well as with the AER, for feedback.

3. Insufficient Observational Data for Hydrological Model Calibration

Based on AWA’s stated concerns about hydrological model calibration, it appears that: i) AWA lacks expertise with respect to how HydroGeoSphere (HGS) modelling works; and/or ii) AWA did not review or misinterpreted Appendix D of the Operational Plan which discusses calibration of the HGS model. In contrast to AWA’s assertions, the HGS model did not use simulated data as calibration targets during model calibration. The subsurface hydrologic regime of the model was calibrated to pumping test results in addition to being manually measured and using time series data from groundwater data at 497 different locations that spanned over the entire Quaternary depositional sequence. The data at these 497 locations were then temporally averaged where applicable and turned into groundwater calibration targets (the observed values on shown scatterplots). An additional 78 (measured) groundwater levels were used for calibrating the deeper (Cretaceous and Devonian) aquifers and aquitards.

Regarding AWA’s concern about the real-world observational data used,⁴¹ measured hydrological observation data (e.g., groundwater level data) within the MLWC watershed is available back to approximately 1997 (Cretaceous data) and 2000 (Quaternary data) and those data were used to develop targets for model calibration. However, integrated surface water-groundwater interaction models such as HGS are largely driven by the climate applied to their upper surface. From this applied climate the HGS

⁴⁰ AWA Report, p 10.

⁴¹ AWA Report, p 11.

model computes flow rates and water levels across space and time. In the case of the MLWC HGS model, the climate data used extended back to 1945 and includes the largest source (precipitation) and sink (evapotranspiration) terms in the water balance. This includes several wet and dry climate cycles to imbue the HGS model with the system's "hydrologic memory".

4. Uncertainty and Risk with Proposed "Conceptual Stage" Water Management Plan

AWA expresses concern regarding uncertainty and risk with the conceptual stage water management plan and states: "There is a high risk that the construction and operation of all the necessary mitigation infrastructure (called "Design Features" within the OP) will result in significant damage to the downstream non-mined fen and connected wetlands, watercourses, and lake."⁴² Again, AWA provides no evidence or data to back up this statement, and it does not appear that either of the consultants retained by AWA are experienced in engineering, design, or construction.

SEOI selected a conceptual option for the system components to be constructed throughout the life of the mine. This work includes identification and evaluation of options, design concept selection supported by monitoring data collection, analysis, and modelling simulations, as well as work with the Sustainability Committee. In terms of cutoff walls, they have commonly been used in the industry in various configurations to manipulate groundwater flows or act as a low-permeability barrier to groundwater flows and contaminants. It is also not uncommon for cutoff walls to work in concert with other groundwater or control features such as pumping and injection wells. AWA fails to consider that there is substantial experience in the region working in thick muskeg that will inform working pad design, and these learnings will be applied to the MLWC. For example, a 900-metre soil bentonite cut-off wall was constructed at Suncor Base Plant South Tailings Pond in 2008 and learnings from this system will be incorporated into the MLWC cut-off wall design. Additionally, SEOI has safely executed active groundwater management at a number of its operations across the region.

SEOI will monitor the performance of the design features through various instruments and field observations as part of ongoing operations and has a robust response framework as per Objective 6 of the Operational Plan. Review of the performance of the system is critical to determine whether contingency measures should be implemented.

5. Assumption of Negligible Impacts from Predicted Water Level Changes

⁴² AWA Report, p 11.

AWA's concerns in regard to predicted water level changes appear to be founded on i) incorrect assumptions; and ii) a misunderstanding of the issue. These concerns are also addressed directly in the Operational Plan. A detailed discussion on potential changes to vegetation communities and wetland function (via potential structural and functional responses to changes in surface water hydrology and surface water quality) of the non-mined portion is provided in Section 4.3.2.4 of Objective 3.

To be clear, the 27 mm/year (increase) stated by AWA⁴³ is the change in discharge from the fen to McClelland Lake, not within the fen itself. Groundwater discharge to the fen was simulated to remain relatively unchanged (i.e., less than 5mm/year of difference) for the operational, closure, and far-future cases (Section 4.3.2.1.2 of the Operational Plan). These changes in flow on an annual basis are considered negligible. Additionally, in Section 4.3.2.1.4 of Objective 3 of the Operational Plan, the risk assessment showed that these changes are below the Level 1 trigger of the Response Framework (Objective 6). The triggers are based on MLWC normal ranges and Before After Control Impact (BACI) or trend analysis. The Level 1 trigger is the lowest level within the response framework and at this level, effects beyond trigger values are measurable but values occur well below/above the upper/lower limit of the system, which in and of itself is very conservative.

6. Unrecognized Impacts to the Ecological Integrity and Functionality of the Patterned Fen

AWA's concern regarding ecological integrity and functionality of the patterned fen is addressed directly in the Operational Plan. The Operational Plan recognizes the importance of ecohydrological processes in the sustainability of the non-mined portion of the MLWC. Section 2.4 of Objective 1 of the Operational Plan describes the ecohydrological processes that maintain the MLWC. A detailed discussion on potential changes to vegetation communities and wetland function (via potential structural and functional responses to changes in surface water hydrology and surface water quality) of the non-mined portion is provided in Section 4.3.2.4 of Objective 3 of the Operational Plan.

7. Unrecognized Impacts to Peatland Carbon Stores and the Resulting Increase in Greenhouse Gas Emissions

An assessment of greenhouse gas emissions is out of the Operational Plan's scope. Such an assessment was completed in the original proceeding for the Fort Hills project and the 2002 EUB Decision includes an assessment of same.⁴⁴ The intent of the Operational Plan and the process leading up to it was to identify

⁴³ AWA Report, p 12.

⁴⁴ 2002 EUB Decision, pp 45-47. (Attachment 4)

appropriate mitigation measures and not to revisit whether a portion of the MLWC should be mined, which was already decided in 2002. Further, and as stated in the Operational Plan,⁴⁵ the MLWC project development is appropriately informed by the latest climate change science, regulatory requirements and corporate goals.

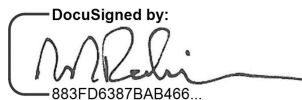
To summarize, the AWA Report should not be considered “new information” due to the many opportunities AWA had to file it earlier – and if it is considered “new information”, AWA has failed to demonstrate that it is compelling, significant, or extraordinary.

Conclusion

SEOI has provided six reasons that individually are sufficient for the AER to decline to proceed to Phase 2 of the reconsideration process. Taken together, the evidence is overwhelming that this process should not proceed.

Based on the foregoing, SEOI submits that the AER should decline to exercise its extraordinary power of reconsideration, and requests that the AER dismiss the AWA’s request without further process.

Sincerely,

DocuSigned by:

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Michael Robinson

cc AWA

⁴⁵ Operational Plan, Introduction, Attachment 3, Table 2, p 3.