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July 27, 2023

Alberta Energy Regulator

Suite 1000, 250 – 5 Street SW

Calgary, Alberta T2P 0R4

Attention: Pam Tongsrinark- Regulatory Appeals

**Re: Request for Reconsideration No. 1942728 of McClelland Lake Wetland Complex (MLWC) Operational Plan (OP) for the Fort Hills Oil Sands Project by Alberta Wilderness Association (AWA) - Suncor Energy Operating Inc. (SEOI) Response to Alberta Energy Regulator (AER) Letter dated July 6, 2023**

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Dear Ms. Tongsrinark:

**Executive Summary**

The AER should not proceed to Phase 2 of the reconsideration process. Please note:

- Mining of a portion of the MLWC was authorized over 20 years ago.
- The AER, in accordance with its public interest mandate, established a robust regulatory process (the Process) to facilitate development of the OP via the Sustainability Committee (SC).<sup>1</sup>
- The OP was approved – after the Process concluded and the AER had considered all the evidence it felt was necessary to make a decision.
- Indigenous Community representatives, technical experts, regulators and the operator participated in the Process over the past two decades.
- AWA deliberately boycotted the Process – it was invited several times and refused to work with the SC and refused to comment on the OP prior to its approval, despite ample opportunity to do so.
- The AWA has not submitted any new, compelling, significant or extraordinary information, and no persuasive reason has been provided for why any of the information, including the reports, could not have been submitted prior to the OP being approved.

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<sup>1</sup> TrueNorth Energy Corporation Application to Construct and Operate an Oil Sands Mine and Cogeneration Plant in the Fort McMurray Area, October 22, 2002 (2002 EUB Decision).

- Granting the AWA's request in this case would endorse the AWA's strategy, which appears to be to undermine Alberta's regulatory system and to create a disconcerting precedent whereby requestors could utilize the AER's reconsideration powers to intentionally boycott the AER's processes and subsequently compel new and unnecessary processes.
- This precedent would be even more troubling considering the AWA, by its own acknowledgement, is not directly affected by the decision to authorize the OP and therefore would not normally have been included in any hearing on this matter.

Below please find a background summary to this proceeding and an overview of, and detailed response to, the reports submitted by AWA.

### **Background**

On May 8, 2023, AWA filed submissions in support of its request for reconsideration of the OP (AWA Submission). On May 31, 2023, SEOI, on behalf of Fort Hills Energy Corporation (FHEC), filed its response to the AWA Submission (SEOI Submission). On June 9, 2023, AWA submitted its reply to the SEOI Submission (AWA Reply). On June 16, 2023, SEOI provided a response to the AWA Reply, raising concerns about information introduced in the AWA Reply.

On July 6, 2023, the AER issued a procedural letter<sup>2</sup> (AER Letter) which indicates that the following reports (hereinafter collectively referred to as the Reports) attached to the AWA Reply are in fact new evidence:

1. Lindsay Report (dated May 29, 2023);
2. Locky Report (dated May 31, 2023);
3. Wieder Report (dated May 24, 2023); and
4. Vitt/House Report (dated Nov 28, 2022).

The AER Letter allowed the Reports to be filed in this proceeding but gave SEOI a right of reply. The following is SEOI's reply to the Reports.

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<sup>2</sup> AER Letter dated July 6, 2023 re: Request for Reconsideration 1942728.

### Overview of Reasons

SEOI repeats and relies on its previous submissions in this proceeding in response to the Reports. The following overarching reasons confirm that the Reports should be disregarded, and the AER should not proceed to Phase 2 of the reconsideration process:

- The 2002 EUB Decision<sup>3</sup> established the Sustainability Committee (SC) – contrary to AWA’s assertion, it was not a process chosen or forced by SEOI.<sup>4</sup>
- The AER acted in accordance with its public interest mandate by establishing the SC. The AER, SEOI, Indigenous Communities and others dedicated considerable time and resources to the work of the SC to develop the OP. The AWA elected to boycott this process. Neither the AWA nor the individuals it has retained (including the authors of the Reports) participated in the extensive work done by the SC, including the engagement of numerous technical experts to support such work.
- The AWA deliberately chose not to participate in the work of the SC, which was designed to ensure the public interest was considered, or comment on the OP, despite being provided with ample opportunity to do so.
- The AWA’s understanding of the OP and its development is deficient and less than the understanding of the AER, SEOI, Indigenous Communities and others who have participated in and benefited from the work of the SC.
- The AWA claims to have a “public interest mandate” that prevented it from participating in the work of the SC. However, it is the AER and not the AWA that has a legally recognized statutory public interest mandate. The AWA’s refusal to participate in and consider the views of others involved with the SC is entirely inconsistent with any sort of legally recognized public interest mandate, which AWA does not have in any event.
- The Reports do not contain any new, compelling, significant or extraordinary information.
- AWA provides no compelling reason why the Reports were not commissioned and submitted prior to the OP being approved.
- The AWA has acknowledged that it is not directly affected by the Fort Hills Mine or the OP.<sup>5</sup> On that basis alone, the AWA’s request for reconsideration should be denied.

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<sup>3</sup> 2002 EUB Decision, p 39 and 69.

<sup>4</sup> AWA Reply, p 3.

<sup>5</sup> AWA Reply, p 3.

## Additional AWA Reports

### General Principles

#### *Rules of Practice*

SEOI submits that the *Alberta Energy Regulator Rules of Practice*<sup>6</sup> (the Rules) provide helpful guidance on the consideration of the information contained in the Reports and are applicable in these circumstances. Rule 6.2(2) is clear that the AER may disregard a concern raised in a statement of concern if any of the following apply:

- (a) “the concern relates to a matter outside the Regulator’s jurisdiction;
- (b) the concern is unrelated to, or relates to a matter beyond the scope of the application;
- (c) the concern has been adequately dealt with or addressed through a hearing or other proceeding under any other enactment or by a decision on another application;
- (d) the concern relates to a policy decision of the Government;
- (e) the concern is frivolous, vexatious, an abuse of process or without merit; and
- (f) the concern is so vague that the Regulator is not able to determine the nature of the concern.”

Analogously, much of the information in the Reports fits squarely into the categories captured by Rule 6.2(2) and should therefore be disregarded by the AER. For example, in relation to Rule 6.2(2)(c), the Reports refer to many of the very same issues that were fully considered and ruled on over 20 years ago in the 2002 EUB Decision, including the approval to mine a portion of the MLWC.<sup>7</sup> As another example, the Lindsay Report references “breach” of multiple international conventions, but fails to explain how approval of the OP would breach such conventions. These concerns should be disregarded pursuant to Rules 6.2(2)(a), (b) and (d). Further examples are provided below.

#### *Contrary to Law to Re-Litigate*

Building on Rule 6.2(2)(c), it is also contrary to law for AWA to attempt to use the AER’s reconsideration powers to re-litigate issues that were considered as part of a separate proceeding over 20 years ago in which the 2002 EUB Decision was issued.<sup>8</sup> For example, in the Locky Report, it is stated that “the mine extension

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<sup>6</sup> Alta Reg 99/2013.

<sup>7</sup> For example, the Locky Report states that “the mine extension into the wetland simply should not have been approved by the AER” Locky Report, Introduction, p 2.

<sup>8</sup> See, for example, *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 (CanLII), [2001] 2 SCR 460.

into the wetland simply should not have been approved by the AER”.<sup>9</sup> The Locky Report also references testimony from the 2002 EUB proceeding from Dr. Diana Horton which outlines “significant deficiencies” of a report adduced in that proceeding.<sup>10</sup> Further and as stated in the SEOI Submission, AWA fails to recognize that in the 2002 EUB 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.<sup>11</sup>

*OP to Evolve, Not Static and Will Protect NMP*

Another common theme in the Reports is that they incorrectly presume SEOI’s knowledge of and approach to sustaining the non-mined portion (NMP) of the MLWC is static and wholly captured within the OP. As stated in the Introduction to the OP, the plan has been developed over the course of many years.<sup>12</sup> The OP is expected to be dynamic in nature and in place throughout the operational and active closure phases of the Fort Hills Project, which is anticipated to be several decades in length. SEOI recognizes that as additional data is gathered and the OP is implemented, the understanding of the MLWC may continue to evolve. SEOI will have the opportunity to provide an updated understanding through ongoing monitoring, engagement with the SC and submissions to the AER. While the OP is in place, it is expected that technology will continue to advance and approaches will continue to be evaluated and updated, which could lead to improved technology and processes to assist in implementation of the OP. The OP then will be updated over time to reflect these new understandings and SEOI notes that any material changes to the OP will require further authorization from the AER.

The purpose of the OP is to protect the NMP. There is an extensive monitoring program conducted under Objective 5 of the OP and response framework under Objective 6. Should an effect that could be related to the mining activities be detected during the effects monitoring program, a corresponding management action will occur.

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<sup>9</sup> Locky Report, p. 2.

<sup>10</sup> Locky Report, p 2.

<sup>11</sup> 2002 EUB Decision, p. 39.

<sup>12</sup> OP Introduction, p 1-16.

## Specific Concerns

The following section addresses information in the Reports and confirms SEOI's position that AWA has failed to provide any new, compelling, significant, or extraordinary information and proceeding to Phase 2 is not warranted.

### *Lindsay Report*

Richard Lindsay argues that there is a degree of uncertainty associated with SEOI's plans and that this uncertainty means that the OP should not have been approved.<sup>13</sup> First, this ignores the reality that SEOI will, as explained further below, continue to refine its plans to reduce uncertainty as it proceeds to execution of the OP. Second, uncertainty is not a reason to reconsider the OP. A degree of uncertainty always exists as plans are developed and uncertainty does not mean an activity should not be approved. The Federal Court of Canada has recognized that uncertainties are likely to exist but these can be dealt with through adaptive management:

“Thus, in my opinion, adaptive management permits projects with uncertain, yet potentially adverse environmental impacts to proceed based on flexible management strategies capable of adjusting to new information regarding adverse environmental impacts where sufficient information regarding those impacts and potential mitigation measures already exists.”<sup>14</sup>

The OP contains extensive information regarding potential impacts and the potential mitigation measures that may be applied to address those. Therefore, any residual uncertainty is not sufficient justification for reconsideration but is instead a recognized issue that is to be addressed through adaptive management, as contemplated in the OP.

### *Direct Loss of Peatland Habitat and Biodiversity*

Reliance is placed on the Government of Canada's commitments to the Convention on Biological Diversity (CBD) and RAMSAR Convention, including unsubstantiated statements that the development proposed by SEOI for the MLWC “breaches each of these commitments”.<sup>15</sup> There is no evidence presented that the proposed development would prevent Canada from meeting these targets. In any event, these international conventions relate to policy decisions of government and are out of scope of this proceeding (Rules

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<sup>13</sup> Lindsay Report, p 1.

<sup>14</sup> *Pembina Institute for Appropriate Development v. Canada (Attorney General)*, 2008 FC 302 (CanLII), para 32.

<sup>15</sup> Lindsay Report, p 3.

6.2(2)(a)(b) and (d)). Moreover, SEOI notes that the Aichi targets for the CBD expired in 2020, prior to submission of the OP. Regarding the applicability of the RAMSAR Convention specifically, the author does not mention the fact that although Canada has identified 37 sites in accordance with this convention, MLWC is not one of these.

#### *Changes to Peatland hydro-ecology*

The Lindsay Report takes issue with the conceptual level of design features that are contained in Objective 4.<sup>16</sup> SEOI continues to develop design features through standard engineering that will progress from conceptual to the eventual detailed design. Today, conceptual level design is appropriate to identify and assess risks and opportunities at the SC level. Note:

- (a) The long timelines associated with the OP require SEOI to have the ability to concurrently update and refine the design features and contingency mitigation measures and integrate them with the Fort Hills Project mine, reclamation and closure plan updates; and
- (b) Further modelling, effects monitoring data and engineering studies, including trials, to support progression through the preliminary and detailed design phases of the design features will be utilized.

Importantly, SEOI will keep the AER updated on progress of the design work via the annual reporting conducted under the OP and will continue to engage with the AER through the SC or otherwise as required. SEOI is also required to submit detailed engineering designs for approval to the AER at least six months prior to the start of associated construction activities for the design features.

SEOI agrees with the Lindsay Report that models are, by definition, simplified versions of reality. However, SEOI takes issue with an assertion made within the Lindsay Report that no testing of the accuracy of future model predictions can be done in advance of implementing the OP.<sup>16</sup> SEOI is cognizant of the challenges of numerical modelling of environmental systems (evidenced by identifying in the OP already many of the limitations identified by Richard Lindsay). SEOI accounts for the inevitable uncertainties in model predictions within the OP itself. The approach taken pursuant to the OP is consistent with many other projects that have come before the AER for approval. Just like these matters and with the OP, as new information is produced, it is used to update and refine the models and their predictions. As indicated, modelling support for the OP is a dynamic process that evolves and improves as the project continues to advance, consistent with best modelling practices associated with simulating environmental systems. SEOI

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<sup>16</sup> *Ibid*, p 5.

is using modelling to aid in the design of its approach to sustaining the NMP. The model is a support tool in this process. During implementation of the OP, SEOI will monitor, analyze data and incorporate lessons learned to manage and optimize the approach to sustaining the NMP.

The Lindsay Report also alleges that the OP provides long lists of assumptions and generalisations that have been used to generate the models – which in some cases are not supported by existing evidence.<sup>17</sup> This is incorrect. Of particular note, Richard Lindsay assumes that the derived model used by SEOI assumes peat to be a homogeneous material.<sup>18</sup> In the Hydrogeosphere model used in the OP though, the peat is not homogenous, but rather exhibits a diplotelmic structure consisting of a hydrologically active layer (the acrotelm) and a less hydrologically active layer (the catotelm). The hydraulic conductivity of the peat decreases with depth, consistent with the literature.

Richard Lindsay states that the Vitt/House Report reveals a substantial degree of variation in the composition of the peat.<sup>19</sup> This is not the case. In actuality, the Vitt/House Report provides that peat compositions were found to be remarkably consistent in the cores analyzed. Richard Lindsay states: “Indeed, their longest core, Core 1, while showing a considerable degree of uniformity along much of its length also contains areas where no sample was obtained – which from my own experience suggests that there are extremely liquid lenses or even what are termed ‘peat pipes’ contained within this otherwise uniform core. Such layers and features can have a major impact on the behaviour of water within the peat...”<sup>20</sup> SEOI disagrees with these statements and notes Dr. Vitt has confirmed the following:

- (a) the data in the Vitt/House Report is included in the OP;
- (b) the areas in the cores with no retrieved samples are artifacts of the coring procedure (i.e., there is some compaction of the peat from retrieval of the core using the vibrating corer);
- (c) the upper 20 or so cm of the peat profile consists of living materials that do not survive the coring procedure in some cases;
- (d) the two cores retrieved using a side-cutting Russian corer showed no voids; and
- (e) the idea that the fen would have liquid lens (‘peat pipes’) has never been demonstrated in continental peatlands. These ‘pipes’ are a feature of oceanic bogs and this concept cannot be transferred to continental fens like MLWC.

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<sup>17</sup> *Ibid*, p 5.

<sup>18</sup> Lindsay Report, p 5.

