Alberta Energy Regulator

Via Email

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November 23, 2023

Alberta Wilderness Association **Suncor Energy Inc.**

Attention: Phillip Meintzer **Attention: Michael Robinson**

Dear Sirs:

RE: Request for Reconsideration of Suncor's McClelland Lake Wetland Complex Operational Plan for the Fort Hills Oil Sands Project (Operational Plan)
by Alberta Wilderness Association (AWA)
Suncor Energy Inc. (Suncor)/Fort Hills Energy Corporation (FHEC)
Request for Reconsideration No.: 1942728

The Alberta Energy Regulator (AER) has considered the request under section 42 of the Responsible Energy Development Act (REDA) for a reconsideration of the AER's decision dated September 9, 2022 authorizing the McClelland Lake Wetland Complex (MLWC) Operational Plan (the Decision or the Approval). The AER has reviewed the AWA's submissions, and the submissions made by Suncor in considering the AWA's request for reconsideration of the Decision.

For the following reasons, the AER has decided not to exercise its authority under section 42 of REDA to reconsider the Decision.

Background to Reconsideration Request

In *Decision 2002-089* [1] (2002-089 Decision), the Alberta Energy and Utilities Board (AEUB or Board), a predecessor of the AER, approved TrueNorth Energy Corporation's (TrueNorth) application for the construction and operation of an oil sands mine and bitumen extraction facility and a cogeneration plant, together referred to as the Fort Hills Oil Sands Project (FHOSP). The proposed mining project would be located approximately 90 kilometers north of Fort McMurray and included an open pit, truck and shovel mine, two bitumen processing trains, infrastructure associated with the mine and facility, water and tailings management plans and an integrated reclamation plan.

[1] TrueNorth Energy Corporation Application to Construct and Operate an Oil Sands Mine and Cogeneration Plant in the Fort McMurray Area https://static.aer.ca/prd/documents/decisions/2002/2002-089.pdf

In the 2002-089 Decision, the AEUB also gave approval to mine a portion of the MLWC:

> The Board has assessed the bitumen underlying the wetland complex and has concluded that the estimated one billion barrels represents a significant resource that should be recovered as part of the FHOSP as long as it can be done in a manner that minimizes damage to the rest of the complex. The Board has weighed the benefit of recovering the bitumen underlying the MLWC against the direct environmental impacts and has concluded that in the broader context, it is in the public interest to approve mining within the MLWC, subject to establishing the appropriate mitigation plan.

The *Oil Sands Conservation Act* (OSCA) approval issued by the AEUB for the FHOSP, Approval No. 9241, expressly contemplated in condition 15(e) that the results of a MLWC Sustainability Committee was to inform TrueNorth's water management plan:

> 15. TrueNorth shall submit for approval, a water management plan consisting of plant and site wide water balances, an evaluation of associated environmental impacts, and an evaluation of impacts to the mine plan within a reasonable time after each of the following water related issues is resolved:
>
> …
>
> e) implementation of recommendations from the McClelland Lake Wetland Complex sustainability committee.

The Government of Alberta (Alberta), specifically the Ministry of Sustainable Resource Development and the Ministry of Health and Wellness, participated in the AEUB hearing as an intervener. At the time, Alberta had the sole jurisdiction to issue approvals under the *Water Act*. In its decision, the AEUB made the following recommendations to Alberta, with respect to the MLWC[2]:

3) The Board supports Alberta's intention to condition its [*Water Act*] approval to require TrueNorth to provide an acceptable mitigation plan prior to mining in the MLWC. (Section 10.3)

4) The Board recommends that Alberta direct TrueNorth to convene a committee of stakeholders and regulators, as proposed in the MLWC Sustainability Plan, to oversee the collection of baseline monitoring data, establish the natural variability of the wetland, establish criteria to protect the biotic diversity and function of the no-surface-access zone, critically evaluate proposed mitigation plans in relation to the protection criteria, and evaluate postconstruction monitoring data and adaptive management. (Section 10.3)

On December 30, 2002, Alberta granted *Water Act* Approval No. 00151636-00-00 for the FHOSP. The *Water Act* Approval was amended on December 9, 2015 and is now Approval No. 00151636-01-00. The

[2] *Ibid*., at page 70.

approval incorporates by reference a number of plans/reports made by True North in its FHOSP application[3].

The *Water Act* Approval No. 00151636-01-00[4] contains the following conditions, regarding the MLWC:

3.11 The Approval Holder shall submit to the Director for authorization, at least six years prior to ditching or draining for mine pit preparations in the McClelland Lake watershed, a proposal to develop an operational plan for the sustainability of the non-mined portion of the MLWC in accordance with the IRP[5].

3.12 Beginning on January 31 of the year after the proposal referred to in condition 3.11 has been submitted, and each year thereafter until the operational plan is authorized by the Director, the approval holder shall submit to the Director, for written authorization, a report summarizing the progress on the preparation of the operational plan for sustainability of the MLWC and the proposed work for the subsequent year.

3.13 The operational plan referred to in condition 3.11 and 3.12 shall contain, at a minimum:

(a) physical and biological conditions in the MLWC;

(b) design features or measures, and other as required for the protection of the non-mined portions of the MLWC;

(c) a wetland monitoring program containing as a minimum a yearly survey of vegetation species distribution, abundance, health, and string and flark configuration as compared to baseline studies;

(d) a monitoring program to study groundwater and surface water levels and water quality in overburden and muskeg; flow measurements of polishing ponds, and level monitoring in McClelland Lake;

(e) proposed investigation and monitoring necessary to verify the model prediction that the MLWC will not drain towards the dewatering area through the groundwater flow system;

(f) indicators to evaluate the tolerance of the MLWC to project effects;

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[3] Section 3.1 of the approval states: The Approval Holder shall undertake the activity in accordance with this approval and the following plans/reports filed in the following records: AER Numbers 00151636-R001: Application for Approval of the FHOSP, Volume 1: Application and Project Development Plan by TrueNorth, June 2001, 00151636-R002: Application for Approval of the FHOSP, Volume 3: Environmental Impact Assessment, by TrueNorth, June 2001, 00151636-R003 Application for Approval of the FHOSP, Volume 5B: Supporting Technical Information, by TrueNorth, June 2001, 00151636-R004 Application for Approval of the FHOSP, Supplemental Information, Part 1: AEUB Information Requests, by True North, February 2002.

