

**KELTIE L. LAMBERT**

Direct Telephone: (780) 441-3206  
In Reply Please Refer to File No.: 81,621.108/KLL  
E-Mail Address: [klambert@wittenlaw.com](mailto:klambert@wittenlaw.com)

November 13, 2014

LARP Review Panel  
C/O Land-Use Secretariat  
9<sup>th</sup> Floor, Centre West Building  
10035 – 108 Street NW  
Edmonton, AB T5J 3E1

Via E-Mail: [LUF@gov.ab.ca](mailto:LUF@gov.ab.ca)

Dear Sir / Madam:

**RE: Response to Information Request #7**

Attached hereto please find a copy of Cold Lake First Nations' response to Information Request #7 along with a map of their Traditional Territory.

Yours truly,

**WITTEN LLP**

Per:

  
/jkm  
Encls.

  
**KELTIE L. LAMBERT**

- Cc: Jodie Hiermeier  
Via E-mail: [jodie.hiermeier@gov.ab.ca](mailto:jodie.hiermeier@gov.ab.ca)
- Cc: Will S. Randall II  
Via E-mail: [will.randall@gov.ab.ca](mailto:will.randall@gov.ab.ca)
- Cc: Witek Gierulski  
Via E-mail: [witek.gierulski@gov.ab.ca](mailto:witek.gierulski@gov.ab.ca)
- Cc: Mark Gustafson (counsel for Mikisew Cree First Nation)  
Via E-mail: [mgustafson@jfkllaw.ca](mailto:mgustafson@jfkllaw.ca)
- Cc: Jenny Biem and Melissa Daniels (counsel for Athabasca Chipewyan First Nation)  
Via E-mail: [jenny@woodwardandcompany.com](mailto:jenny@woodwardandcompany.com) and [melissa@woodwardandcompany.com](mailto:melissa@woodwardandcompany.com)
- Cc: Tarlan Razzaghi (counsel for Fort McKay First Nation and Chipewyan Prairie Dene First Nation)  
Via E-mail: [trazzaghi@k2blaw.ca](mailto:trazzaghi@k2blaw.ca)
- Cc: Client

[www.wittenlaw.com](http://www.wittenlaw.com)

Suite 2500 Canadian Western Bank Place  
10303 Jasper Avenue • Edmonton • Alberta • Canada • T5J 3N6  
t: 780.428.0501 f: 780.429.2559 e: [lawyers@wittenlaw.com](mailto:lawyers@wittenlaw.com)

November 13, 2014

TO: J. Gilmour, Chair, LARP Review Panel  
FROM: Cold Lake First Nations  
RE: Response to Information Request No. 7

---

Thank you for the opportunity to respond to Information Request No. 7.

1. The new Dillon River Conservation Area (“Dillon River CA”) is within Cold Lake First Nations’ Traditional Territory—please see attached map.
2. Cold Lake First Nations’ concerns related to the establishment of this Conservation Area are described at pages 9 and 10 of the August 30, 2013 Request for Review. Specifically, Cold Lake First Nations is concerned that this is the only conservation area established within its Traditional Territory and the Dillon River CA cannot be an effective mechanism to protect and ensure the meaningful ability of Cold Lake First Nations’ members to exercise their Treaty and Aboriginal Rights. Conservation Areas, generally, and the Dillon River CA, are not designed for the purpose of Treaty and Aboriginal Rights protection. The Nation has a number of specific and related concerns:
  - a) The establishment of the “conservation area” involves the imposition of regulations which are incompatible with the meaningful exercise of Treaty and Aboriginal Rights;
  - b) Conservation areas allow for activities that are incompatible with the exercise of Treaty and Aboriginal Rights, including allowing for the development of existing petroleum and natural gas tenures, and by attracting recreational (non rights bearing) users whose activities interfere and are in competition with the exercise of Treaty and Aboriginal Rights;
  - c) Alberta did not provide any evidence that the Dillon River CA would be able to support the exercise of Treaty and Aboriginal Rights by those First Nations communities whose traditional territory overlaps the Dillon River CA, or other rights-bearing users<sup>1</sup> who may use this area;
  - d) The Dillon River CA is far too small to provide an effective location for wildlife to sustain the populations necessary to support hunting by rights-bearing

---

<sup>1</sup> Cold Lake First Nations uses the term “rights-bearing users” to encompass First Nations and Metis who exercise harvesting rights under s. 35 of the *Constitution Act, 1982*.

users—and is nowhere near large enough to sustain wildlife populations necessary to support both rights bearing and recreational hunters; and

- e) The Dillon River CA is too remote for Cold Lake First Nations' members to reasonably access as the only conservation area designated within their Traditional Territory.