<sup>19</sup> *Ibid*, p 6.

<sup>20</sup> *Ibid*, p 6.



Richard Lindsay also states: “It is not enough simply to state that there is little evidence of dynamic change within an aerial-photo sequence spanning a period of 65 years when in fact there is little reason to suspect that environmental conditions have changed significantly during this period, given the relatively undisturbed nature of the site.”<sup>21</sup> The evidence is clear though, that the MLWC has experienced significant change over its history and that it is resilient and returns to a previous state following disruption and disturbance. Note:

- (a) Objective 1 of the OP is clear that the 1940s is considered to be one of the driest decades on record in the last century as it relates to the MLWC.
- (b) Several observations of Indigenous Traditional Knowledge note both higher and lower lake levels compared to current day.
- (c) Air photos show that following several successive years of drought in the 1940s, the water levels at the MLWC receded severely. The 1950 air photo of the system illustrates the decline in lake level. Cross referencing the historical air photos with bathometric readings taken from McClelland Lake indicates that the lake was between 1.0 and 1.5 m shallower in 1950 than it is currently. The foregoing decline in lake level was still apparent in 1953.<sup>22</sup>
- (d) By 1967, the date of the next available aerial image, the system had recovered again hydrologically (i.e., the photo showed return to levels seen previously and currently).<sup>23</sup>
- (e) Additionally, the Vitt/House Report clearly shows that throughout history, the MLWC has experienced disturbance from fires and other factors and has recovered to its previous state.<sup>24</sup>

Moreover, Richard Lindsay is incorrect when he concludes that there is no evident attempt to undertake small-scale experimental trials and that the OP is in and of itself the experimental trial.<sup>25</sup> In actuality, there will be trial work undertaken as a part of the detailed design process. As well, there will be considerable mining carried out through thick, saturated peat zones to the west of the NMP for several kilometres as the mine advances easterly, also acting as a trial in effect. This will further aid in ascertaining predicted behaviour well before mining approaches the protected NMP and the OP’s early warning monitoring program will be used to refine the response framework if necessary. It is also important to note that SEOI will incorporate learnings from all of the foregoing activities.

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<sup>21</sup> Lindsay Report, p 6.

<sup>22</sup> OP Objective 1, p 2-79.

<sup>23</sup> *Ibid.*

<sup>24</sup> Vitt/House Report, p 8.

<sup>25</sup> Lindsay Report, p 6.

### *On the Ground Implementation of the OP*

Richard Lindsay notes that “So many of the proposed construction and mitigation measures remain untested.”<sup>26</sup> However, this ignores the fact that most of the oil sands mines in the region, including those operated by the Suncor group of companies, have extensive experience with construction and mitigation associated with thick surface peat and have tested some of these measures already. These activities include excavation of mine pits and constructing infrastructure that involves building on or over peat and the removal of peat. The Suncor group of companies also has local experience in constructing cutoff walls.

### *Potential for Catastrophic Change*

The Lindsay Report discusses two entirely unrelated projects to support an assertion that “catastrophic failure” can occur based on a single incident. Aside from providing no evidence as to how the referenced projects are similar to the NMP, the author appears to misunderstand the topography of the MLWC area. The ground surface in the MLWC area slopes down to McClelland Lake at a very gentle surface slope. The mine pit floor, as it advances towards the NMP, will be significantly lower than that of McClelland Lake. Hence, hypothetical failures associated with pit slopes would be into the mine pit or away from McClelland Lake.

In any event, SEOI has measures in place to mitigate the potential for any changes, catastrophic or otherwise. Engineering practices and standards require SEOI to identify potential failure mechanisms and ensure designs account for such, which it has done and will continue to do through in-house and external technical experts. These experts also have considerable experience working with peat as it relates to resource development and SEOI is drawing on that experience in detailed design.

Importantly, the peats in the MLWC are generally similar in moisture content/void ratio and strength to many of the peats in Northern Alberta with which SEOI and the other Suncor group of companies have extensive experience working with. Other oil sands operators and stakeholders in other industries (such as highways, pipelines, access roads, drill pads, etc.) also have experience in working in these zones and SEOI may draw upon these persons for learnings.

### *Carbon Emissions*

The Lindsay Report contains claims (with unsupported evidence), including those around: (i) peat volumes; (ii) allegations that that the majority of those volumes of peat will be oxidized; and (ii) the loss of peat will

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<sup>26</sup> Lindsay Report, p 8.

result in 7 to 11 million tonnes of carbon dioxide to the atmosphere.<sup>27</sup> In addition, the Report notes that the alleged loss of peat is in direct conflict with the UN Framework Convention on Climate Change.<sup>28</sup> None of this information explains how approval of the OP would prevent the UN Framework from being met. Further, and even if there was evidence to support the foregoing claims, the development of the mined portion of the MLWC is appropriately informed by the latest climate change science, regulatory requirements and government goals. In any event, SEOI notes these issues are inconsistent with Rules 6.2(2)(a), (b), (c) and (d).

### **Locky Report**

The Locky Report puts forward no evidence which refutes the contents of the OP. Rather, the Locky Report focuses on questioning the 2002 EUB Decision, which approved mining in the MLWC. For example, the Locky Report references the “uniqueness” of the MLWC, impacts on biodiversity, greenhouse gas emissions, risks to wildlife from tailings ponds and other areas that were considered as part of the original 2002 EUB proceeding. Such information is not “new” and could have been provided in the lead up to the 2002 EUB Decision or the approval of the OP. To demonstrate, the Locky Report brings up an expert witness testimony at the 2002 EUB proceeding, speaking to alleged deficiencies of another expert in that proceeding.<sup>29</sup>

The Locky Report also contains speculative and out-of-scope statements. For example, there is reference to the government’s mandate to protect all peatlands in the province and the governmental and regulatory track record on environmental issues.<sup>30</sup> The Report also notes that “the Fort Hills mine butts up against McClelland Lake and could likely already be causing issues” without evidence to support this statement.<sup>31</sup> As a result, these concerns should be disregarded in that they are vague, unsubstantiated, unrelated to and/or beyond the scope of this proceeding as per Rules 6.2(2)(b) and (f).

Also of particular note, the Locky Report includes an irrelevant comparison of conditions at Sandhill and Nikanotee fens to the NMP of the MLWC.<sup>32</sup> As indicated in the SEOI submission and to be clear, these are

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<sup>27</sup> Lindsay Report, p 10.

<sup>28</sup> *Ibid*, p 10.

<sup>29</sup> Locky Report, p 2.

<sup>30</sup> *Ibid*, p 8.

<sup>31</sup> *Ibid*, p 5.

<sup>32</sup> *Ibid*, p 7.

constructed research wetlands that have been constructed near or with tailings materials, which is a very different scenario to maintaining the NMP of MLWC.

### **Wieder Report**

The Wieder Report fails to take into consideration the goals of the OP monitoring program. The OP is focused on monitoring changes that could be caused by the Fort Hills Project mining activities in the NMP. Most of the monitoring programs are therefore necessarily focused on the NMP. For example, the report states that “Although vegetation monitoring has been carried out almost every year since 2008, the number of plots in the fen (six sites, two plots per site) is low, given the overall area of the fen.”<sup>33</sup> SEOI disagrees with this statement. The number of sites is sufficient to monitor the NMP – as described in the OP, 64 grid sampling locations have been added to the vegetation monitoring network in the NMP (Section 6.2.1.2 of the OP). Further, rare plants were purposefully not selected as a primary effects indicator under the OP as they are highly variable on the landscape and not indicative of early change (Section 3.4.5 of the OP).

SEOI also disagrees with the comments in the Wieder Report related to the normal range approach. Indeed, the method used for calculating normal range is incorrectly cited<sup>34</sup> and defines a normal range using prediction intervals based on the distribution of reference values. However, there are numerous methods proposed in the literature for calculating normal ranges, each with similar goals of defining an expected range of natural variability. No one standard has yet been adopted within the environmental monitoring literature. In the OP, the normal range approach is used as a part of a detailed analysis involving statistical comparisons, periodic trend analysis and comparisons to water quality guidelines/screening values. The Wieder Report also identifies concerns with detecting changes in water quality. These concerns are precisely why SEOI is using the normal range approach; to incorporate year-to-year variability in the analysis. SEOI agrees that seasonal variation could interfere or reduce sensitivity of the water quality monitoring, if it is considerable. Accordingly, under the OP, the timing of sampling is consistent on an annual basis. The intent within the OP was to provide a normal range estimate with the data available up to filing and then refine it as more data accumulates before development begins. As stated under Objective 6 of the OP, this work will be undertaken as a part of the updated baseline summary report that will be provided at the end of the baseline period (up to the end of 2024). The transition from the baseline tier to the surveillance tier is expected to occur in 2025.

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<sup>33</sup> Wieder Report, p 1.

<sup>34</sup> *Ibid*, p 2.

Regarding the concerns about depth of wells in the OP, water quality samples in the peat are collected from the surface (pooled water/bootwell method or drivepoint piezometers) and deeper peat porewater using the existing groundwater wells. Shallow drive-point piezometers installed into the peat above three metres typically have six inches (15 centimetres) screened intervals near the tip of the piezometers. The screened interval has a smaller diameter than the above attached standpipe coupling to limit connection between the screen and overlying peat water column. Deeper peat wells were installed using a drilling rig. As pointed out in the Weider Report, the hydraulic conductivity of peat decreases with depth. Therefore, in order to collect the necessary water volume for the required sample analyses, wells installed deeper in the peat units had screened intervals of 1.5 to 3.0 metres in length. Peat wells were sealed along the casing annulus from surface to near the screen top to limit hydraulic connections. Preliminary examination of the peat porewater chemistry showed that dissolved constituents increase with depth, particularly from surface to a one metre depth. Deeper porewater within the peat has a stronger resemblance to quaternary groundwater whereas the shallow peat porewater has a signature closer to surface water.

The Wieder Report concludes with the statement that the author supports “preserving all of McClelland Lake Fen”.<sup>35</sup> This suggests that the author disproves of the 2002 EUB Decision to approve mining in the MLWC – which, for the reasons discussed above, is not a valid reason to reconsider the decision to authorize the OP.

### **Vitt/House Report**

The co-author of the Vitt/House Report, Dr. Dale Vitt, was contracted by SEOI to support development of the OP and the data in this report was considered within the OP.

Throughout the reports from Lindsay and Locky and within the reply from AWA, the Vitt/House Report is interpreted in a way to try to demonstrate how fragile the MLWC is. SEOI disagrees with this interpretation. On the contrary, SEOI’s interpretation of the Vitt/House Report is that the MLWC is resistant and resilient to changes, whether that is fire or changing climatic and associated hydrological conditions. Despite changes to the MLWC’s water balance over time, Dr. Vitt has confirmed to SEOI that vegetation communities have experienced little change.

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<sup>35</sup> Wieder Report, p 3.

**Conclusion**

The Reports do not contain any new, compelling, significant, or extraordinary information and in any event, could have (and should have) been commissioned and submitted prior to the OP being approved. The AWA deliberately chose to boycott the regulatory process which was established by the AER to develop the OP taking into account the views and concerns of various stakeholders. The AWA now seeks an entirely new process to review the OP, despite the fact it is not directly affected by the OP or the Fort Hills Project – and the Reports do not change this fact. For all these reasons, the AWA's request for reconsideration should not proceed.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Robinson", with a long horizontal flourish extending to the right.

Michael Robinson, SEOI

cc: Phillip Meintzer, AWA

Bola Talabi, AER