



ALBERTA WILDERNESS ASSOCIATION

*"Defending Wild Alberta through Awareness and Action"*

May 8, 2023

Aimée Hockenull  
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Alberta Energy Regulator  
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**Re: Alberta Wilderness Association Request for Reconsideration No. 1942728**

Dear Aimée Hockenull,

This letter constitutes the submissions of Alberta Wilderness Association (AWA) in support of AWA's Request for Reconsideration No. 1942728 pursuant to section 42 of the *Responsible Energy Development Act* (REDA).

Overview

This Request for Reconsideration asks that the Alberta Energy Regulator (the Regulator) reconsider the September 9, 2022, authorization of Suncor's McClelland Lake Wetland Complex (MLWC) Operational Plan for the Fort Hills Oil Sands Project. AWA made this request because AWA's April 2023 Report, "A Review of Suncor's McClelland Lake Wetland Complex Operational Plan for the Fort Hills Oil Sands Project" (the Report)<sup>1</sup> contains new information that indicates that Suncor's Operational Plan for the Fort Hills Oil Sands Project (the Project) violates conditions of the Project's 2002/2015 *Water Act* approvals and 2002 EUB Decision Report. Specifically, new information in the AWA Report indicates that the Operational Plan does not satisfy the condition that it guarantee the protection of the unmined portion of the McClelland Lake Wetland Complex.

This Request for Reconsideration is brought pursuant to section 42 of the REDA, under which the Regulator may, in its sole discretion, reconsider a decision made by it and may confirm, vary, suspend or revoke the decision. The Regulator will only exercise this discretion under extraordinary circumstances, where it is satisfied that there are exceptional and compelling grounds to do so, such as the presence of new evidence not previously available to or considered by the Regulator. The question is therefore whether the evidence in the Report was not previously available to or considered by the Regulator and may cause the Regulator to change its decision if considered during a reconsideration, thereby giving

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<sup>1</sup> Attached as Appendix A [the "Report"].

rise to exceptional and compelling grounds for a reconsideration under the Regulator's discretionary power.

For the reasons detailed in these submissions, the new information in the Report is sufficiently significant to warrant a reconsideration. In short, the Report includes independent studies and analysis which could and should change the Regulator's determination of whether to approve the Operational Plan and which were not initially available to or considered by the Regulator, because these studies and analyses were completed necessarily after the Operational Plan was submitted and approved.

#### 1 – The Report Contains New Evidence Not Previously Available To or Considered By the Regulator

The Regulator has been clear that new information includes information which was not available to or considered by the Regulator at the time the Regulator made its initial decision. This includes evidence not reasonably available at the time of the initial decision, where the provider of the evidence did not have the opportunity to bring the evidence to the Regulator at the time of the decision.<sup>2</sup>

The Operational Plan was submitted on December 15, 2021. There was no public posting of the proposed Operational Plan and no opportunity for public comment on the proposed Operational Plan. At the request of AWA, Suncor provided AWA with a copy of the submitted Operational Plan on January 28, 2022. AWA's reason for requesting a copy of the Operational Plan was to seek an objective, independent, third-party review of the Operational Plan conducted by experts in the disciplines of ecology, hydrology, and hydrogeology. AWA wanted to conduct this review to ensure that the measures proposed by Suncor within the Operational Plan would guarantee the protection of the unmined portion of the MLWC, as required by the 2002 *Water Act* Approval (renewed in 2015) and 2002 EUB Decision Report for the FHOSP to proceed with its expansion.

From January to August, the AWA contacted nearly 20 expert scientists, searching for researchers with specific expertise related to boreal wetland hydrology and/or peatland ecosystems. This search was time-consuming as it was difficult to find experts who did not have existing contractual ties or conflicts of interest with Suncor. In August 2022, the AWA successfully contracted the services of two independent boreal wetland experts, Dr. Lorna Harris and Dr. Kelly Biagi, to review Suncor's Operational Plan in an effort to understand Suncor's proposed mitigation plans and to determine whether any concerns had been left unaddressed, or if there were any evident deficiencies. Their review was completed on December 28, 2022. However, in response to an AWA query in November 2022, the AER informed the AWA it had approved the Operational Plan via a Letter of Authorization to Suncor on September 9, 2022.

Because the lengthy process to contract experts to review the Operational Plan was only successful by August 2022, there was no reasonable opportunity for the contracted experts to conduct their six-month review of the Operational Plan, and for the AWA to articulate the outcomes of the review to the

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<sup>2</sup> Alberta Energy Regulator Reconsideration No.: 1941491 at pages 3, 6, online: [https://static.aer.ca/prd/documents/decisions/regulatory-appeal-decisions/1941491\\_20230222.pdf](https://static.aer.ca/prd/documents/decisions/regulatory-appeal-decisions/1941491_20230222.pdf).

Regulator by the time the Regulator issued its decision on September 9, 2022. Also, AWA requested the Letter of Authorization on November 14, 2022, but did not receive the Letter of Authorization from the Regulator until January 6, 2023. AWA's Report contains analysis of the three mitigation conditions listed in the Regulator's Letter of Authorization, which necessarily could not have been formulated until after the Regulator issued the Letter of Authorization. AWA's Report, and the expert reviews detailed therein, were therefore unavailable to and not considered by the Regulator in its initial decision, and are new information for the purposes of a reconsideration.