[4] A copy of Approval No. 00151636-01-00 was included as an attachment in Suncor's May 31, 2023 submission.

[5] IRP stands for the Fort McMurray- Athabasca Oil Sands Subregional Integrated Resources Plan as amended.

(g) the necessary contingency mitigation measures to maintain the water table, water chemistry and water flow within limits as indicated by natural fluctuations to maintain ecosystem diversity and function of the non-mined portions of the MLWC during operation and reclamation of the project; and

(h) a detailed schedule for the implementation of each component of the plan.

3.14 The Approval Holder shall implement the operational plan as authorized in writing by the Director two years prior to any ditching or drainage for mine pit preparations in the McClelland Lake Watershed.

3.15 The Approval Holder shall submit to the Director for authorization, prior to development of the out of pit tailings area and the plant site, a monitoring and mitigation plan documenting how the approval holder will update the existing assessment of the effect of those activities on surface and groundwater flow to the MLWC, the monitoring required prior to and during development of those activities and mitigative measures, if necessary, to protect the non-mined portion of MLWC.

The current OSCA approval for the FHOSP, Approval No. 9241I continues to contemplate the implementation of recommendations of the MLWC Sustainability Committee as a condition to the approval:

7. The Operator shall submit, when directed by the AER, a water management plan consisting of plant and site wide water balances, an evaluation of associated environmental impacts, and an evaluation of impacts to the mine plan within a reasonable time after each of the following water related issues is resolved:

   (a) detailed design for tailings management,
   (b) detailed evaluation and design of seepage control from the OPTA,
   (c) treatment or management of basal aquifer water,
   (d) in-stream flow needs and need for on-site temporary water storage, and
   (e) implementation of recommendations from the McClelland Lake Wetland Complex sustainability committee.

In addition, there is a subsequent condition in the OSCA approval that requires the submission of an operational plan for the sustainability of the non-mined portion of the MLWC:

8. (a) The Operator shall submit the operation plan for the sustainability of the non-mined portion for

the McClelland Lake Wetland Complex by December 15, 2021, or such other date as the AER may stipulate in writing.

(b) The operational plan referred to in clause 8(a) shall include:

(i) as per requirements outlined in the Operator's *Water Act* Approval no. 00151636-01-00 as amended; and

(ii) any other information the AER may require.

On December 15, 2021, pursuant to its *Water Act* Approval, Suncor, on behalf of the FHEC, submitted its Operational Plan for the non-mined portion of the MLWC.

On September 9, 2022, the AER authorized implementation of the Operational Plan, as specified in section 3.14 of the *Water Act* Approval. The authorization was subject to the following conditions:

- As outlined in both the Operational Plan and the SIR1 Response Letter, 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 amendments to the Operational Plan must be submitted in writing to the AER for review and authorization prior to their implementation.

- 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 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.

- 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.

The authorization also stated that,

FHEC must comply with all *Water Act* requirements, the terms and conditions of its approvals, and this authorization. Any contravention of the above conditions authorized by this letter is a contravention of

Conditions 3.1 and 3.2 of *Water Act* Approval No. 00151636-01-00, as amended, and may result in enforcement action.

On March 31, 2023, the AWA requested that the AER reconsider its decision to issue approval of the Operational Plan.

Submissions from the AWA and Suncor

The AWA's Submissions

In support of its request for reconsideration, the AWA submitted a report entitled "A Review of Suncor's McClelland Lake Wetland Complex Operational Plan for the Fort Hills Oil Sands Project" (the Report).

The AWA submitted that from January to August 2022, the AWA searched for expert scientists with specific expertise related to boreal wetland hydrology and/or peatland ecosystems. In August, the AWA contracted two independent boreal wetland experts, Dr. Lorna Harris and Dr. Kelly Biagi, to review the Operational Plan to understand the proposed mitigation plans and to determine whether any concerns had been left unaddressed, or if there were any evident deficiencies. They completed the review on December 28, 2022. However, the AER had approved the Operational Plan via a Letter of Authorization to Suncor on September 9, 2022.

The AWA argues that there was no reasonable opportunity for the experts to conduct their review, and for the AWA to articulate the outcomes of the review to the AER by the time the decision was issued, due to the lengthy process to contract experts. The AWA requested the Letter of Authorization on November 14, 2022, but did not receive it until January 6, 2023. The AWA Report contains analysis of the three mitigation conditions listed in the AER's Letter of Authorization.

The AWA submits that the Report presents new information to indicate that the Operational Plan does not satisfy the conditions of the *Water Act* Approval regarding the protection of the unmined portion of the MLWC.

The concerns addressed by the Report fall into seven categories. The Operational Plan contains very little recognition for the potential saline contamination of the groundwater from the Fort Hills' mining activities in the upper half of the MLWC. There is evidence of elevated salinity from mining activities within the oil sands region. If saline contamination of groundwater does occur, this will likely have an impact on surface water quality as well, as groundwater is transported to the surface in this wetland complex. The AWA submits there is a probable and significant right of irreversible damage to the wetland species, and therefore

to ecosystem diversity and function, due to the impact of increased salinity on the reclaimed MLWC ecosystem.

The AWA's concerns also include little to no modelling in the Operational Plan to assess any potential changes to groundwater quality. 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 plan did not model this potential threat or discuss mitigation strategies. Due to the likelihood of water quality degradation, modeling of potential changes to the groundwater quality is crucial to fully understand potential impacts of mining activities and to implement effective mitigation strategies.

The AWA submits that the review of the Operational Plan found that some of the hydrological modeling was validated using only two to three years of real-world observational data, and that much of the data used for calibrating these models was simulated data. This means that the modeling simulations are based on previous simulations and using simulated data introduces the potential for greater error. The Operational Plan provides no alternative mitigation strategy should the cutoff wall fail or have unanticipated issues and the plan for water supply to the fen peatlands is very poor.

The AWA is also concerned that many of the predicted changes to the water table and/or water levels are assumed to have negligible impacts, but without any associated justification provided for why that is assumed to be the case. There is no basis for describing an expected 27mm per year increase in groundwater flow as 'moderate', nor for the assumptions that this impact is 'negligible'. There are no ecological impacts described for potential rising water levels in fen, even though the upper range of water levels could drastically reduce peat accumulations and shift the vegetation communities aware from a fen peatland.