The Dillon River CA negatively impacts Cold Lake First Nations' Health<sup>2</sup> because it suffers from these fundamental inadequacies. The Dillon River CA simply cannot meet all of the needs it is required to meet in order to be effective. The problem of inadequacy is seriously compounded for Cold Lake First Nations' because the Dillon River CA is the only conservation area established within Cold Lake First Nations' Traditional Territory. For this reason, and given that nearly all of Cold Lake First Nations' Traditional Territory has already been taken up by the Crown for other purposes, the failure of LARP to ensure and plan for an effective space for the exercise of Treaty and Aboriginal Rights by Cold Lake First Nations' members is a major failing which must be remedied.

- 3. The Clyde Lake Recreation Area is just outside the western border of Cold Lake First Nations' Traditional Territory. The Winefred Lake Recreation Area is within Cold Lake First Nations' Traditional Territory. Please see the attached map referred to in Answer #1.
- 4. Cold Lake First Nations' concerns with the Clyde and Winefred Lake Recreation Areas (the "Recreation Areas") are described at pages 11 and 12 of the August 30, 2013 Request for Review. To provide further elaboration, the establishment of Recreation Areas has a negative impact on Cold Lake First Nations' Health<sup>3</sup> and quiet enjoyment of property<sup>4</sup> by:
  - a) **Restricting through regulation and administrative procedures the meaningful enjoyment and exercise of Treaty and Aboriginal Rights.** For example, where land is designated "Public Land" or "Crown Land" under the

---

<sup>2</sup> Cold Lake First Nations' asserts that the health of its members and its community, both from a physical standpoint (having confirmed that the harvesting and ingestion of traditional foods is healthier than reliance upon store bought foods) and a psychological standpoint (having confirmed individual mental health and communal cultural benefits are increased through traditional harvesting practices) are positively supported by the exercise of Treaty and Aboriginal Rights and negatively impacted by the inability to exercise their Treaty and Aboriginal Rights. Accordingly, the term "Health" is used to encompass all of the aspects of Treaty and Aboriginal Rights.

<sup>3</sup> See above at footnote 2.

<sup>4</sup> Cold Lake First Nations' asserts the common law understanding of "property" includes the bundle of rights protected by s. 35 of the *Constitution Act, 1982*. In other words, the quiet enjoyment of property necessarily includes the quiet enjoyment of Treaty and Aboriginal Rights, unmolested by Parks staff or other users.

*Public Lands Act*, Treaty Rights holders have much greater freedom to exercise their Treaty and Aboriginal Rights. Once the land is designated a "Recreation Area" under the *Parks Act*, far more restrictions are imposed. Many activities, such as snaring, the dressing of game, and plant gathering are not permitted at all. Activities which are incidental to the Treaty right to fish, such as the construction and use of smokehouses is restricted. Cold Lake First Nations members are no longer allowed to camp in large family groups to support traditional fish harvesting over 3 to 4 week periods, as is customary. Cold Lake First Nations members are brought into conflict with Parks officers who do not understand traditional practices and who do not understand that the Province has no jurisdiction to regulate the safe exercise of Treaty Rights;

- b) **Encouraging increased use of the area by recreational (non-rights bearing) users whose activities conflict with or compete with the enjoyment and exercise of Treaty and Aboriginal Rights.** The purpose of a "recreation area" under s. 4 of the *Parks Act* is not for conservation or for the exercise of Traditional Uses, the express purpose of a recreation area is "to establish, maintain and facilitate use and enjoyment for outdoor recreation." As described in the Berry Point TLU Report (see footnote 5 of the August 30, 2013 Review Request), outdoor recreation by non-rights bearing users is typically incompatible with the quiet enjoyment of Treaty Rights. Elders cannot and will not pick berries and medicines where campers have been drinking alcohol and urinating in the bush—the foods and medicines are contaminated. Families with elders and children cannot camp together, dress game, and smoke fish comfortably with many "outsiders" around. Unfortunately, Cold Lake First Nations members report repeated negative interactions with aggressive, drunk and racist campers. For many reasons quieter, isolated, peaceful locations are preferred and "recreation areas" are avoided so as to avoid confrontation.
- c) **Further taking up land (including the removal of culturally significant plants and medicines) and rendering it incompatible with the exercise of Treaty and Aboriginal Rights.** Recreation areas are not intended for conservation or the maintenance of wilderness, nor are they intended for the meaningful exercise of Treaty and Aboriginal rights. They are intended to facilitate "outdoor recreation" such as camping with RV's, quadding, snowmobiling and other outdoor sports. In addition to the regulatory changes and potential conflict with other users, often the development of infrastructure to support recreational use within recreation areas involves construction of roads, trails, picnic areas, camp spots, fire pits, toilets and parking facilities.

The construction of these facilities involves the destruction of trees, medicinal and other culturally important plants, impacts qualities of the landscape that are associated with sense of place and the peaceful enjoyment of place, and impacts wildlife habitat.