## 2 – The Evidence in the Report, if Considered in a Reconsideration, May Lead the Regulator to Change its Original Decision

The results of the reviews conducted by Dr. Harris and Dr. Biagi as detailed in the AWA Report raise several concerns which could impact the Regulator's decision in a reconsideration. As explained in the Report, these concerns fall into seven categories, namely:

1. Unaddressed potential saline contamination of freshwater (wetlands and groundwater);
2. Lack of modelling for potential impacts to groundwater quality;
3. Insufficient observational data for hydrological model calibration;
4. Uncertainty and risk with the proposed "conceptual stage" water management plan;
5. Assumption of negligible impacts from predicted water level changes;
6. Unrecognized impacts to the ecological integrity and functionality of the patterned fen; and
7. Unrecognized impacts to peatland carbon stores and the resulting increase in greenhouse gas emissions.<sup>3</sup>

Given these concerns based on the expert reviews included in the Report, AWA believes there are significant risks and deficiencies in Suncor's submitted Operational Plan that fall considerably short of the Fort Hills Oil Sands Project's regulatory requirements to guarantee the protection and sustainability of the unmined portion of the MLWC. As concluded in the Report:

"the knowledge expressed within the Operational Plan does not ease our concerns regarding Suncor's mitigation plan, which appears to be more of a water management experiment with a high level of risk for the unmined portion of the MLWC.

Taken together, these review findings indicate that Suncor has not provided evidence of sufficient knowledge and understanding of the complex natural water flow regime in the

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<sup>3</sup> Report, pp 8-14; see also Appendix 1 to the Report, "FHOSP OP Review" (November 3, 2022) conducted by Dr. Kelly Biagi, and Appendix 2 to the Report, "Review of Suncor McClelland Lake Wetland Complex (MLWC) Operational Plan (OP) for Alberta Wilderness Association" (December 28, 2022) conducted by Dr. Lorna Harris.

wetland complex to ensure that there will be no negative impacts to the ecological diversity and functionality of the unmined portion of the MLWC. The review findings also raise significant concern regarding whether the proposed underground wall and water pipeline system is robust enough to adequately substitute for these natural flows, and to counteract mining impacts upon local groundwater sources, continuously, throughout many decades of proposed mine operation and reclamation.”<sup>4</sup>

The concerns detailed in the Report therefore suggest that the activities proposed within the Operational Plan are likely to violate the conditions of True North Energy’s 2002 EUB approval and 2002/2015 *Water Act* Approvals.<sup>5</sup> This suggestion shows that if the Regulator were to consider the information in the Report in a reconsideration, the Regulator could and should come to a different conclusion about whether to approve the Operational Plan.

Also, the concerns raised in the Report cast doubt on the efficacy of the mitigation conditions the Regulator imposed in the Letter of Authorization. The mitigation conditions in the Letter of Authorization are as follows:

1. As outlined in both the Operational Plan and the Supplemental Information Request (SIR1) Response Letter, Fort Hills Energy Corporation (FHEC) has committed to various engagement, operational, monitoring and reporting activities. Authorization of the Operational Plan by the AER signifies that FHEC is required to comply with these commitments; any changes or amendment to the Operational Plan must be submitted in writing to the AER for review and authorization prior to their implementation.
2. The SIR1 Response Letter, SIR #18 Response, stated that certain parameters were missing from Table 3.4-2. FHEC is required to provide an updated version of the Table 3.4-2, including all the missing parameters in all appropriate rows, to the AER for review, this updated Table is to be referenced in the 2022 Annual Progress Report.
3. With regards to Surface Water Hydrology triggers: as discussed in the SIR1 Response Letter, SIR #8 Response, the AER expects the Operational Plan to include triggers that are designed to detect significant departures from the expected performance as quickly as practical. For example, in the case of a major performance failure, some of the Surface Water Hydrology triggers should be capable of detecting deviations within the first one to two years of operations. FHEC is required to assess the performance of the Surface Water Hydrology triggers in Annual Progress Reports and evaluate whether more sensitive triggers should also be included.

As noted in the Report, none of these three conditions meaningfully or substantively address the seven categories of concerns arising from the expert reviews detailed in the Report with regards to the

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<sup>4</sup> Report at p 16.

<sup>5</sup> Report at p 17.

Operational Plan and Suncor's ability to guarantee the protection of the unmined portion of the MLWC.<sup>6</sup> If the Regulator were to consider the information in the Report in a reconsideration, the Regulator could and should come to a different conclusion about what mitigation conditions would be necessary if the Operational Plan were approved, or whether any mitigation conditions could rectify the deficiencies of the Operational Plan.

### Conclusion

In the exercise of its discretionary power under section 42 of the REDA, the Regulator has been clear that new information which was not reasonably available to or considered by the Regulator in its initial decision, and which may lead the Regulator to make a different decision if considered in a reconsideration, gives rise to the exceptional and compelling grounds and extraordinary circumstances necessary for the Regulator to exercise its discretion to reconsider.

The expert reviews and subsequent concerns with respect to the Operational Plan detailed in the Report, are new information which AWA did not reasonably have the opportunity to provide to the Regulator by the time of its initial decision. The information detailed in the Report is also directly relevant to the Regulator's considerations in deciding whether to approve the Operational Plan, and if considered in a reconsideration could and should lead the Regulator to come to a very different conclusion than the conclusion in the initial Letter of Authorization.

For these reasons, there are extraordinary circumstances with exceptional and compelling grounds which justify an exercise of the Regulator's discretionary power to reconsider the approval of the Fort Hills Oil Sands Project Operational Plan.

Sincerely,  
ALBERTA WILDERNESS ASSOCIATION



Phillip Meintzer  
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<sup>6</sup> Report at p 16.