The AWA submits that there is uncertainty and risk with the proposed "conceptual stage" water management plan. There is a high risk that the construction and operation of all the necessary mitigation infrastructure (called "Design Features" within the Operational Plan) will result in significant damage to the downstream non-mined fen and connected wetlands, watercourse, and lake. These risks are not adequately addressed in the plan.

The AWA also submits that the Operational Plan does not adequately describe the ecohydrological processes that are necessary to maintain the structure and function (the ecological integrity and functionality) of the unmined portion of the McClelland patterned fen and other wetlands. The plan describes how changes in hydrology and chemistry may impact the composition and vegetation within the fen, but it does not adequately describe how these changes may impact peat accumulation and the ecohydrological feedbacks essential for maintaining the string-flark structure of the fen. The Operational

Plan should include a disclosure of how fen structure and function will be maintained during mining activities, mine closure, reclamation, and post-reclamation.

The AWA is also concerned that the FHOSP expansion into MLWC will result in the irrecoverable loss of currently intact and relatively undisturbed peatlands within the mined area. Its review also found that potential GHG emissions caused by FHOSP activities in both mined and unmined MLWC have not been addressed within the Operational plan. Although not a requirement under the approval conditions set out by the 2002-089 Decision or the 2002/2015 WA approvals. The AWA feels that it is important to highlight that the loss of stored carbon from destroyed or degraded peatlands will increase Canada's greenhouse gas emissions and should have been considered in the development of the Operational Plan.

The AWA submits that the concerns raised by the Report suggest that the activities proposed within the Operational Plan are likely to violate the conditions contained in the 2002-089 Decision and the *Water Act* Approval. The AWA also claims that the conditions set out in the AER's approval of the Operational Plan do not meaningfully or substantively address the seven categories of concerns raised in the Report. Based upon its review, the AWA believes there are significant risks and deficiencies in Suncor's submitted Operational Plan that fall considerably short of the FHOSP's regulatory requirements to guarantee the protection and sustainability of the unmined portion of the MLWC.

Furthermore, the AWA submits that if the AER were to consider the information in the Report in a reconsideration, the AER 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. As a result, AWA is of the view that there are extraordinary circumstances with exceptional and compelling grounds which justify an exercise of the AER's discretionary power to reconsider the approval of the FHOSP's Operational Plan.

Suncor's Response Submissions

Suncor submits there are no extraordinary circumstances or exceptional or compelling grounds warranting the AER to exercise its discretion to reconsider the decision to issue the approval of the Operational Plan. Suncor submits that the AWA's request for reconsideration should be dismissed by the AER.

Suncor notes that approval to mine a portion of the MLWC was granted 20 years ago in the 2002-089 Decision. In 2005 the Sustainability Committee was created, which Suncor views as the backbone of the Operation Plan. To protect the MLWC, the AEUB 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. Suncor submits that the 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[6]".

Suncor explains that participants in the Sustainability Committee have included Suncor, Indigenous communities, and various regulatory and government agencies. Offers to participate have been extended to environmental non-governmental organizations (ENGOs), and the committee has been supported by an Aboriginal Advisory Group (AAG), comprised of Elders, traditional knowledge holders and land users, and a Technical Advisory Group, comprised of scientific technical experts, and two independent co-chairs.

Suncor argues that the AWA missed the opportunity to contribute to years of discussion, data review and to provide input into the Operational Plan's development due to its continued refusal to participate in the Sustainability Committee. In 2005, the FHEC's predecessor reached out to the AWA requesting input on the development of the Sustainability Committee. Since then, AWA has been offered additional opportunities to participate in the committee but has declined these invitations. On page 15 of the AWA's Report, the AWA acknowledges its lack of participation in the Sustainability Committee:

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

Suncor submits that the AWA determined strategically they would not support the Operational Plan before it existed.

After the AWA filed a letter with the AER on December 22, 2021, requesting a copy of the Operational Plan, Suncor provided the AWA with a copy on January 28, 2022 and offered to discuss the plan and the AWA's concerns. The AWA sent further correspondence to Suncor in March and April of 2022 requesting details on the Operational Plan regulatory process to which Suncor responded. Suncor submits that despite this, the AWA chose not to meet or discuss with Suncor nor file any additional information with the AER, even though nearly eight months passed from the AWA's receipt of the Operational Plan.

Suncor submits that establishing a subsequent reconsideration process so the AWA may provide input it could have provided earlier would establish a troubling precedent that would encourage parties to only raise concerns after decisions have been made. Under section 42 of REDA, a reconsideration is at the sole discretion of the AER and no time limit is specified. Suncor further submits that if parties were permitted

[6] Fort McMurray- Athabasca Oil Sands Subregional Integrated Resource Plan (IRP, ASRD 2002)

to request reconsideration of AER decisions when they please, any AER decision would be open to a reconsideration request at any time. In the usual course, parties can appeal an AER decision in 2 ways:

(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. Suncor's understanding is that the AWA did not pursue either of these avenues and is now time barred since both deadlines have passed.

Suncor submits that the need to utilize the available statutory appeal mechanisms under REDA is reinforced in a 2014 AER decision[7] denying a reconsideration:

> …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.

Suncor highlights that the AER has indicated it will only exercise its discretion to reconsider a decision in the most extraordinary, exceptional, and compelling circumstances. The AWA provides no such circumstances which would warrant reconsideration instead, it has 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 the delay.

Suncor disagrees with the AWA's submission that its evidence was not available at the time of the Decision, and that the AWA did not have an opportunity to bring forward the evidence prior to the time of the Decision. It states that the AWA had almost 20 years to retain experts as they have known since 2002 that a mitigation plan would need to be developed in connection with the MLWC. The AWA was also invited on several occasions to participate in the process leading to the Operational Plan but refused. Additionally,

[7] AER letter denying Beaver Lake Cree Nation Reconsideration Request against Canadian Natural Resources Kirby In-Situ Expansion Project, June 27, 2014.

it took approximately seven months from the AWA's receipt of the Operational Plan for it to engage consultants, it took the AWA's consultants a total of four months to review the Operational Plan and provide their findings and it took AWA an additional three months to summarize the consultants' findings.

The apparent conflicts for the AWA's delay in engaging consultants and the failure to explain why it took a further three and four months for the consultants to conduct the review of the Operational Plan, are not compelling reasons to warrant a reconsideration. Suncor also submits it is disingenuous for the AWA to argue that there was "no opportunity for public comment" on the Operational Plan. The AWA had ample opportunity to bring forward documentation and concerns to the Sustainability Committee. Parties cannot expect the AER to accommodate their timelines to file information that should have been filed earlier in a proceeding. Further, Suncor states that the AWA disagreeing with the AER's decision to authorize the Operational Plan and the 2002-089 Decision is not sufficient to trigger a reconsideration, especially where another appeal is available but not used. The 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 31m 2023, which was far too late.

Suncor submits that the AWA is not directly and adversely affected by authorization of the Operational Plan and would not have met the AER's standing test if it had requested participation in the AER's regulatory process. To meet the "direct and adverse effect" test and obtain standing, 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)* [8]. Suncor is not aware of any previous AER decisions which granted reconsideration where the requesting party did not meet the AER's standing test. The AWA is a Calgary-based association that has expressed general concerns about authorization of the Operational Plan and has not demonstrated how any of its members use the MLWC area or how they might be affected by the Decision.

The AER explained in a recent decision filed by NOVA Chemicals, that it will reconsider a decision "where there is new information or an error in the decision that is so profound that to not reconsider the decision would make it without value or merit, such that it would be absurd not to reconsider it"[9]. Neither is the case here. The decision to authorize the Operational Plan is well reasoned, puts the onus on Suncor to follow its commitments, and requires continued work with the Sustainability Committee for the years to come.

[8] 2005 ABCA 68, para 14.
[9] AER disposition letter dated March 8, 2023, Request for Reconsideration No.: 1941310 Nova Chemicals Corporation

Suncor submits that the AWA Report does not adduce any new, compelling, significant, or extraordinary information such that reconsideration is warranted. Suncor addresses the AWA's 7 concerns referenced in the Report and submits the concerns are addressed in the Operational Plan, are based on incorrect or misleading assumptions, are highly speculative and not supported by relevant evidence, and/ or demonstrate a lack of knowledge of the technical expertise that went into development of the Operation Plan.

Suncor notes that the AWA's first concern is that there is evidence of elevated salinity from mining activity within the oil sands region without providing evidence of such salinity occurring specifically at the MLWC site. The FHOSP mine site has a robust groundwater monitoring program which is designed to identify, manage, and mitigate potential effects to the groundwater system from oil sands mining across the lease, along with a seepage management system to detect and mitigate potential migration of industrial wastewater off-lease. If the industrial wastewater influence was suspected or detected at monitoring wells, the pumping wells would be activated.

Suncor submits that with respect to its concern that there is a lack of modelling for potential impacts to groundwater quality, the AWA ignores that a roadmap for future work required on water quality modelling was provided in the Operational Plan and that refinements to the MLWC water quality model are ongoing. This work will continue to be shared with the Sustainability Committee and its advisory groups, as well as with the AER, for feedback.

The AWA's concern about hydrological and model calibration shows that the AWA lacks expertise on how HydroGeoSphere (HGS) modelling works and/or the AWA did not review or misinterpreted Appendix D of the Operational Plan which discusses calibration of the HGS model. In contrast to their assertions, the HGS model did not use simulated data as calibration targets during model calibration. Instead, 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 locations were then temporally averaged where applicable and turned into ground water calibration targets. An additional 78 (measured) groundwater levels were used for calibrating the deeper (Cretaceous and Devonian) aquifers and aquitards, among other things.

Suncor submits that regarding AWA's concern about real-world observational data used, there are measured hydrological observation data (e.g., groundwater level data) within the MLWC watershed that were used to develop targets for model calibration. From the applied climate to the upper surface of water-groundwater, the HGS model climate data computed extends back to 1945 and includes the largest source (precipitation) and sink (evapotranspiration) terms in the water balance.

With respect to the AWA's concerns regarding uncertainty and risk with the conceptual stage water management plan, Suncor highlights that the AWA do not provide evidence or data to back up its concern, and it does not appear that either of the consultants retained by the AWA are experienced in engineering, design, or construction. The AWA fails to consider that there is substantial experience in the region working in thick muskeg that will inform working pad design and that 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. Suncor will monitor the performance of the design features through instruments and field observations as part of ongoing operations and has a robust response framework as per Objective 6 of the Operational Plan.

Suncor notes that the AWA's concerns in regard to predicted water level changes appear to be founded on incorrect assumptions and a misunderstanding of the issue. These concerns are also addressed directly in a detailed discussion on potential changes to vegetation communities and wetland function of the non-mined portion, provided in Objective 3 of the Operational Plan.

Submit submits that the 27 mm/year (increase) stated by the AWA 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 for the operational, closure and far-future cases. These changes in flow on an annual basis are considered negligible. Additionally, the risk assessment showed that these changes are below the Level 1 trigger of the Response Framework, the lowest response framework level. 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 constructive.

Suncor notes that the AWA's concern regarding ecological integrity and functionality of the patterned fen is addressed directly in the Operational Plan. The plan recognizes the importance of ecohydrological processes in the sustainability of the non-mined portion of the MLWC. Specifically, section 4.3.2.4 of Objective 3 contains 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.

With respect to the AWA's concern about unrecognized impacts to peatland carbon stores and the resulting increase in greenhouse gas emissions, Suncor submits that greenhouse gas emissions are out of the Operational Plan's scope as such an assessment was done in the proceeding for the FHOSP and the 2002 AEUB decision. The intent of the Operational Plan and the process leading up to it was to identify appropriate mitigation measures and not to revisit whether a portion of the MLWC should be mined, which was already decided in 2002. The MLWC project development is appropriately informed by the latest climate science, regulatory requirements, and corporate goals.

The AWA's Reply Submissions

The AWA submits that Suncor fails to show that the information presented in its Report is not new. The AWA reiterates that its information is new because it was not reasonably available prior to the AER's decision to approve the Operational Plan and may cause the AER to change its decision if considered during a reconsideration. Suncor's argument that the AWA should have made the information available through participation in the Sustainability Committee ignores the AWA's explanation that participation in the committee would conflict with its public-interest mandate and was therefore not reasonable. The Sustainability Committee's sole purpose is to facilitate something which in AWA's view will destroy the unmined portion of the MLWC and is in direct conflict with the AWA's mandate and is therefore not a process in which AWA could have reasonably participated. Suncor's response also raises an imagined concern that this reconsideration request would incentivize members of the public to provide input when they "could have provided it earlier". Suncor has created the conditions incentivizing a reconsideration request by failing to produce an Operational Plan that meets the conditions of its *Water Act* Approval and Suncor should be held accountable accordingly.

The AWA submits that Suncor's claim that there is no mechanism for members of the public to request reconsideration is incorrect and contradicts other statements in its response. As the AER noted in Reconsideration No. 194149, although the AER's discretionary power to reconsider does not give rise to an "appeal" mechanism per se, the discretion does give rise to a mechanism for the AER to reconsider a decision where there is new information to warrant such a reconsideration. The appeal routes Suncor described under sections 38 and 45 of the REDA apply to parties who would be directly and adversely affected by the decision. The AWA does not purport to be directly and adversely affected by the decision and therefore those appeal mechanism were not available to the AWA in this context.

Furthermore, the AWA states that Suncor provides no proof that reconsideration proceedings are only requested by parties who would meet the directly and adversely affected test, as the test was not actually applied in those cases and no determination was made as to whether the parties satisfied the test.

The AWA submits that Suncor's claim that the AWA had ample opportunity to make the information available prior to the time of the decision and that the AWA could have and should have taken advantage of the opportunities to provide input and potentially influence the contents misses the point that the information at issue is a report based on the independent expert reviews of the final Operational Plan could not have existed prior to the AER's decision.

The AWA's position on the authorization decision or the 2002 AEUB Decision are not the basis for this reconsideration request. Rather, the new information contained within the Report reveal significant

uncertainties about the Operational Plan's ability to satisfy the conditions of the 2002 AEUB Decision and the 2002/2015 *Water Act* Approvals. This new information could therefore lead the AER to come to a different conclusion upon reconsideration and is thus sufficiently compelling and exceptional grounds for reconsideration.

The AWA states that Suncor's assertion that the AWA did not demonstrate an error in the Decision is irrelevant as reconsiderations do not require a demonstration of an error in the decision.

The AWA also addresses Suncor's claim that the report is not compelling, significant, or extraordinary as applied in Suncor's response to each of the AWA's seven highlighted concerns. First, Suncor claims that the AWA does not provide relevant evidence and that for the AWA's concern to have merit, proof of elevated salinity levels having been observed at the MLWC is necessary. The AWA states this is incorrect as there is no reason that the Report including evidence of elevated salinity from mining activity elsewhere in the mineable oil sands region would not be relevant, beyond noting conditions at each site are unique. Despite unique conditions, regional trends from similar activities and circumstances are useful indicators of potential risk and cannot be simply ignored, especially where it would be impossible to provide evidence of increased salinity from mining in the MLWC itself since it has never taken place. The Operational Plan admits the salinity issue is unresolved and fails to provide any guarantee that a solution might be found and would sufficiently protect the unmined portion of the MLWC.

Suncor fails to refute the AWA's concern that the Operational Plan is insufficient by asserting that the AWA ignores that a roadmap for future work required on water quality modelling was provided in the Operational Plan. The AWA is of the view that a roadmap for future work on water quality modeling is not enough to guarantee the diversity and function of the unmined portion of the MLWC as required by the *Water Act* approvals and the 2002 AEUB Decision.

The AWA notes that despite Suncor's unproven claims that the "AWA lacks expertise " and/or" did not review or misinterpreted Appendix D of the Operational Plan", the AWA's concern that the hydrological model calibration relies on insufficient data still stands. The AWA's expert, Richard Lindsay from the Sustainability Research Institute of the University of East London provides:

> …While a huge amount of data has been gathered, collated and assessed, the data are only interpreted with confidence and adequate quality assurance for the current set of conditions. There are so many acknowledged (and un-acknowledged) unknowns in the practical implementation of the Operational Plan that it is not possible to generate an interpretation of what will happen in the future with any degree of confidence… In this case, however, no real testing of the model output can take place until the Operational Plan has been implemented, by which time it is too late to undo the engineered construction works.

> …The current reports linked to the Operational Plan do not adequately address the dynamic nature of a peatland system and the fact that effects may extend out from areas of impact, resulting in changes to the vegetation, the microtopography and therefore the hydro-ecological behavior of the peatland system. 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 changes have changed significantly during this period, given the relatively undisturbed nature of the site. However, by the time any changes due to construction of the Suncor mine are noticed, it will be too late to do much about them.

The AWA submits its concern is that the hydrogeological model as a whole, given the flaws and limitations, is unable to provide any meaningful guarantee of protection for the unmined portion of the MLWC.

The AWA highlights that there is uncertainty and risk with the proposed conceptual stage water management plan. Suncor fails to justify its claims that the AWA provides no evidence or data and that the consultants do not appear to have experience in engineering, design, or construction. However, the AWA submits that its report relies on evidence about the uncertainties inherent in the proposed mitigation strategy.

The AWA notes that Mr. Lindsay further highlights how the Suncor Operational Plan is highly speculative:

> The Suncor Operational Plan itself is, however, "highly speculative' in the sense that no testing has been undertaken of the whole OP approach as an integrated system while the practical implementation of this approach is explicitly described by Suncor itself as 'conceptual' rather than practical.
>
> Also no information is provided about how the Operational Plan systems will be maintained at cessation and restoration of the mining nor who will bear the responsibility for this. Given that peatland systems demonstrably operate over timescales of centuries and even millennia (as evidence by the preserved peat archive), the timescales for responsibility approach those of a nuclear power plant rather than a short-rotation conifer plantation, which is the timescale explicitly addressed by Suncor's Operational Plan. As such, Suncor's OP mitigation measures proposal is not merely 'highly speculative', it is more accurately described as conjectural and presumptive.

Mr. Lindsay further submits that the plan's designed features consist only of conceptual designs which will need further investigations to confirm the resulting flow pattern in the fen areas will be similar to pre-mining conditions. He lists several caveats that show the potential for reality to diverge from the conceptual designs.

The AWA submits that these uncertainties support its concern that the Operational Plan is fundamentally unable to guarantee the protection of the MLWC and is likely to violate the conditions imposed by the *Water Act* Approvals and the 2002 AEUB Decision. As such, the information in the Report could result in a significantly different outcome if considered by the AER upon reconsideration.

Suncor's dismissal of the AWA's concern with the Operation Plan's assumption that there will be negligible impacts from predicted water flow changes hinges on unproven conjectures that the AWA's concerns allegedly "appear" to be founded on incorrect assumptions and a misunderstanding of the issue. Suncor's argument fails to provide any explanation as to how the Operational Plan's assumption of negligible impacts from predicted water level changes can guarantee the protection of the unmined portion of the MLWC. The AWA submits that Suncor fails to recognize that such an assumption is inappropriate in the context of a complex wetland system, such as the MLWC.

The AWA argues that the Operational Plan also does not sufficiently address their concerns about unrecognized impacts to the fen. The integrity and functionality of the MLWC as a patterned fen is complex and multi-faceted as are the risks which mining can pose to that integrity and functionality. With the difficulty of monitoring the risks and determining the full range of impacts, the Operational Plan fails to provide sufficient certainty for the protection of the unmined portion of the MLWC. Since surface hydrology has not changed significantly between dataset years (2008 and 2019), disrupting hydrology will only reinforce the risk. The Operational Plan's proposed disruption of the surrounding watershed and the unique hydrology of the MLWC poses a profound risk to the survival of the MLWC.

Lastly, the AWA notes the Operational Plan does not account for the negative feedback loops associated with climate change, GHG emissions and peatland carbon stores. Contrary to Suncor's suggestion that considerations of peatland carbon stores and GHG emissions would "revisit whether a portion of the MLWC should be mined, which was already decided in 2002", these considerations are directly relevant to the identification of appropriate mitigation measures. The impacts of climate change and the protection of the MLWC are directly and mutually related to the MLWC's ecosystem functions including buffering fire risk in the oil sands region. As Dr. David Locky notes in his report to the AWA:

> The fire severity and risk have significantly increased in Alberta's boreal region. This is primarily due to the area becoming significantly warmer and drier over the past 50 years (Whitman et al. 2022) During this period there have been increases in the annual number of large wildfires, area burned, and fire sizes…
>
> But parts of the boreal region have built-in resistance to fire (Kuntzeman et al. 2023). Because peatlands are a dominant component in the oilsands region (Foot and Krogman 2016), their reliable water sources and saturated nature provide fire resilience compared to adjacent ecosystem types (Kuntzeman et al. 2023). … Predictive maps developed highlighted the probability of refugia from fire with forested fens have 64% higher probability of provided refugia than upland forests. In peatlands in general, [neither] regional climate moisture conditions nor the interannual deviations affected refugia, demonstrating [the critical importance] of large areas of intact peatlands. In fact, intact peatland areas have a high probability of providing fire refugia, slowing climate-driven, fire-mediated vegetation transitions in surrounding forest ecosystems.

> Peatlands that have been compromised hydrologically do not fare as well. Sites decoupled from their hydrological regime present a severe positive feedback loop, in that, those peatlands that succumb to fire are even more susceptible to increased post-fire drying (Kettridge et al. 2019). This adds to future fire risk. A significant resilient ecosystem on the greater landscape in its current form, a compromised McClelland fen would fall into this category of fire susceptibility. An uncompromised MLWC is critical to helping buffer fire risk in the region, given the increased the [*sic*] unprecedented fire risk Alberta currently faces (Whitman et al. 2022).

The AWA submits that the negative feedback loop of fire risk associated with climate change also relates to peatland carbon store impacts. The Operational Plan fails to account for these negative feedback loops associated with climate change, GHG emissions, and peatland carbon stores, and therefore is insufficient for guaranteeing the protection of the unmined portion of the MLWC.

Overall, the AWA submits that Suncor's response does not refute the AWA's assertions in their initial submissions that the new information in the report could lead the AER to a different conclusion upon reconsideration, namely that the Operational Plan does not guarantee protection of the unmined portion of the MLWC, and therefore does not satisfy the conditions of the *Water Act* Approvals and 2002 AEUB Decision.

Suncor's Additional Response Submissions

The AER permitted Suncor to file an additional response submission to reply to the AWA's reply submission, after the AER determined that the AWA's submission included the following new evidence:

- Report by Richard Lindsay entitled "A Report to Alberta Wilderness Association- Suncor Operational Plan for McClelland Lake Wetland Complex", dated May 29, 2023.
- Report by Dr. David Locky entitled "A Case for Preserving the McClelland Lake Patterned Fen", dated May 31, 2023.
- Report by Dr. R. Kelman Wieder entitled "Report to Alberta Wilderness Association", dated May 24, 2023.
- Report by Dale H. Vitt and Melissa House entitled "An 11,000 year record of plant community stability and paludification in a patterned rich fen in northeastern Alberta, Canada" dated November 28, 2022.

Suncor repeats and relies on its previous submissions in response to the four reports filed by the AWA in its final reply submission. Suncor submits that the following overarching reasons confirm that the report should be disregarded, and the AER should not proceed to Phase 2 of the reconsideration process:

- The 2002-089 Decision established the Sustainability Committee and contrary to the AWA's assertion, it was not a process chosen or forced by Suncor.

- The AER acted in accordance with its public interest mandate by establishing the Sustainability Committee. The AER, Suncor, the Indigenous Communities and others dedicated considerable time and resources to the work of the committee to develop the Operational Plan. The AWA elected to boycott this process. Neither the AWA nor individuals it has retained (including the authors of the reports) participated in the extensive work done by the Sustainability Committee, including the engagement of numerous technical experts to support such work.
- The AWA deliberately chose not to participate in the work of the Sustainability Committee, which was designed to ensure the public interest was considered, or comment on the Operational Plan, despite being provided with ample opportunity to do so.
- The AWA's understanding of the Operational Plan and its development is deficient and less than the understanding of the AER, Suncor, Indigenous Communities and others who have participated in and benefitted from the work of the Sustainability Committee.
- The AWA claims to have a "public interest mandate" that prevented it from participating in the work of the Sustainability Committee. 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 view of others involved with the committee 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.
- The AWA provides no compelling reason why the reports were not commissioned and submitted prior to the Operational Plan being approved.
- The AWA has acknowledged that it is not directly affected by the Fort Hills Mine or the Operational Plan. On that basis alone, the AWA's request for reconsideration should be denied.

Suncor further submits that section 6.2(2) of the *Alberta Energy Regulator Rules of Practice* is clear that the AER may disregard a concern raised in a statement of concern based on the reasons noted in the Rule. Suncor is of the view that much of the information in the reports fits squarely into the categories captured by section 6.2(2) and therefore should be disregarded. For example, section 6.2(2)(c) states that the AER may disregard a concern if 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. The reports refer to many of the very same issues that were fully considered and ruled on over 20 years ago in the 2002-089 Decision, including the approval to mine the MLWC. It is also contrary to law for the AWA to attempt to use the AER's reconsideration powers to re-litigate issues that were considered as part of a separate proceeding. In Dr. Locky's report, it is stated that "the mine extension simply should not have been approved by the AER". The report also references testimony from the 2002 AEUB proceeding from Dr. Diana Horton which outlines "significant deficiencies" of a report adduced in that proceeding. Further, AWA fails to recognize that in the 2002-089 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.

As another example, Suncor notes that Mr. Lindsay's report references "breach" of multiple international conventions but fails to explain how approval of the Operational Plan would breach such conventions. No

evidence was presented that the proposed development would prevent Canada from meeting these targets. These international conventions related to policy decisions of government are out of scope of this proceeding. Suncor submits that these concerns should be disregarded pursuant to sections 6.2(2)(a), (b) and (d).

Suncor also notes that another common theme in the reports is that the AWA incorrectly presumes Suncor's knowledge of and approach to sustaining the non-mined portion of the MLWC is static and wholly captured within the Operational Plan. The plan is expected to be dynamic in nature and in place throughout the operational and active closure phases of the FHOSP, which is anticipated to be several decades in length. Suncor will have the opportunity to provide an updated understanding of the MLWC through ongoing monitoring, engagement with the Sustainability Committee and submissions to the AER. Suncor expects 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 Operational Plan. The plan will be updated over time to reflect these new understandings and Suncor notes that any material changes to the plan will require further authorization from the AER.

With respect to Mr. Lindsay's report, Suncor notes that there is a degree of uncertainty associated with Suncor's plans and this uncertainty means that the Operational Plan should not have been approved. Suncor submits that this ignores the reality that Suncor will continue to refine its plans to reduce uncertainty as it proceeds to execution of the Operational Plan. Second, uncertainty is not reason to reconsider the Operational Plan, as a degree of uncertainty always exists as plans are developed and uncertainties are likely to exist, but these can be dealt with through adaptive management.

Furthermore, Suncor submits that Mr. Lindsay's report takes issue with the conceptual level of design features that are contained in Objective 4. Suncor provides that it continues to develop design features through standard engineering that will progress from conceptual to the eventual detailed design. Suncor states that it will keep the AER updated on the progress of the design work via the annual reporting conducted and will continue to engage with the AER through the Sustainability Committee or otherwise as required. It notes that it is 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.

Suncor takes issue with an assertion made within Mr. Lindsay's report that no testing of the accuracy of future model predictions can be done in advance of implementing the Operational Plan. Suncor submits that it is cognizant of the challenges of numerical modelling of environmental systems and accounts for the inevitable uncertainties in model predictions within the plan itself. It explains that it is using modelling to aid in the design of its approach to sustaining the non-mined portion. The model is a support tool in this

process. During implementation of the Operational Plan, Suncor states that will monitor, analyze data and incorporate lessons learned to manage and optimize the approach to sustaining the non-mined portion.

Suncor submits that in his report, Mr. Lindsay states that the Vitt/House Report reveals a substantial degree of variation in the composition of peat. Suncor explains this is not the case and in actuality, the report provides that peat compositions were found to be remarkably consistent in the cores. Furthermore, Suncor argues that the evidence is clear 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.

Suncor submits that Mr. Lindsay is incorrect when he concludes that there is no evident attempt to undertake small-scale experimental trials and that the Operational Plan is in and of itself the experimental trial. In actuality, there will be trial work undertaken as part of the detailed design process. There will also be considerable mining carried out through thick, saturated peat zones to the west of the non-mined portion for several kilometers as the mine advances easterly, also acting as a trial. This will further aid in ascertaining predicted behaviour well before mining approaches the protected non-mined portion and the Operational early warning monitoring program will be used to refine the response framework if necessary.

Suncor notes that Mr. Lindsay discusses two entirely unrelated projects to support an assertion that "catastrophic failure" can occur based on a single incidence. Suncor submits that no evidence as to how the reference projects are similar to the non-mined portion is provided, but Mr. Lindsay appears to misunderstand the topography of the MLWC area. Suncor provides that it has measures in place to mitigate the potential for any changes, catastrophic or otherwise. Engineering practices and standards require Suncor 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. Suncor also submits that these experts have considerable experience working with peat as it relates to resource development and Suncor is drawing on that experience in detailed design.

Suncor also submits that Mr. Lindsay's report contains claims, with unsupported evidence, including those around peat volumes, allegations that the majority of those volumes of peat will be oxidized and the loss of peat will result in 7 to 11 million tonnes of carbon dioxide to the atmosphere. In addition, the report notes that the alleged loss of peat is in direct conflict with the UN Framework Convention on Climate Change. Suncor states that none of this information explains how approval of the Operational Plan would prevent the UN Framework from being met. Even if there was evidence to support the foregoing claims, the development of the mined portion of the MLWC is appropriately informed by the late climate change science, regulatory requirements, and government goals. These issues are inconsistent with section 6.2(2)(a), (b), (c), and (d).

With respect to Dr. Locky's report, Suncor submits that no evidence is put forward to refute the contents of the Operational Plan. Instead, the report focuses on questioning the 2002-089 decision. Dr. Locky's report also contains speculative and out-of scope statements. For example, Suncor notes 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. 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. Suncor argues these concerns should be disregarded in that they are vague, unsubstantiated, unrelated to and/or beyond the scope of this proceeding as per section 6.2(2)(b) and (f).

With respect to the Vitt/House report, Dr. Dale Vitt, was contracted by Suncor to support development of the Operational Plan and the data in this report was considered within the Operational Plan. Suncor provides that throughout the reports from Mr. Lindsay and Dr. 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. Suncor disagrees with this interpretation. Instead, Suncor's interpretation of the report is that MLWC is resilient and resilient to changes, whether that is fire or changing climatic and associated hydrological conditions. Suncor submits that despite changes to the MLWC's water balance over time, Dr. Vitt has confirmed to Suncor that vegetation communities have experienced little change.

Suncor concludes that the four reports do not contain new, compelling, significant, or extraordinary information and in any event, could have (and should have) been commissioned and submitted prior to the Operational Plan being approved. The AWA now seeks an entirely new process to review the Operational Plan, despite the fact it is not directly affected by the Operational Plan or the FHOSP - and the reports do not change this fact. Suncor submits that the AWA's request for reconsideration should not proceed.

Reconsideration

The AER has the authority to reconsider its decisions pursuant to section 42 of *REDA*. That section states:

> The Regulator may, **in its sole discretion**, reconsider a decision made by it and may confirm, vary, suspend or revoke the decision. [emphasis added]

As indicated in section 42, it is at the AER's sole discretion whether to reconsider a decision made by it. That section does not provide an appeal mechanism to be utilized by industry or members of the public. Other provisions of REDA are available for that purpose. Given the appeal processes available under REDA, and the need for finality and certainty in its decisions, the AER will only exercise its discretion to reconsider a decision in extraordinary circumstances and where it is satisfied that there are exceptional and compelling grounds to do so. Mere disagreement with a decision is not sufficient.

The reconsideration power in section 42 exists because in its absence, the AER could never reconsider its decisions, notwithstanding a change in circumstances. The intent of REDA is not to have reconsiderations be a review tool to be invoked by application from those who believe they are affected by AER project decisions.

The AER will reconsider a decision when 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. There is no time bar to the ability of the AER to reconsider a decision. The test is whether the AWA has demonstrated that extraordinary circumstances exist that provide exceptional and compelling reasons for the AER to reconsider its decision to issue the Approval.

Decision

No Exceptional or Compelling Grounds

We have reviewed and considered all of the information contained in the AWA's submissions, including the new evidence filed in its reply submission. We find that the AWA has not presented any new information which demonstrates exceptional and compelling reasons for the AER to reconsider its decision to issue the Approval.

The Approval does not preclude changes to the Operational Plan, nor does it preclude the AER from making modifications to the conditions regulating the project if the AER decides it is necessary to do so.

The AER requires Fort Hills to conduct further monitoring, modelling, and engineering studies, with performance reports to be submitted to the AER for review. AER subject matter experts will continue to be involved in the review of the performance of the project and the Operational Plan and will have the mandate to enforce the conditions of the Approval and other authorizations.

The design of specific water management structures related to the project are also required to be submitted to AER for review and authorization prior to the start of construction.

The security of the nearby peatland area has been given significant attention throughout the approval process. It is covered by two factors:

- Firstly, as outlined in the 2002-089 Decision, a deposit or posting of security with respect to the reclamation liability of this project is required. This is standard for oil sands mining projects and is a component of the security programs administered under the Mine Financial Security Program, which is a liability management program under the *Environmental Protection and Enhancement Act*.

- Secondly, as noted in the Letter of Authorization, the Approval Holder is required to comply with the terms and conditions specific to the *Water Act*. Any contravention of the conditions would result in enforcement action by AER, including modifying or halting operations if required.

The enforceable conditions of the *Water Act* Approval were developed and implemented to identify and address any potential impact on the non-mined portion of the fen. The Operational Plan provides a more rigorous framework around how the environmental conditions will be measured, assessed, and reported to the AER, both as a baseline and going forward as operations closer to the fen are undertaken.

As part of the *Water Act* Approval there is a requirement to establish an understanding of baseline conditions in the fen and to ensure that the implementation of an Operational Plan minimizes the impact to the non-mined portion of the fen, as well as monitoring and reporting on the condition of the fen throughout the life of the project. The *Water Act* Approval requires the plan to include specific monitoring, evaluation indicators, and mitigation measures to maintain ecosystem diversity and function of the non-mined portion of the MLWC. Monitoring results may result in amendments to the plan to prevent adverse impacts on the non-mined portion of the MLWC.

The Role of the MLWC Sustainability Committee

In addition to the fact that the AWA has not made out any exceptional and compelling grounds for reconsideration, we view the AWA's failure to participate in the MLWC Sustainability Committee as problematic for its case for a reconsideration.

The function of the Sustainability Committee is to provide oversight for the FHOSP. The Sustainability Committee was created for the express purpose of gathering a diverse group of stakeholders together to discuss concerns relating to the project and its effect on the MLWC. The development of the Operational Plan has incorporated the advice of technical specialists, scientists, and traditional knowledge holders who participated in the MLWC Sustainability Committee. And as discussed previously, the prior approvals and authorizations expressly required that the recommendations of the Sustainability Committee be taken into consideration by Suncor.

The Sustainability Committee continues to be very active in relation to the project and meets every few weeks. The AWA claims that the Sustainability Committee is in direct conflict to its public interest mandate to advocate for the protection of ecological systems, and that participation in the committee would compromise the AWA's independence. We disagree that the committee is in conflict to the public interest, and in fact, it was conceived for exactly that purpose. Furthermore, we believe that the AWA serves an important role and presents a unique perspective which would be invaluable to the committee in relation to ongoing public interest issues and concerns to be addressed by it. The AWA may still participate in the

committee to address concerns raised in this reconsideration request, and the AWA is strongly highly encouraged to do so.

Finally, the AER's decision to authorize the Operational Plan is not the end of the AER's regulatory oversight of the project. The AER will require continued monitoring of the project and continue to be involved in the review of the performance of the project and the Operational Plan, and it will have the mandate to enforce the conditions of the authorizations.

On the basis of the foregoing reasons, the AWA's request for reconsideration is denied.

Sincerely,

Paul Ferensowicz
Principal Regulatory Advisor

Jeff Moore
Senior Advisor, Legal/Regulatory

Alexandra Robertson
Principal Engineer

cc: Martin Ignasiak, Bennett Jones LLP
Matt Webster, Suncor
Mark Graham, Suncor