The establishment of recreation areas in Cold Lake First Nations' Traditional Territory is not considered neutral—it is considered a further, harmful taking up of land which negatively interferes with the health and quiet enjoyment of the property of the Nation. Recreation areas, as they are currently defined and managed, cannot be considered a mechanism or accommodation that will support the meaningful exercise of Cold Lake First Nations Treaty and Aboriginal rights currently and into the future. Even if the institutional framework were amended to address the above issues with recreation areas, Cold Lake First Nations notes that, like the Dillon River CA, the Recreation Areas are remote from our home communities, difficult for our members to access, and may not provide sufficient quality and quantity of traditional resources to support the exercise of Treaty and Aboriginal rights for our current and future generations, particularly if other First Nations communities will also be depending on these areas.

5. The Panel's question raises the issue of "exclusive use" by Cold Lake First Nations' members. Problems associated with "multiple users" of the area relate to competition for resources (e.g., too many people hunting for moose in one area) and to the incompatibility of differing uses of the land. As described above, Cold Lake First Nations' concerns extend beyond these problems associated with "multiple users" of the area. While "exclusive use" may be one element of an ideal scenario to protect the ability of Cold Lake First Nations' members to exercise their Treaty and Aboriginal Rights, such a scenario would involve identifying culturally and ecologically appropriate lands where that could occur and would require other protections to ensure that such lands could continue to produce sufficient quality and quantity of necessary resources in a culturally meaningful way into the future. Cold Lake First Nations respectfully asserts that the key issue is not "exclusive use" of Parks identified under LARP, but rather, whether LARP has even considered, much less provided measures to address, what our Nations' needs are to ensure the meaningful exercise of our Treaty and Aboriginal rights can be sustained.

Fishing, hunting, trapping and gathering resources ("Traditional Resources") are becoming scarce. Cold Lake First Nations has not seen any evidence that Alberta has studied or considered within LARP or elsewhere whether there are enough Traditional Resources within Cold Lake First Nations' Traditional Territory to support all of the harvesting activities which are protected by Treaty. It is not a matter of Cold Lake First Nations wanting or advocating for "exclusive use"—the Supreme

Court of Canada has already confirmed in *Sparrow* that First Nations harvesting must be prioritized over non-rights based harvesting as a matter of law. The problem, identified in these submissions and in the submissions of the other First Nations, is that Alberta has taken no steps under the LARP to identify or prioritize the needs of First Nations with respect to harvesting and access to Traditional Resources.

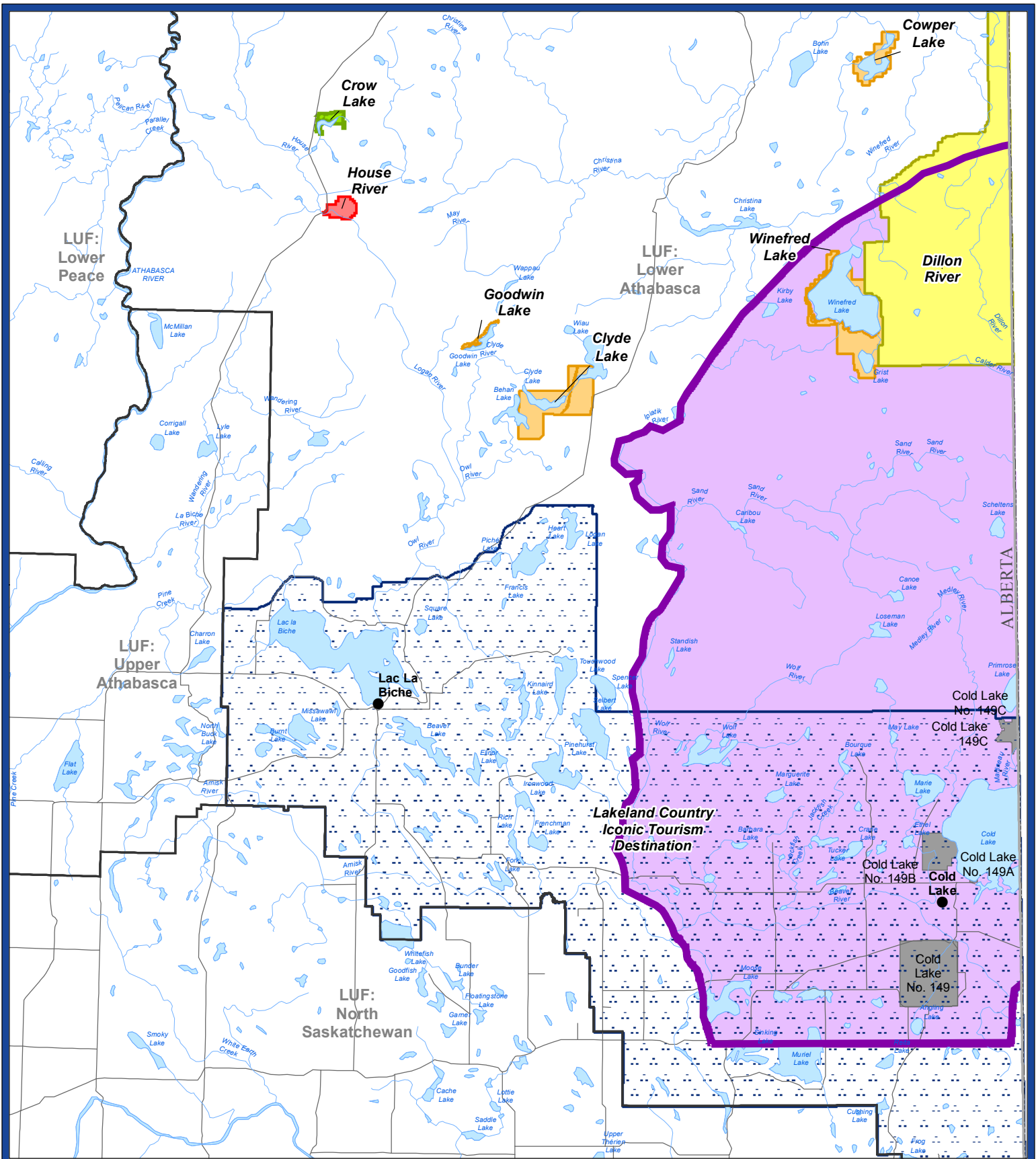
Ideally, a plan to identify the required Traditional Resources and to co-manage those resources in a responsible manner would be supported and pursued by Alberta and would be the basis upon which an alternate management regime, based on principles of shared decision-making and joint stewardship of keys lands and resources for the continued exercise of rights, could be based. This has been a frequent and repeated request made by Cold Lake First Nations. Unfortunately, as the request has never been taken up by Alberta it is very challenging for Cold Lake First Nations to propose an alternate management regime as requested by the Panel. Too many information gaps remain to propose a reasonable management regime. Cold Lake First Nations' is interested and willing to work with Alberta, and other parties, on developing an alternate management regime that could address the concerns identified above and we propose the following:

- a) Identify what key lands, and resources, are required to sustain rights over time for Cold Lake First Nations.
- b) Compare the results of (a) with LARP and identify whether amendments are required.
- c) If amendments are required, then draft amendments in consultation with aboriginal groups.
- d) Appoint a representative on behalf of the Crown to begin discussions with Cold Lake First Nations, and other First Nations, on the specific mechanisms for shared stewardship and decision-making, considering, among other things:
  - i. Establishing zones that consider the specific areas that are identified by aboriginal groups as critical to their rights and culture;
  - ii. Criteria for shared stewardship and decision-making and a detailed consultation and accommodation protocol for each zone;
  - iii. The legislative mechanisms by which the management regime would be implemented;

- iv. That in those areas critical to the aboriginal groups rights and culture, than no industrial or other activity is permitted which would adversely affect or infringe the aboriginal groups' constitutionally-protected rights until the management regime is finalized and enshrined in provincial legislation.

The first step in developing a co-management system for parks and recreation areas would be to gather information about:

- a) Which parks and recreation areas provide access to high quality Traditional Resources for Cold Lake First Nations and other First Nations;
- b) Whether the identified parks and recreation areas provide sufficient high quality Traditional Resources to support the exercise of Treaty and Aboriginal Rights by Cold Lake First Nations and other First Nations;
- c) If the answer to (b) is "yes", then consider which activities may be made available to all Albertans (considering the nature of the activity, the season, the number of people, and other relevant factors) without reducing the availability of Ecological Resources below the level necessary to support the exercise of Treaty and Aboriginal Rights by Cold Lake First Nations and other First Nations. For example, an area which is very good for hunting may be closed to other recreational users during moose hunting season but may be open for greater access during other seasons.




# COLD LAKE FIRST NATIONS

CLFNS Traditional Territory in Relation to LARP Conservation/Recreation/Parks Areas

Features:

- Land Use Framework Boundary
- Wildland Park / Expansion
- Provincial Park Expansion
- Lakeland Country Iconic Tourism Destination
- Provincial Recreation Area
- Conservation Area Public Land Use Zone
- Public Land Areas for Recreation/Tourism
- CLFNS: Traditional Territory
- CLFNS Reserve Boundary

Data Source:  
 Base Data: Altalis, Geobase, Geogritis  
 Traditional Territory: CLFNS  
 LARP Data: ESRD (2014)  
 Land Use Planning Maps & Shapefiles



SCALE: 1:1,000,000

DATE: 13 November 2014

PRODUCED BY:

